

## SCHEDULES

### SCHEDULE 1

Sections 1 and 2.

#### INVESTMENTS AND INVESTMENT BUSINESS

#### PART I

##### INVESTMENTS

###### *Shares etc.*

- 1 Shares and stock in the share capital of a company.  
*Note.* In this paragraph " company" includes any body corporate and also any unincorporated body constituted under the law of a country or territory outside the United Kingdom but does not include an open-ended investment company or any body incorporated under the law of, or of any part of, the United Kingdom relating to building societies, industrial and provident societies or credit unions.

###### *Debentures*

- 2 Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, not being instruments falling within paragraph 3 below.  
*Note.* This paragraph shall not be construed as applying—
- (a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services ;
  - (b) to a cheque or other bill of exchange, a banker's draft or a letter of credit; or
  - (c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy.

###### *Government and public securities*

- 3 Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.  
*Notes*
- (1) In this paragraph " government, local authority or public authority " means—
    - (a) the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom ;

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- (b) a local authority in the United Kingdom or elsewhere;
  - (c) any international organisation the members of which include the United Kingdom or another member State.
- (2) The Note to paragraph 2 above shall, so far as applicable, apply also to this paragraph.

*Instruments entitling to shares or securities*

- 4 Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1, 2 or 3 above.

*Notes*

- (1) It is immaterial whether the investments are for the time being in existence or identifiable.
- (2) An investment falling within this paragraph shall not be regarded as falling within paragraph 7, 8 or 9 below.

*Certificates representing securities*

- 5 Certificates or other instruments which confer—
- (a) property rights in respect of any investment falling within paragraph 1, 2, 3 or 4 above ;
  - (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates ; or
  - (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

*Note.* This paragraph does not apply to any instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different investments falling within paragraph 3 above and issued by the same person.

*Units in collective investment scheme*

- 6 Units in a collective investment scheme, including shares in or securities of an open-ended investment company.

*Options*

- 7 Options to acquire or dispose of—
- (a) an investment falling within any other paragraph of this Part of this Schedule ;
  - (b) currency of the United Kingdom or of any other country or territory;
  - (c) gold or silver; or
  - (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of (a), (b) or (c) above.

### *Futures*

- 8 Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

#### *Notes*

- (1) This paragraph does not apply if the contract is made for commercial and not investment purposes.
- (2) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised investment exchange or made otherwise than on a recognised investment exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (3) A contract not falling within Note (2) above shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.
- (4) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it is made for investment purposes—
  - (a) either or each of the parties is a producer of the commodity or other property or uses it in his business ;
  - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
- (5) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.
- (6) The following are also indications that a contract is made for investment purposes—
  - (a) it is expressed to be as traded on a market or on an exchange ;
  - (b) performance of the contract is ensured by an investment exchange or a clearing house ;
  - (c) there are arrangements for the payment or provision of margin.
- (7) A price shall be taken to have been agreed upon when a contract is made—
  - (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract ; or
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

### *Contracts for differences etc.*

- 9 Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

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*Note.* This paragraph does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

*Long term insurance contracts*

- 10 Rights under a contract the effecting and carrying out of which constitutes long term business within the meaning of the Insurance Companies Act 1982.

*Notes*

- (1) This paragraph does not apply to rights under a contract of insurance if—
  - (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
  - (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding seventy years;
  - (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium ; and
  - (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with paragraphs (a), (b) and (c) above.
- (2) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract—
  - (a) constitutes both long term business within the meaning of the Insurance Companies Act 1982 and general business within the meaning of that Act; or
  - (b) by virtue of section 1(3) of that Act constitutes long term business notwithstanding the inclusion of subsidiary general business provisions,

references in this paragraph to rights and benefits under the contract are references only to such rights and benefits as are attributable to the provisions of the contract relating to long term business.
- (3) This paragraph does not apply to rights under a reinsurance contract.
- (4) Rights falling within this paragraph shall not be regarded as falling within paragraph 9 above.

*Rights and interests in investments*

- 11 Rights to and interests in anything which is an investment falling within any other paragraph of this Part of this Schedule.

*Notes*

- (1) This paragraph does not apply to interests under the trusts of an occupational pension scheme.
- (2) This paragraph does not apply to rights or interests which are investments by virtue of any other paragraph of this Part of this Schedule.

## PART II

### ACTIVITIES CONSTITUTING INVESTMENT BUSINESS

#### *Dealing in investments*

- 12 Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

#### *Arranging deals in investments*

- 13 Making, or offering or agreeing to make—
- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or
  - (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

#### *Notes*

- (1) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.
- (2) The arrangements in (a) above are arrangements which bring about or would bring about the transaction in question.

#### *Managing investments*

- 14 Managing, or offering or agreeing to manage, assets belonging to another person if—
- (a) those assets consist of or include investments; or
  - (b) the arrangements for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time since the date of the coming into force of section 3 of this Act done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which they would do so.

#### *Investment advice*

- 15 Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

#### *Establishing etc. collective investment schemes*

- 16 Establishing, operating or winding up a collective investment scheme, including acting as trustee of an authorised unit trust scheme.

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### PART III

#### EXCLUDED ACTIVITIES

##### *Dealings as principal*

- 17 (1) Paragraph 12 above applies to a transaction which is or is to be entered into by a person as principal only if—
- (a) he holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction ; or
  - (b) he holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates ; or
  - (c) he regularly solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that manner.
- (2) In sub-paragraph (1) above " buying" and " selling " means buying and selling by transactions to which paragraph 12 above applies and "members of the public", in relation to the person soliciting them (" the relevant person "), means any other persons except—
- (a) authorised persons, exempted persons, or persons holding a permission under paragraph 23 below ;
  - (b) members of the same group as the relevant person ;
  - (c) persons who are, or propose to become, participators with the relevant person in a joint enterprise ;
  - (d) any person who is solicited by the relevant person with a view to—
    - (i) the acquisition by the relevant person of 20 per cent, or more of the voting shares in a body corporate (that is to say, shares carrying not less than that percentage of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body); or
    - (ii) if the relevant person (either alone or with other members of the same group as himself) holds 20 per cent, or more of the voting shares in a body corporate, the acquisition by him of further shares in the body or the disposal by him of shares in that body to the person solicited or to a member of the same group as that person ; or
    - (iii) if the person solicited (either alone or with other members of the same group as himself) holds 20 per cent, or more of the voting shares in a body corporate, the disposal by the relevant person of further shares in that body to the person solicited or to a member of the same group as that person;
  - (e) any person whose head office is outside the United Kingdom, who is solicited by an approach made or directed to him at a place outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

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- (3) Sub-paragraph (1) above applies only if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above.
- (4) Paragraph 12 above does not apply to a transaction which relates or is to relate to any other investment and which is or is to be entered into by a person as principal if he is not an authorised person and the transaction is or is to be entered into by him—
  - (a) with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or
  - (b) through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business is such as is mentioned in sub-paragraph (2)(e) above.

#### *Groups and joint enterprises*

- 18 (1) Paragraph 12 above does not apply to any transaction which is or is to be entered into by a person as principal with another person if—
- (a) they are bodies corporate in the same group ; or
  - (b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purposes of, or in connection with, that enterprise.
- (2) Paragraph 12 above does not apply to any transaction which is or is to be entered into by any person as agent for another person in the circumstances mentioned in sub-paragraph (1)(a) or (b) above if—
- (a) where the investment falls within any of paragraphs 1 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above, the agent does not—
    - (i) hold himself out (otherwise than to other bodies corporate in the same group or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
    - (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 12 above applies ; and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
  - (b) where the investment is not as mentioned in paragraph (a) above—
    - (i) the agent enters into the transaction with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or
    - (ii) the transaction is effected through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

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- (3) Paragraph 13 above does not apply to arrangements which a person makes or offers or agrees to make if—
- (a) that person is a body corporate and the arrangements are with a view to another body corporate in the same group entering into a transaction of the kind mentioned in that paragraph ; or
  - (b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.
- (4) Paragraph 14 above does not apply to a person by reason of his managing or offering or agreeing to manage the investments of another person if—
- (a) they are bodies corporate in the same group ; or
  - (b) they are, or propose to become, participators in a joint enterprise and the investments are or are to be managed for the purposes of, or in connection with, that enterprise.
- (5) Paragraph 15 above does not apply to advice given by a person to another person if—
- (a) they are bodies corporate in the same group ; or
  - (b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of, or in connection with, that enterprise.
- (6) The definitions in paragraph 17(2) above shall apply also for the purposes of subparagraph (2)(a) above except that the relevant person referred to in paragraph 17(2)(d) shall be the person for whom the agent is acting.

*Sale of goods and supply of services*

- 19 (1) This paragraph has effect where a person (" the supplier ") sells or offers or agrees to sell goods to another person (" the customer ") or supplies or offers or agrees to supply him with services and the supplier's main business is to supply goods or services and not to engage in activities falling within Part II of this Schedule.
- (2) Paragraph 12 above does not apply to any transaction which is or is to be entered into by the supplier as principal if it is or is to be entered into by him with the customer for the purposes of or in connection with the sale or supply or a related sale or supply (that is to say, a sale or supply to the customer otherwise than by the supplier but for or in connection with the same purpose as the first-mentioned sale or supply).
- (3) Paragraph 12 above does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection with the sale or supply or a related sale or supply and—
- (a) where the investment falls within any of paragraphs 1 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above, the supplier does not—
    - (i) hold himself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates ; or
    - (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 12 above applies ; and the transaction is not or is not to be



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- entered into as a result of his having solicited members of the public in that manner;
- (b) where the investment is not as mentioned in paragraph (a) above, the supplier enters into the transaction—
- (i) with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below ; or
  - (ii) through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.
- (4) Paragraph 13 above does not apply to arrangements which the supplier makes or offers or agrees to make with a view to the customer entering into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.
- (5) Paragraph 14 above does not apply to the supplier by reason of his managing or offering or agreeing to manage the investments of the customer if they are or are to be managed for the purposes of or in connection with the sale or supply or a related sale or supply.
- (6) Paragraph 15 above does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale or supply or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.
- (7) Where the supplier is a body corporate and a member of a group sub-paragraphs (2) to (6) above shall apply to any other member of the group as they apply to the supplier; and where the customer is a body corporate and a member of a group references in those sub-paragraphs to the customer include references to any other member of the group.
- (8) The definitions in paragraph 17(2) above shall apply also for the purposes of sub-paragraph (3)(a) above.

#### *Employees' share schemes*

- 20 (1) Paragraphs 12 and 13 above do not apply to anything done by a body corporate, a body corporate connected with it or a relevant trustee for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in sub-paragraph (2) below or the holding of such shares or debentures by or for the benefit of any such persons.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) the bona fide employees or former employees of the body corporate or of another body corporate in the same group; or
  - (b) the wives, husbands, widows, widowers, or children or stepchildren under the age of eighteen of such employees or former employees.
- (3) In this paragraph " a relevant trustee " means a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements made for the purpose mentioned in subparagraph (1) above by, or by a body corporate connected with, that body corporate.

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- (4) In this paragraph " shares" and " debentures" include any investment falling within paragraph 1 or 2 above and also include any investment falling within paragraph 4 or 5 above so far as relating to those paragraphs or any investment falling within paragraph 11 above so far as relating to paragraph 1, 2, 4 or 5.
- (5) For the purposes of this paragraph a body corporate is connected with another body corporate if—
- (a) they are in the same group; or
  - (b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or of its holding company.

*Sale of private company*

- 21 (1) Paragraphs 12 and 13 above do not apply to the acquisition or disposal of, or to anything done for the purposes of the acquisition or disposal of, shares in a private company, and paragraph 15 above does not apply to advice given in connection with the acquisition or disposal of such shares, if—
- (a) the shares consist of or include shares carrying 75 per cent. or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the company ; or
  - (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights ; and
  - (c) in either case, the acquisition and disposal is, or is to be, between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.
- (2) For the purposes of subsection (1)(c) above " a group of connected individuals", in relation to the party disposing of the shares, means persons each of whom is, or is a close relative of, a director or manager of the company and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is to be a director or manager of the company.
- (3) In this paragraph " private company " means a private company within the meaning of section 1(3) of the Companies Act 1985 or the corresponding Northern Ireland provision and " close relative" means a person's spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters.

*Trustees and personal representatives*

- 22 (1) Paragraph 12 above does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if—
- (a) the investment is or, as the case may be, is to be held by him as bare trustee or, in Scotland, as nominee for another person ;
  - (b) he is acting on that person's instructions; and
  - (c) he does not hold himself out as providing a service of buying and selling investments.
- (2) Paragraph 13 above does not apply to anything done by a person as trustee or personal representative with a view to—

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- (a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within paragraph 12 above ; or
  - (b) a beneficiary under the trust, will or intestacy engaging in any such activity, unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (3) Paragraph 14 above does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (4) Paragraph 15 above does not apply to advice given by a person as trustee or personal representative to—
- (a) a fellow trustee or personal representative for the purposes of the trust or estate ; or
  - (b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate,
- unless that person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (5) Sub-paragraph (1) above has effect to the exclusion of paragraph 17 above as respects any transaction in respect of which the conditions in sub-paragraph (1)(a) and (b) are satisfied.

*Dealings in course of non-investment business*

- 23 (1) Paragraph 12 above does not apply to anything done by a person—
- (a) as principal;
  - (b) if that person is a body corporate in a group, as agent for another member of the group ; or
  - (c) as agent for a person who is or proposes to become a participator with him in a joint enterprise and for the purposes of or in connection with that enterprise, if it is done in accordance with the terms and conditions of a permission granted to him by the Secretary of State under this paragraph.
- (2) Any application for permission under this paragraph shall be accompanied or supported by such information as the Secretary of State may require and shall not be regarded as duly made unless accompanied by the prescribed fee.
- (3) The Secretary of State may grant a permission under this paragraph if it appears to him—
- (a) that the applicant's main business, or if he is a member of a group the main business of the group, does not consist of activities for which a person is required to be authorised under this Act;
  - (b) that the applicant's business is likely to involve such activities which fall within paragraph 12 above; and
  - (c) that, having regard to the nature of the applicant's main business and, if he is a member of a group, the main business of the group taken as a whole, the manner in which, the persons with whom and the purposes for which the applicant proposes to engage in activities that would require him to be be

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an authorised person and to any other relevant matters, it is inappropriate to require him to be subject to regulation as an authorised person.

- (4) Any permission under this paragraph shall be granted by a notice in writing ; and the Secretary of State may by a further notice in writing withdraw any such permission if for any reason it appears to him that it is not appropriate for it to continue in force.
- (5) The Secretary of State may make regulations requiring persons holding permissions under this paragraph to furnish him with information for the purpose of enabling him to determine whether those permissions should continue in force ; and such regulations may, in particular, require such persons—
- (a) to give him notice forthwith of the occurrence of such events as are specified in the regulations and such information in respect of those events as is so specified ;
  - (b) to furnish him at such times or in respect of such periods as are specified in the regulations with such information as is so specified
- (6) Section 61 of this Act shall have effect in relation to a contravention of any condition imposed by a permission under this paragraph as it has effect in relation to any such contravention as is mentioned in subsection (1)(a) of that section.
- (7) Section 104 of this Act shall apply to a person holding a permission under this paragraph as if he were authorised to carry on investment business as there mentioned ; and sections 105 and 106 of this Act shall have effect as if anything done by him in accordance with such permission constituted the carrying on of investment business.

*Advice given in course of profession or non-investment business*

- 24 (1) Paragraph 15 above does not apply to advice—
- (a) which is given in the course of the carrying on of any profession or of a business not otherwise constituting investment business ; and
  - (b) the giving of which is a necessary part of other advice or services given in the course of carrying on that profession or business.
- (2) Advice shall not be regarded as falling within sub-paragraph (1)(b) above if it is remunerated separately from the other advice or services.

*Newspapers*

- 25 (1) Paragraph 15 above does not apply to advice given in a newspaper, journal, magazine or other periodical publication if the principal purpose of the publication, taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.
- (2) The Secretary of State may, on the application of the proprietor of any periodical publication, certify that it is of the nature described in sub-paragraph (1) above and revoke any such certificate if he considers that it is no longer justified.
- (3) A certificate given under sub-paragraph (2) above and not revoked shall be conclusive evidence of the matters certified.

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## PART IV

### ADDITIONAL EXCLUSIONS FOR PERSONS WITHOUT PERMANENT PLACE OF BUSINESS IN UNITED KINGDOM

#### *Transactions with or through authorised or exempted persons*

- 26 (1) Paragraph 12 above does not apply to any transaction by a person not falling within section 1(3)(a) of this Act (" an overseas person ") with or through—
- (a) an authorised person ; or
  - (b) an exempted person acting in the course of business in respect of which he is exempt.
- (2) Paragraph 13 above does not apply if—
- (a) the arrangements are made by an overseas person with, or the offer or agreement to make them is made by him to or with, an authorised person or an exempted person and, in the case of an exempted person, the arrangements are with a view to his entering into a transaction in respect of which he is exempt; or
  - (b) the transactions with a view to which the arrangements are made are, as respects transactions in the United Kingdom, confined to transactions by authorised persons and transactions by exempted persons in respect of which they are exempt.

#### *Unsolicited or legitimately solicited transactions etc. with or for other persons*

- 27 (1) Paragraph 12 above does not apply to any transaction entered into by an overseas person as principal with, or as agent for, a person in the United Kingdom, paragraphs 13, 14 and 15 above do not apply to any offer made by an overseas person to or agreement made by him with a person in the United Kingdom and paragraph 15 above does not apply to any advice given by an overseas person to a person in the United Kingdom if the transaction, offer, agreement or advice is the result of—
- (a) an approach made to the overseas person by or on behalf of the person in the United Kingdom which either has not been in any way solicited by the overseas person or has been solicited by him in a way which has not contravened section 56 or 57 of this Act; or
  - (b) an approach made by the overseas person which has not contravened either of those sections.
- (2) Where the transaction is entered into by the overseas person as agent for a person in the United Kingdom, sub-paragraph (1) above applies only if—
- (a) the other party is outside the United Kingdom ; or
  - (b) the other party is in the United Kingdom and the transaction is the result of such an approach by the other party as is mentioned in sub-paragraph (1)(a) above or of such an approach as is mentioned in sub-paragraph (1)(b) above.

## PART V

### INTERPRETATION

- 28 (1) In this Schedule—

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- (a) " property" includes currency of the United Kingdom or any other country or territory ;
  - (b) references to an instrument include references to any record whether or not in the form of a document;
  - (c) references to an offer include references to an invitation to treat;
  - (d) references to buying and selling include references to any acquisition or disposal for valuable consideration.
- (2) In sub-paragraph (1)(d) above " disposal " includes—
- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements ;
  - (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
  - (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.
- (3) A company shall not by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his own debentures or debenture warrants, be regarded for the purposes of this Schedule as disposing of them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for or otherwise acquiring them or underwriting them.
- (4) In sub-paragraph (3) above " company " has the same meaning as in paragraph 1 above, " shares " and " debentures " include any investments falling within paragraph 1 or 2 above and " share warrants " and " debenture warrants " means any investment which falls within paragraph 4 above and relates to shares in the company concerned or, as the case may be, to debentures issued by the person concerned.
- 29 For the purposes of this Schedule a transaction is entered into through a person if he enters into it as agent or arranges for it to be entered into by another person as principal or agent.
- 30 For the purposes of this Schedule a group shall be treated as including any body corporate which is a related company within the meaning of paragraph 92 of Schedule 4 to the Companies Act 1985 of any member of the group or would be such a related company if the member of the group were a company within the meaning of that Act.
- 31 In this Schedule "a joint enterprise" means an enterprise into which two or more persons (" the participators ") enter for commercial reasons related to a business or businesses (other than investment business) carried on by them ; and where a participator is a body corporate and a member of a group each other member of the group shall also be regarded as a participator in the enterprise.
- 32 Where a person is an exempted person as respects only part of the investment business carried on by him anything done by him in carrying on that part shall be disregarded in determining whether any paragraph of Part III or IV of this Schedule applies to anything done by him in the course of business in respect of which he is not exempt.
- 33 In determining for the purposes of this Schedule whether anything constitutes an investment or the carrying on of investment business section 18 of the Gaming Act 1845, section 1 of the Gaming Act 1892, any corresponding provision in force in

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*Status: This is the original version (as it was originally enacted).*

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Northern Ireland and any rule of the law of Scotland whereby a contract by way of gaming or wagering is not legally enforceable shall be disregarded.