
STATUTORY INSTRUMENTS

1995 No. 1266

FINANCIAL SERVICES

**The Financial Services Act 1986 (Investment
Advertisements) (Exemptions) Order 1995**

<i>Made</i>	- - - -	<i>10th May 1995</i>
<i>Laid before Parliament</i>		<i>10th May 1995</i>
<i>Coming into force</i>	- -	<i>19th June 1995</i>

The Treasury, in exercise of the powers conferred on them by section 58(3)(a) to (c) and (4) and section 205A of the Financial Services Act 1986⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and Commencement

1. This Order may be cited as the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1995 and shall come into force on 19th June 1995.

Interpretation

2.—(1) In this Order and in the Schedules 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⁾;

“approved securities market” means any market which is established under the rules of an investment exchange specified in Schedule 2 to this Order;

“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⁽⁴⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁵⁾, but until that Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein;

(1) 1986 c. 60. Section 205A was inserted by paragraph 18 of Schedule 23 to the Companies Act 1989 (c. 40).

(2) 1985 c. 6.

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

(4) OJNo. L 1, 3.1.94, p.3.

(5) OJ No. L 1, 3.1.94, p.572.

“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;

“relevant bearer security” means a relevant security title to which is capable of being transferred without notice of that fact being given to the body corporate issuing the security or any person acting on its behalf;

“relevant EEA market” means a market in an EEA State which is established under the rules of an investment exchange specified in Part I of Schedule 1 to this Order or which meets the criteria specified in Part II of that Schedule;

“relevant security” means shares and also means an investment falling within paragraph 2 of Schedule 1 to the Act and any investment falling within paragraph 4 or 5 of that Schedule which confers rights in respect of an investment falling within paragraph 1 or 2 of that Schedule; and

“shares” means any investment falling within paragraph 1 of Schedule 1 to the Act.

(2) For the purposes of this Order, a relevant security falling within paragraph 4 or 5 of Schedule 1 to the Act shall be taken to have been issued by the person who issued the investment in respect of which the relevant security confers rights if it is issued by a body corporate in the same group as that person or by some other person acting on behalf of, or pursuant to arrangements made with, that person.

Investment advertisements issued by body corporate to member or creditors

3.—(1) Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a body corporate other than an open-ended investment company if the only persons to whom the advertisement is issued, other than persons to whom it may otherwise lawfully be issued, are reasonably believed by the person who issued the advertisement or who caused it to be issued to be persons who fall within any one or more of the following categories—

- (a) creditors or members of, or persons who are entitled to investments falling within paragraph 1, 2 or 4 of Schedule 1 to the Act issued by, the body corporate;
- (b) creditors or members of, or persons who are entitled to investments falling within paragraph 1, 2 or 4 of Schedule 1 to the Act issued by, another body corporate which is not an open-ended investment company but which is in the same group as the first body corporate; and
- (c) persons who are entitled, whether conditionally or unconditionally, to become members of the body corporate or to have title to an investment of a kind mentioned in subparagraph (a) or (b) above issued by the body corporate transferred to them but who have not yet become a member of the body corporate or, as the case may be, acquired title to the investment

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 a kind described in this paragraph issued or to be issued by the body corporate or by another body corporate which is not an open-ended investment company but which is in the same group as the first body corporate.

(2) Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by an open-ended investment company if the circumstances are that the only persons to whom the advertisement is issued, other than persons to whom it may otherwise lawfully be issued, are reasonably believed by the person who issued the advertisement or who caused it to be issued to be persons who fall within any one or more of the following categories—

- (a) creditors or members of, or persons who are entitled to investments falling within paragraph 2, 4 or 6 of Schedule 1 to the Act issued by, the open-ended investment company; and
 - (b) persons who are entitled, whether conditionally or unconditionally, to become members of the open-ended investment company or to have title to an investment of a kind mentioned in sub-paragraph (a) above issued by the company transferred to them but who have not yet become a member of the company or, as the case may be, acquired title to the investment,
- 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 a kind described in this paragraph issued or to be issued by the open-ended investment company.

Investment advertisements relating to relevant securities

4.—(1) Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a body corporate other than an open-ended investment company if the advertisement fulfils the conditions specified in paragraph (2) of this article and either—

- (a) relevant securities issued by the body corporate, or, in a case in which the body corporate is a wholly-owned subsidiary within the meaning of section 736 of the 1985 Act⁽⁶⁾, by its holding company, are permitted to be traded or dealt in on a relevant EEA market or an approved securities market; or
- (b) the advertisement consists of or is accompanied by the whole or any part of the body corporate's annual accounts or by the directors' report prepared and approved under sections 234 and 234A of the 1985 Act⁽⁷⁾ or the corresponding Northern Ireland enactment or consists of or is accompanied by any report prepared and approved under the law of another EEA State corresponding to the said sections 234 and 234A.

(2) The conditions specified in this paragraph are that the advertisement—

- (a) does not contain any invitation or offer to persons to underwrite, subscribe for, otherwise acquire, or dispose of any investments or advise persons so to do;
- (b) does not contain any invitation or offer to persons to effect any transaction with, or to make use of any services provided by, the body corporate or any person named in the advertisement in the course of any activity falling within any of paragraphs 12 to 16 of Schedule 1 to the Act in which the body corporate or the relevant person engages;
- (c) does not contain any information calculated to lead directly or indirectly to persons doing any of the things mentioned in section 57(2) of the Act in relation to any investment which is not a relevant security issued by the body corporate or another body corporate in the same group; and
- (d) in a case in which the advertisement contains information about the price at which relevant securities issued by the body corporate have been bought or sold in the past or, except where the information is restricted to a statement as to earnings per share, dividend or nominal rate of interest payable, about the yield on such securities, it states prominently a warning that past performance cannot be relied upon as a guide to future performance.

(3) For the purposes of paragraph (1)(b) of this article, “annual accounts” means any of the following, that is to say—

- (a) accounts produced by virtue of Part VII of the 1985 Act⁽⁸⁾ or the corresponding Northern Ireland enactment including accounts produced by virtue of Part VII or the corresponding Northern Ireland enactment as applied by virtue of any enactment;

⁽⁶⁾ 1985 c. 6. Section 736 of the Companies Act 1985 was inserted by section 144 of the Companies Act 1989 (c. 40).

⁽⁷⁾ Sections 234 and 234A were inserted by section 8(1) of the Companies Act 1989.

⁽⁸⁾ Part VII of the Companies Act 1985 has been amended by Part I of the Companies Act 1989 (c. 40).

- (b) a summary financial statement prepared under section 251 of the 1985 Act⁽⁹⁾;
- (c) accounts delivered to the registrar under Chapter II of Part XXIII of the 1985 Act⁽¹⁰⁾; and
- (d) accounts produced or published by virtue of the law of an EEA State other than the United Kingdom which correspond to accounts falling within sub-paragraph (a), (b) or (c) of this paragraph.

Investment advertisements relating to relevant bearer securities issued by body corporate

5.—(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 advertisement—

- (a) is addressed to persons entitled to relevant bearer securities issued by the body corporate or by a related body corporate;
- (b) contains no invitation to persons to enter into an investment agreement other than an invitation relating to relevant securities of a class which consists of or includes the relevant bearer securities or investments in respect of which the relevant bearer securities confer rights and which is capable of being accepted only by persons who are entitled to relevant securities issued by the body corporate or a related body corporate; and
- (c) contains no information relating to any investment which is not a relevant security issued by the body corporate or by a related body corporate.

(2) 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 advertisement is addressed to persons entitled to relevant bearer securities issued by the body corporate or by a related body corporate and would not otherwise be regarded as an investment advertisement but for the inclusion of information which the authorities of a relevant EEA market or an approved securities market on which relevant securities of a class which consists of or includes the relevant bearer securities are traded or dealt in require or permit be made known to the holders of securities in that class.

(3) In this article—

- (a) the expressions “holding company” and “subsidiary” have the same meanings as in section 736 of the 1985 Act⁽¹¹⁾;
- (b) in relation to a body corporate, the expression “related body corporate” means a body corporate which is not an open-ended investment company but which is either the holding company of or a subsidiary of the first body corporate; and
- (c) relevant bearer securities may be regarded as being in the same class as relevant securities which are not relevant bearer securities.

Investment advertisements issued in connection with employees' share schemes

6.—(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.

⁽⁹⁾ Section 251 of the Companies Act 1985 was inserted by section 15 of the Companies Act 1989.

⁽¹⁰⁾ Chapter II of Part XXIII of the Companies Act 1985 was inserted by section 23 of the Companies Act 1989.

⁽¹¹⁾ 1985 c. 6. Section 736 of the Companies Act 1985 was inserted by section 144 of the Companies Act 1989 (c. 40).

- (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 in which any member of the group holds a qualifying interest within the meaning of paragraph 30 of Schedule 1 to the Act.

Groups

7. 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 in which a member of the group holds a qualifying capital interest within the meaning of paragraph 30 of Schedule 1 to the Act.

Joint enterprises

8.—(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

- 9.—(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 in which a member of the group holds a qualifying capital interest within the meaning of paragraph 30 of Schedule 1 to the 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

10.—(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

11.—(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, other than persons to whom the advertisement may otherwise lawfully be issued, 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 except to persons to whom the advertisement may otherwise lawfully be issued or who are 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; or
 - (h) any trustee of a trust where the aggregate value of the cash and investments which form part of the trust's assets (before deducting the amount of its liabilities) is £10 million or more or has been £10 million or more at any time during the previous two years.
- (4) 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

12.—(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 Schedule 4 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

13. 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.

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

14. 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.

Publications and programmes containing investment advice

15. Section 57 of the Act shall not apply to an investment advertisement if the only reason why section 57 would otherwise apply to the advertisement is that it contains an invitation or information of the kind described in section 57(2) of the Act relating—

- (a) to a newspaper, journal, magazine or other periodical publication which contains advice to which paragraph 15 of Schedule 1 to the Act does not apply by virtue of the provisions of paragraph 25 of that Schedule; or
- (b) to a programme which contains advice to which paragraph 15 of Schedule 1 to the Act does not apply by virtue of the provisions of paragraph 25A of that Schedule⁽¹²⁾.

Advertisements by certain markets

16.—(1) Section 57 of the Act shall not apply to an investment advertisement which is issued or caused to be issued by a market which is a relevant EEA market or is established under the rules of an investment exchange specified in Schedule 2 or 3 to this Order, if the only reason why section 57 would otherwise apply to the advertisement is that it contains information relating to the facilities provided by the relevant market.

⁽¹²⁾ Paragraph 25A was inserted by S.I. 1990/349 and has been amended by paragraph 45(2) of Schedule 20 to the Broadcasting Act 1990 (c. 42).

(2) For the purposes of paragraph (1) of this article, information which identifies a particular investment as one which may be traded or dealt in on a market or which identifies particular persons as persons through whom transactions on a market may be effected shall not be regarded as information relating to the facilities provided by the relevant market.

Management companies

17. Section 57 of the Act shall not apply to an investment advertisement if the only reason why that section would otherwise apply to the advertisement is that it contains an invitation or information relating to an investment falling within paragraph 1 of Schedule 1 to the Act⁽¹³⁾ issued or to be issued by a private company established for the purpose of managing the common parts or the fabric of property used for residential or business purposes or of supplying services to such property being an investment which is to be acquired in connection with the acquisition of an interest in the property in question.

Advertisements in respect of the Parliamentary Commissioner for Administration

18. Section 57 of the Act shall not apply in respect of any advertisement issued or caused to be issued by any person for the purpose of enabling any injustice stated by the Parliamentary Commissioner for Administration in a report under section 10 of the Parliamentary Commissioner Act 1967⁽¹⁴⁾ to have occurred, to be remedied with respect to the person to whom the advertisement is issued.

Revocations

19. The Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988⁽¹⁵⁾, the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1990⁽¹⁶⁾ and the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1992⁽¹⁷⁾ are hereby revoked.

10th May 1995

Derek Conway
Andrew Mackay
Two of the Lords Commissioners of Her
Majesty's Treasury

⁽¹³⁾ Paragraph 1 of Schedule 1 to the Financial Services Act 1986 has been amended by S.I. [1991/1104](#).

⁽¹⁴⁾ 1967 c. 13.

⁽¹⁵⁾ S.I. 1988 No. 316.

⁽¹⁶⁾ S.I. 1990 No. 27.

⁽¹⁷⁾ S.I. 1992 No. 274.

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

SCHEDULE 1

Article 2

RELEVANT EEA MARKETS

PART I

EXCHANGES OPERATING RELEVANT EEA MARKETS

Asociacion de Intermediarios de Activos Financieros.
Amsterdam Financial Futures Market.
Amsterdam Pork and Potato Terminal Market (NLKKAS—Amsterdam Clearing House).
Amsterdam Stock Exchange.
Antwerp Stock Exchange.
Athens Stock Exchange.
Barcelona Stock Exchange.
Berlin Stock Exchange.
Bilbao Stock Exchange.
Bologna Stock Exchange.
Bremen Stock Exchange.
Brussels Stock Exchange.
Copenhagen Stock Exchange (including FUTOP).
Deutsche Terminboerse.
Dusseldorf Stock Exchange.
European Options Exchange.
Finnish Options Market.
Florence Stock Exchange.
Frankfurt Stock Exchange.
Genoa Stock Exchange.
Hamburg Stock Exchange.
Hanover Stock Exchange.
Helsinki Stock Exchange.
The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.
Irish Futures and Options Exchange.
Lisbon Stock Exchange.
Luxembourg Stock Exchange.
Madrid Stock Exchange.
Marche a Terme International de France (MATIF).
MEFF Renta Fija.
MEFF Renta Variable.
Milan Stock Exchange.
Marche des Options Negociables de Paris (MONEP).

Munich Stock Exchange.
Naples Stock Exchange.
OM Stockholm AB.
Oporto Stock Exchange.
Oslo Stock Exchange.
Palermo Stock Exchange.
Paris Stock Exchange.
Rome Stock Exchange.
Stockholm Stock Exchange.
Stuttgart Stock Exchange.
Trieste Stock Exchange.
Turin Stock Exchange.
Valencia Stock Exchange.
Venice Stock Exchange.
Wiener Bourse.

PART II

CRITERIA RELEVANT TO DEFINITION OF “RELEVANT EEA MARKET”

The criteria relevant for the purposes of the definition of “relevant EEA market” in article 2 of this Order are the following—

- (a) the head office of the market must be situated in an EEA State; and
- (b) the market must be subject to requirements in the EEA State in which its head office is situated as to—
 - (i) the manner in which it operates;
 - (ii) the means by which access may be had to the facilities it provides;
 - (iii) the conditions to be satisfied before an investment may be traded or dealt in by means of its facilities; and
 - (iv) the reporting and publication of transactions effected by means of its facilities.

SCHEDULE 2

Articles 2 and 16

EXCHANGES RELEVANT TO DEFINITION OF APPROVED SECURITIES MARKET AND FOR THE PURPOSES OF ARTICLE 16

Alberta Stock Exchange.
American Stock Exchange.
Australian Stock Exchange Limited.
Basler Effektenbourse.
Bolsa Mexicana de Valores.
Boston Stock Exchange.

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

Bourse de Geneve.
Chicago Board Options Exchange.
Cincinnati Stock Exchange.
Effektenborsenverein Zurich.
Fukuoka Stock Exchange.
Hiroshima Stock Exchange.
Johannesburg Stock Exchange.
Korea Stock Exchange.
Kuala Lumpur Stock Exchange.
Kyoto Securities Exchange.
Midwest Stock Exchange.
The Montreal Exchange.
Nagoya Stock Exchange.
NASDAQ.
New York Stock Exchange.
New Zealand Stock Exchange.
Niigata Stock Exchange.
Osaka Securities Exchange.
Pacific Stock Exchange.
Philadelphia Stock Exchange.
Sapporo Securities Exchange.
Securities Exchange of Thailand.
Singapore Stock Exchange.
Stock Exchange of Hong Kong Limited.
Tokyo Stock Exchange.
Toronto Stock Exchange.
Vancouver Stock Exchange.
Winnipeg Stock Exchange.

SCHEDULE 3

Article 16

OTHER MARKETS RELEVANT FOR THE PURPOSES OF ARTICLE 16

Australian Financial Futures Market.
Chicago Board of Trade.
Chicago Mercantile Exchange.
Coffee, Sugar and Cocoa Exchange, Inc.
Commodity Exchange, Inc.
Hong Kong Futures Exchange.
International Securities Market Association.

Kansas City Board of Trade.
Mid-America Commodity Exchange.
Minneapolis Grain Exchange.
New York Cotton Exchange (including the Citrus Associates of the New York Cotton Exchange).
New York Futures Exchange.
New York Mercantile Exchange.
New Zealand Futures Exchange.
Philadelphia Board of Trade.
Singapore International Monetary Exchange.
South African Futures Exchange (SAFEX).
Swiss Options and Financial Futures Exchange (SOFFEX).
Sydney Futures Exchange.
Toronto Futures Exchange.

SCHEDULE 4

Article 12

ADVERTISEMENTS RELATING TO MATTERS OF COMMON INTEREST

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.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order consolidates, amends and adds to the various exemptions from the restrictions on advertising imposed by section 57 of the Financial Services Act 1986 provided by the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988, the Financial Services Act 1986 (Investment Advertisements) Order 1990 and the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1992.

Article 3 of the Order concerns advertisements issued by bodies corporate to members and creditors. Article 4 concerns advertisements which are issued or caused to be issued by a body corporate other than an open-ended investment company where particular investments issued by the body corporate or its holding company are traded or dealt in on a market of the kind referred to in the article or where the advertisement consists of or is accompanied by documents of a kind described in the article. The article specifies certain conditions with which the advertisement must comply if it is to benefit from the exemption. Article 5 concerns advertisements relating to bearer securities which are issued or caused to be issued by a body corporate other than an open-ended investment company. The article specifies certain conditions with which the advertisement must comply if it is to benefit from the exemption. Article 6 concerns advertisements issued in connection with employee share schemes. Articles 7 and 8 respectively concern advertisements issued within groups of bodies corporate and advertisements between participants or potential participants in a joint enterprise. Article 9 concerns investment advertisements issued in connection with the sale of goods or supply of services. Article 10 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 11 concerns advertisements issued to certain persons sufficiently expert to understand the risks involved. Article 12 concerns advertisements issued to persons who are regarded as having an existing and common interest in the subject matter of the advertisement. Article 13 concerns certain advertisements issued by trustees and personal representatives. Article 14 concerns advertisements issued by operators of recognised collective schemes who are not authorised under the Act. Article 15 concerns advertisements relating to publications or programmes which contain advice which does not fall within paragraph 15 of Schedule 1 to the Financial Services Act 1986 by virtue of paragraph 25 or 25A of that Schedule. Article 16 concerns advertisements relating to the facilities offered by a market referred to in the article. Article 17 concerns advertisements relating to shares in a private company established to manage the fabric or common parts of residential or business property or to supply services to such property. Article 18 concerns advertisements issued for the purpose of remedying injustice stated by the Parliamentary Commissioner for Administration to have occurred.