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STATUTORY INSTRUMENTS

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**1988 No. 316**

**FINANCIAL SERVICES**

**The Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988**

<i>Made</i>	- - - -	<i>25th February 1988</i>
<i>Laid before Parliament</i>		<i>25th February 1988</i>
<i>Coming into force</i>	- -	<i>17th March 1988</i>

The Secretary of State in exercise of the powers conferred on him by section 58(3)(a) and (c) and (4) of the Financial Services Act 1986(1), and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation and Commencement**

1. This Order may be cited as the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988 and shall come into force on 17th March 1988.

**Interpretation**

2. In this Order and in the Schedule hereto—

“the Act” means the Financial Services Act 1986;

“the 1985 Act” means the Companies Act 1985(2);

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(3); and

“private company”, in relation to a body corporate which is a company within the meaning of the 1985 Act, means a private company within the meaning of section 1(3) of the 1985 Act and, in relation to a body corporate which is a company within the meaning of the 1986 Order, means a private company within the meaning of article 12(3) of the 1986 Order.

**Investment advertisements issued by body corporate to existing members or creditors**

3.—(1) Section 57 of the Act shall not apply to an investment advertisement which is issued or caused to be issued by a body corporate other than an open-ended investment company if the circumstances are that the body corporate issues or causes the advertisement to be issued to persons

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(1) 1986 c. 60.

(2) 1985 c. 6.

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

whom it reasonably believes to be creditors or members of, or the holders of investments falling within paragraph 1, 2 or 4 of Schedule 1 to the Act issued by, the body corporate or by another body corporate in the same group other than an open-ended investment company and the advertisement contains no invitation or information which would make it an investment advertisement other than an invitation or information relating to an investment of the kind described in this paragraph.

(2) Section 57 of the Act shall not apply to an advertisement which is issued or caused to be issued by an open-ended investment company if the circumstances are that the open-ended investment company issues or causes the advertisement to be issued to persons whom it reasonably believes to be creditors of or the holders of investments falling within paragraph 2, 4 or 6 of Schedule 1 to the Act issued by the open-ended investment company and the advertisement contains no invitation or information which would make it an investment advertisement other than an invitation or information relating to an investment of the kind described in this paragraph.

### **Investment advertisements issued in connection with employees' share schemes**

4.—(1) Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a body corporate, a body corporate connected with it or a relevant trustee if the only reason why it would be subject to the provisions of section 57 of the Act is because it contains an invitation made or information given for the purpose of enabling or facilitating transactions in shares in or debentures of the first mentioned body corporate between or for the benefit of any of the persons mentioned in paragraph (2) of this article or the holding of such shares or debentures by or for the benefit of any such persons.

(2) The persons referred to in paragraph (1) of this article 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 (including, in Northern Ireland, adopted children) or step-children under the age of eighteen of such employees or former employees.

(3) For the purposes of this article—

- (a) the expressions “relevant trustee”, “shares” and “debentures” have the meanings ascribed to them in paragraph 20(3) and (4) of Schedule 1 to the Act taking the reference in paragraph 20(3) to sub-paragraph (1) of that paragraph to be a reference to paragraph (1) of this article;
- (b) a body corporate is to be regarded as connected with another body corporate if it would be so regarded for the purposes of paragraph 20 of Schedule 1 to the Act; and
- (c) 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 1985 Act 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.

### **Groups**

5. Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by one body corporate in a group to another body corporate in the same group and for these purposes 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 1985 Act 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.

### **Joint enterprises**

6.—(1) For the purposes of this article “joint enterprise” has the meaning given in paragraph 31 of Schedule 1 to the Act and the expression “participator” shall be construed in accordance with that paragraph.

(2) Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a participator or potential participator in a joint enterprise to another participator or potential participator in the same joint enterprise if the only reason why the advertisement would be subject to the provisions of section 57 of the Act is because it contains an invitation or information of the kind described in section 57(2) of the Act which is made or given in connection with, or for the purposes of, the joint enterprise.

### **Sale of goods and supply of services**

7.—(1) For the purposes of this article—

- (a) the expressions “supplier” and “related sale or supply” shall be construed in accordance with paragraph 19 of Schedule 1 to the Act and the expression “customer” shall also be construed in accordance with that paragraph except that it shall be construed as excluding references to an individual; and
- (b) 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 1985 Act 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.

(2) Subject to paragraph (3) below, section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a supplier or a body corporate in the same group as a supplier to a customer or a body corporate in the same group as a customer if the only reason why the advertisement would be subject to the provisions of section 57 of the Act is because it contains an invitation or information of the kind described in section 57(2) of the Act which is made or given for the purposes of or in connection with the supplier selling or offering or agreeing to sell goods to the customer or supplying or offering or agreeing to supply him with services or is given for the purposes of or in connection with a related sale or supply provided that the supplier’s main business is to supply goods or services and not to engage in activities falling within Part II of Schedule 1 to the Act.

(3) This article shall not apply to an advertisement which contains an invitation or information with respect to an investment falling within paragraph 6 or 10 of Schedule 1 to the Act or, so far as relevant to either of those paragraphs, paragraph 11 of that Schedule.

### **Overseas persons**

8.—(1) In this article “overseas person” means a person who does not fall within section 1(3)(a) of the Act.

(2) Subject to the provisions of paragraph (3) below, section 57 of the Act shall not apply to an investment advertisement which an overseas person issues or causes to be issued to another person if that other person is either—

- (a) a person with or for whom the overseas person has, in the course of carrying on investment business, effected or arranged for the effecting of a transaction within the period of twelve months ending with the date on which the investment advertisement was issued; or
- (b) a person to whom the overseas person has, in the course of carrying on such business, given advice falling within paragraph 15 of Schedule 1 to the Act within that period.

(3) The provisions of paragraph (2) above shall not apply unless either—

- (a) in a case within paragraph (2)(a) above, the transaction was effected or arranged at a time when the other person was neither resident nor had a place of business in the United Kingdom; or
- (b) in a case within paragraph (2)(b) above, the advice was given outside the United Kingdom at a time when the other person was neither resident nor had a place of business in the United Kingdom; or
- (c) in either case, if the transaction was effected or arranged or the advice was given otherwise than in the circumstances described in sub-paragraph (a) or (b) of this paragraph, the overseas person had, on a previous occasion and in the course of carrying on investment business, effected or arranged for the effecting of a transaction with or for the other person in the circumstances described in sub-paragraph (a) of this paragraph or had given the other person advice falling within paragraph 15 of Schedule 1 to the Act in the circumstances described in sub-paragraph (b).

### **Advertisements issued to persons sufficiently expert to understand the risks involved**

9.—(1) In this article “relevant person” means a person who is not an authorised person and who is not unlawfully carrying on investment business in the United Kingdom.

(2) Subject to the provisions of paragraph (4) of this article, section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a relevant person if either—

- (a) in the case of an advertisement which takes the form of a document, the only persons in the United Kingdom to whom the relevant person issues or causes the advertisement to be issued are persons whom he reasonably believes to be persons of a kind described in paragraph (3) below and, in a case in which a person is described in paragraph (3) below as acting in a particular capacity, the advertisement was issued to that person in that capacity; or
  - (b) in any other case, the relevant person reasonably believes that the means by which the advertisement is issued is such that it will not generally be made available in the United Kingdom except to persons of a kind described in paragraph (3) below and, in a case in which a person is described in paragraph (3) below as acting in a particular capacity, the relevant person intended the advertisement to be received by him in that capacity.
- (3) A person falls within this paragraph if he is either—
- (a) an authorised person; or
  - (b) an exempted person; or
  - (c) a person who is acting in the course of a business or employment which involves the dissemination of information concerning investments or activities of the kind described in Part II of Schedule 1 to the Act through newspapers, journals, magazines or other periodical publications or by way of sound broadcasting or television; or
  - (d) a government, local authority or public authority within the meaning of Note 1 to paragraph 3 of Schedule 1 to the Act; or
  - (e) a body corporate or an unincorporated association which either—
    - (i) if it is a body corporate and has more than 20 members or is the subsidiary of a holding company which has more than 20 members, it, or any of its holding companies or subsidiaries, has a called up share capital or net assets of not less than £500,000; or
    - (ii) if it is a body corporate other than one described in sub-paragraph (e)(i) above, it or any of its holding companies or subsidiaries has a called up share capital or net assets of not less than £5 million; or

- (iii) if it is an unincorporated association, it has net assets of not less than £5 million; or
- (f) a person who holds a permission granted under paragraph 23 of Schedule 1 to the Act; or
- (g) a person acting in his capacity as a director, officer or employee of a person of a kind described above in this paragraph being a person whose responsibilities, when acting in that capacity, involve him engaging in activities which fall within Part II of Schedule 1 to the Act or which would fall within that Part were it not for the provisions of Part III of that Schedule.

(4) This article does not apply to an investment advertisement which contains an invitation or information of the kind described in section 57(2) of the Act in connection with an offer which is an offer of a kind described in section 14 of the Companies Securities (Insider Dealing) Act 1985(4) for shares in a body corporate.

(5) In paragraph (3) above, the expression “net assets” has the meaning assigned to it in section 264 of the 1985 Act.

#### **Advertisements relating to matters of common interest**

**10.**—(1) Subject to the provisions of paragraph (2) of this article, section 57 of the Act shall not apply to an investment advertisement which contains an invitation made or information given with respect to shares in or debentures of a private company if the advertisement—

- (a) states expressly that the only persons who may enter into or offer to enter into any agreement for or with a view to subscribing for shares in or debentures of the company on the basis of any invitation or information contained in the advertisement or any such agreement which might reasonably be expected to be entered into, directly or indirectly, as a result of the advertisement are within an identified group of persons who, at the time the advertisement was issued, might reasonably be regarded as having an existing and common interest with each other and with the company in the affairs of the company and in what is to be done with the proceeds of the offer; and
- (b) the advertisement complies with the requirements of the Schedule to this Order.

(2) For the purposes of paragraph (1) above persons shall not be regarded as having an interest of the kind described in that paragraph if the only reason why they would be so regarded is because—

- (a) they will have such an interest if they become members or creditors of the company; or
- (b) they are persons all of whom carry on a particular trade or profession; or
- (c) they are persons with whom the company has an existing business relationship whether by reason of their being its clients, customers, contractors or suppliers or otherwise.

#### **Advertisements by trustees or personal representatives**

**11.** Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a person when acting as a trustee or a personal representative to—

- (a) a fellow trustee or personal representative if the advertisement is issued for the purposes of the trust or estate; or
- (b) a beneficiary under the trust, will or intestacy if the advertisement concerns his interest in the trust fund or estate.

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**Advertisements issued by operators of schemes recognised under section 87 or 88 of the Act**

**12.** Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a person who is not an authorised person but who is the operator of a scheme recognised under section 87 or 88 of the Act to persons in the United Kingdom who are participants in a scheme recognised under section 87 or 88 of the Act which is operated by the person by or to whose order the advertisement is issued if the only reason why the advertisement would be subject to the provisions of section 57 of the Act is because it contains an invitation or information relating to that recognised scheme or to units in it.

25th February 1988

*Francis Maude,*  
Parliamentary Under Secretary of State  
Department of Trade and Industry

## SCHEDULE

Article 10

1. An advertisement complies with the requirements of this Schedule if it complies with the requirements of paragraphs 2, 3 and 4 below.

2. An advertisement complies with the requirements of this paragraph if it contains a statement made by the directors or the persons named therein as promoters of the company accepting responsibility therefor without any limitation of liability on the basis that they have taken all reasonable care to ensure that every statement whether of fact or opinion which it contains is true and not misleading in the form and context in which it is included.

3. An advertisement complies with the requirements of this paragraph if it contains either—

- (a) a statement by the directors or the persons named therein as promoters of the company also accepting responsibility therefor without any limitation of liability that they have taken all reasonable care to ensure that the document contains all such information as a person such as the person or persons to whom the advertisement is addressed and their professional advisers would reasonably require and reasonably expect to find there for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the company and the rights attaching to the shares or debentures to which the document relates; or
- (b) the words “you should regard any subscription for shares in or debentures of this company as made primarily to assist the furtherance of its objectives (other than any purely financial objectives) and only secondarily, if at all, as an investment”.

4. An advertisement complies with the requirements of this paragraph if it contains prominently the words “If you are in any doubt about this offer you should consult a person authorised under the Financial Services Act 1986 who specialises in advising on investments of the kind being offered” or other words to a like effect.

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## EXPLANATORY NOTE

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

This Order makes provision for certain exemptions from the requirement imposed by section 57 of the Financial Services Act 1986 that no person other than a person authorised under that Act may issue or cause to be issued an investment advertisement in the United Kingdom unless its contents have been approved by an authorised person.

Article 3 of the Order is concerned with advertisements issued by bodies corporate to existing members and creditors. Article 4 is concerned with advertisements issued in connection with employee share schemes. Articles 5 and 6 respectively concern advertisements issued within groups of bodies corporate and advertisements between participants or potential participants in a joint enterprise. Article 7 concerns investment advertisements issued in connection with the sale of goods or supply of services. Article 8 concerns advertisements issued by persons without a permanent place of business in the United Kingdom to persons with whom they have an existing relationship established abroad. Article 9 concerns advertisements issued to certain persons sufficiently expert to understand the risks involved. Article 10 concerns advertisements issued to persons who are regarded as having an existing and common interest in the subject matter of the advertisement.

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Article 11 concerns certain advertisements issued by trustees and personal representatives. Article 12 concerns advertisements issued by operators of recognised collective investment schemes who are not authorised under the Act.