

SCHEDULES

SCHEDULE 2

Regulation 30(9)

Compensation: exemptions

PART 1

Interpretation

1. In this Schedule, “prospectus” includes an MTF admission prospectus.

PART 2

General exemptions

Statements believed to be true

- 2.—(1) In this paragraph “statement” means—
 - (a) any untrue or misleading statement in a prospectus, or
 - (b) the omission from a prospectus of any matter required to be included by regulation 23.(2) A person (D) does not incur any liability under regulation 30(1) for loss caused by a statement if D satisfies the court—
 - (a) that, at the time when the prospectus was published, D reasonably believed, having made such enquiries (if any) as were reasonable, that—
 - (i) the statement was true and not misleading, or
 - (ii) the matter whose omission caused the loss was properly omitted, and
 - (b) that one or more of the conditions set out in sub-paragraph (3) are satisfied.(3) The conditions are—
 - (a) that D continued in that belief until the time when the transferable securities in question were acquired;
 - (b) that they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire them;
 - (c) that, before the transferable securities were acquired, D had taken all such steps as it was reasonable for D to have taken to secure that a correction was brought to the attention of those persons;
 - (d) that D continued in that belief until after the commencement of dealings in the transferable securities following their admission to trading and they were acquired after such a lapse of time that D ought in the circumstances to be reasonably excused.

Statements by experts

3.—(1) In this paragraph “statement” means a statement included in a prospectus which—

- (a) purports to be made by, or on the authority of, another person as an expert, and
- (b) is stated to be included in the prospectus with that person’s consent.

(2) A person (D) does not incur any liability under regulation 30(1) for loss in respect of any securities caused by a statement if D satisfies the court that, at the time when the prospectus was published, D reasonably believed—

- (a) that the other person—
 - (i) was competent to make or authorise the statement, and
 - (ii) had consented to its inclusion in the form and context in which it was included, and
- (b) that one or more of the conditions set out in sub-paragraph (3) are satisfied.

(3) The conditions are—

- (a) that D continued in that belief until the time when the transferable securities were acquired;
- (b) that they were acquired before it was reasonably practicable to bring the fact that the expert was not competent, or had not consented, to the attention of persons likely to acquire the transferable securities in question;
- (c) that, before the transferable securities were acquired, D had taken all such steps as it was reasonable for D to have taken to secure that that fact was brought to the attention of those persons;
- (d) that D continued in that belief until after the commencement of dealings in the transferable securities following their admission to trading and they were acquired after such a lapse of time that D ought in the circumstances to be reasonably excused.

Correction of statements

4.—(1) In this paragraph “statement” has the same meaning as in paragraph 2.

(2) A person (D) does not incur liability under regulation 30(1) for loss caused by a statement if D satisfies the court—

- (a) that before the transferable securities in question were acquired, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities, or
- (b) that D took all such steps as it was reasonable for D to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(3) Nothing in this paragraph is to be taken as affecting paragraph 2.

Corrections of statements by experts

5.—(1) In this paragraph “statement” has the same meaning as in paragraph 3.

(2) A person (D) does not incur liability under regulation 30(1) for loss caused by a statement if D satisfies the court—

- (a) that before the transferable securities in question were acquired, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the transferable securities, or

- (b) that D took all such steps as it was reasonable for D to take to secure such publication and reasonably believed that it had taken place before the transferable securities were acquired.
- (3) Nothing in this paragraph is to be taken as affecting paragraph 3.

Official statements

6. A person (D) does not incur any liability under regulation 30(1) for loss resulting from—
- (a) a statement made by an official person which is included in the prospectus, or
 - (b) a statement contained in a public official document which is included in the prospectus,
- if D satisfies the court that the statement is accurately and fairly reproduced.

False or misleading information known about

7. A person (D) does not incur any liability under regulation 30(1) or (5) if D satisfies the court that the person suffering the loss acquired the transferable securities in question with knowledge—
- (a) that the statement was false or misleading,
 - (b) of the omitted matter, or
 - (c) of the circumstances giving rise to the obligation to publish a supplementary prospectus,
- as the case may be.

Belief that supplementary prospectus not called for

- 8.—(1) A person (D) does not incur any liability under regulation 30(5) if D satisfies the court that D reasonably believed that the circumstances were not such as to give rise under the appropriate rules (as defined by regulation 30(8)) to the obligation to publish a supplementary prospectus
- (2) In this paragraph “supplementary prospectus” includes a document falling within regulation 30(6)(a) or (b).

Meaning of “expert”

9. “Expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by the person.

PART 3

Further exemption relating to forward-looking statement

“Protected forward-looking statement”

- 10.—(1) For the purposes of this Part of this Schedule, a forward-looking statement in a prospectus is “a protected forward-looking statement” if it—
- (a) is of a kind specified by the FCA for the purposes of this paragraph in the appropriate rules, and
 - (b) is accompanied by a statement, in such form as may be required by the appropriate rules, which identifies the statement as a protected forward-looking statement for the purposes of this Part of this Schedule.
- (2) In paragraph (1)—
- “the appropriate rules” means—

- (i) in relation to a regulated market, regulated market admission rules, and
 - (ii) in relation to a primary MTF, rules made by virtue of regulation 15;
- “forward-looking statement” includes—
- (i) a statement containing a projection, estimate, forecast or target,
 - (ii) a statement giving guidance,
 - (iii) a statement of opinion as to future events or circumstances, or
 - (iv) a statement of intention.

Exemption from liability

- 11.**—(1) Unless the condition in sub-paragraph (2) is met, a person responsible for a prospectus (R)—
- (a) does not incur any liability under regulation 30(1) or (5) in respect of any loss caused by a protected forward-looking statement, and
 - (b) is not subject to any other liability in respect of any loss caused by such a statement.
- (2) The condition is that, at any time in the relevant period, R—
- (a) knew the protected forward-looking statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
 - (b) knew the omission from the protected forward-looking statement to be a dishonest concealment of a material fact.
- (3) A person (P) who is not among those responsible for a prospectus but would apart from this sub-paragraph have any liability to a person other than the issuer in respect of loss caused by a protected forward-looking statement in the prospectus has no such liability unless at any time in the relevant period, P—
- (a) knew the protected forward-looking statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
 - (b) knew the omission from the protected forward-looking statement to be a dishonest concealment of a material fact.
- (4) “The relevant period” is the period beginning with the time when the prospectus is published and ending with the later of—
- (a) the closure of the offer to which the prospectus relates, and
 - (b) the commencement of dealings in the transferable securities following their admission to trading on the regulated market or primary MTF.
- (5) For the purposes of sub-paragraph (2)(b) and (3)(b), a person’s conduct is regarded as dishonest if (and only if)—
- (a) it is regarded as dishonest by persons who regularly trade on the regulated market or primary MTF in question, and
 - (b) the person was aware (or must be taken to have been aware) that it was so regarded.
- (6) In sub-paragraphs (1) and (3) the reference to liability, in relation to a person, includes a reference to another person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.
- (7) This paragraph does not affect—
- (a) civil liability under rules made under section 954 of the Companies Act 2006 (compensation),

- (b) liability to a civil penalty,
 - (c) criminal liability,
 - (d) the powers conferred by section 382 and 384 of FSMA 2000 (powers of the court to make a restitution order and of the FCA to require restitution), or
 - (e) any rights conferred as a result of rules made by virtue of regulation [32](#).
- (8) This paragraph does not limit the application of Part 2 of this Schedule in relation to loss caused by a protected forward-looking statement.