

SCHEDULE 3

Schedule 2, paragraph 3(2)

OFFERS OF SECURITIES TO THE PUBLIC IN THE UNITED KINGDOM

The following is the Schedule to be inserted into the Act as Schedule 11A

“SCHEDULE 11A

OFFERS OF SECURITIES TO THE PUBLIC IN THE UNITED KINGDOM

1. A person offers securities to the public in the United Kingdom if—
 - (a) to the extent that the offer is made to persons in the United Kingdom, it is made to the public; and
 - (b) paragraph 2 below does not apply in relation to the offer;

and, for this purpose, an offer which is made to any section of the public, whether selected as members or debenture holders of a body corporate, or as clients of the person making the offer, or in any other manner, is to be regarded as made to the public.

2. This paragraph applies in relation to an offer of securities where, to the extent that the offer is made to persons in the United Kingdom—

- (a) the condition specified in any one of the paragraphs of sub-paragraph (1) of paragraph 3 below is satisfied in relation to the offer; or
- (b) paragraph 4 below applies in relation to the offer.

- 3.—(1) The following are the conditions specified in this sub-paragraph—

- (a) the securities are offered to persons—
 - (i) whose ordinary activities involve them in acquiring, holding managing or disposing of investments (as principal or agent) for the purposes of their businesses; or
 - (ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses;or are otherwise offered to persons in the context of their trades, professions or occupations;
- (b) the securities are offered to no more than fifty persons;
- (c) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;
- (d) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
- (e) the securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;
- (f) the securities are offered to a government, local authority or public authority, as defined in paragraph 3 of Schedule 1 to this Act;
- (g) the total consideration payable for the securities cannot exceed ecu 40,000 (or an equivalent amount);
- (h) the minimum consideration which may be paid for securities acquired pursuant to the offer is at least ecu 40,000 (or an equivalent amount);
- (i) the securities are denominated in amounts of at least ecu 40,000 (or an equivalent amount);

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- (j) the securities are offered in connection with a takeover offer;
- (k) the securities are offered in connection with a merger within the meaning of Council Directive No. [78/855/EEC](#);
- (l) the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer;
- (m) the securities are shares, or investments falling within paragraph 4 or 5 of Schedule 1 to this Act relating to shares, in a body corporate and are offered in exchange for shares in the same body corporate, and the offer cannot result in any increase in the issued share capital of the body corporate;
- (n) the securities are issued by a body corporate and offered—
 - (i) by the issuer;
 - (ii) only to qualifying persons; and
 - (iii) on terms that a contract to acquire any such securities may be entered into only by the qualifying person to whom they were offered or, if the terms of the offer so permit, any qualifying person;
- (o) the securities result from the conversion of convertible securities and listing particulars or a prospectus relating to the convertible securities were or was published in the United Kingdom under or by virtue of Part IV of this Act, Part III of the Companies Act 1985 or the Public Offers of Securities Regulations 1995;
- (p) the securities are issued by—
 - (i) a charity within the meaning of section 96(1) of the Charities Act 1993⁽¹⁾;
 - (ii) a housing association within the meaning of section 5(1) of the Housing Act 1985⁽²⁾;
 - (iii) an industrial or provident society registered in accordance with section 1(2)(b) of the Industrial and Provident Societies Act 1965⁽³⁾; or
 - (iv) a non-profit making association or body, recognised by the country or territory in which it is established, with objectives similar to those of a body falling within any of sub-paragraphs (i) to (iii) above;and the proceeds of the offer will be used for the purposes of the issuer's objectives;
- (q) the securities offered are shares which are issued by, or ownership of which entitles the holder to membership of or to obtain the benefit of services provided by,—
 - (i) a building society incorporated under the law of, or of any part of, the United Kingdom;
 - (ii) any body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies or credit unions; or
 - (iii) a body of a similar nature established in a member State;
- (r) the securities offered are Euro-securities and are not the subject of advertising likely to come to the attention of persons who are not professionally experienced in matters relating to investment;
- (s) the securities are of the same class, and were issued at the same time, as securities in respect of which a prospectus has been published under or by virtue of Part IV of this Act, Part III of the Companies Act 1985 or the Public Offers of Securities Regulations 1995;

(1) 1993 c. 10.
(2) 1985 c. 68.
(3) 1965 c. 12.

- (t) the securities are investments falling within paragraph 2 of schedule 1 to this Act with a maturity of less than one year from their date of issue;
- (u) the securities are investments falling within paragraph 3 of Schedule 1 to this Act;
- (v) the securities are not transferable.

(2) For the purposes of this paragraph

“convertible securities” means

- (a) securities falling within paragraph 2 of Schedule 1 to this Act which can be converted into, or exchanged for, or which confer rights to acquire, securities; or
- (b) securities falling within paragraph 4 or 5 of that Schedule (as applied for the purposes of section 142(2) of this Act);

and “conversion” in relation to convertible securities means their conversion into or exchange for, or the exercise of rights conferred by them to acquire, other securities;

“credit institution” means a credit institution as defined in Article 1 of Council Directive No. [77/780/EEC](#)(4);

“ecu” means the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC(5) or any Council regulation replacing the same, in either case as amended from time to time;

“Euro-securities” means investments which

- (a) are to be underwritten and distributed by a syndicate at least two of the members of which have their registered offices in different countries or territories;
- (b) are to be offered on a significant scale in one or more countries or territories other than the country or territory on which the issuer has its registered office; and
- (c) may be acquired pursuant to the offer only through a credit institution or other financial institution;

“financial institution” means a financial institution as defined in Article 1 of Council Directive No. [89/646/EEC](#)(6); and

“shares”, except in relation to a takeover offer, means investments which are securities by virtue of falling within paragraph 1 of Schedule 1 to this Act (as applied for the purposes of section 142(3) of this Act).

(3) For the purposes of determining whether the condition specified in paragraph (b) of (g) of sub-paragraph (1) above is satisfied in relation to an offer, the offer shall be taken together with any other offer of the same securities which was

- (a) made by the same person;
- (b) open at any time within the period of 12 months ending with the date on which the offer is first made; and
- (c) not an offer to the public in the United Kingdom by virtue of that condition being satisfied.

(4) In determining for the purposes of paragraph (d) of sub-paragraph (1) above whether a person is sufficiently knowledgeable to understand the risks involved in accepting an offer of securities, any information supplied by the person making the offer shall be disregarded, apart from information about

- (a) the issuer of the securities; or

(4) OJ No. L322. 17.12.77, p. 30.

(5) OJ No. L350. 31.12.94, p. 27.

(6) OJ No. L386. 31.12.89, p. 1. amending Council Directive [77/780/EEC](#) (OJ No. L322. 17.12.77. p. 30).

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(b) if the securities confer the right to acquire other securities, the issuer of those other securities.

(5) For the purposes of determining whether the condition specified in paragraph (g), (h) or (i) of sub-paragraph (1) above is satisfied in relation to an offer, an amount, in relation to an amount denominated in ecu, is an “equivalent amount” if it is an amount of equal value, calculated at the latest practicable date before (but in any event not more than 3 days before) the date on which the offer is first made, denominated wholly or partly in another currency or unit of account.

(6) For the purposes of paragraph (j) of sub-paragraph (1) above, “takeover offer” means

- (a) an offer which is a takeover offer within the meaning of Part XIII A of the Companies Act 1985 (or would be such an offer if that Part of that Act applied in relation to any body corporate); or
- (b) an offer made to all the holders of shares, or of shares of a particular class, in a body corporate to acquire a specified proportion of those shares (“holders” and “shares” being construed in accordance with that Part);

but in determining for the purposes of paragraph (b) above whether an offer is made to all the holders of shares, or of shares of any class, the offeror, any associate of his (within the meaning of section 430E of that Act) and any person whose shares the offeror or any such associate has contracted to acquire shall not be regarded as holders of the shares.

(7) For the purposes of paragraph (1) of sub-paragraph (1) above, “holders of shares” means the persons who, at the close of business on a date specified in the offer and falling within the period of 28 days ending with the date on which the offer is first made, were the holders of such shares.

(8) For the purposes of paragraph (n) of sub-paragraph (1) above

- (a) a person is a “qualifying person”, in relation to an issuer, if he is a bona fide employee or former employee of the issuer or of another body corporate in the same group or the wife, husband, widow, widower or child or stepchild under the age of eighteen of such an employee or former employee; and
- (b) the definition of “issuer” in section 142(7) applies with the omission of the words from “except that” to the end of the definition.

4.—(1) This paragraph applies in relation to an offer where the condition specified in one relevant paragraph is satisfied in relation to part, but not the whole, of the offer and, in relation to each other part of the offer, the condition specified in a different relevant paragraph is satisfied.

(2) For the purposes of this paragraph, “relevant paragraph” means any of paragraphs (a) to (f), (j) to (m), (o), (p) and (s) of paragraph 3(1) above.”