

SCHEDULE 4

Regulation 22.

SUBORDINATE LEGISLATION RELATING TO AUDITORS AND ACCOUNTANTS

Accountants (Banking Act 1987) Regulations 1994

1.—(1) In relation to any time before they are varied or revoked by regulations made under subsection (5) of section 47 of the Banking Act, the Accountants (Banking Act 1987) Regulations 1994⁽¹⁾ shall have effect as if they were amended as follows.

(2) In regulation 2—

(a) for the definition of “auditor” there shall be substituted the following definition—

“‘auditor’ means an accountant who—

- (a) is an auditor of an authorised institution; or
- (b) is an auditor of a body with which an authorised institution which is a credit institution is closely linked by control, and is also either an auditor of the institution or a person appointed to make a report under section 8(5) or 39(1) (b) of the Act in respect of the institution;”

(b) after the definition of “the Bank” there shall be inserted the following definitions—

“‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;

‘the institution concerned’ means—

- (a) in relation to an auditor of an authorised institution, that institution;
- (b) in relation to an auditor of a body with which a credit institution is closely linked by control, that institution;
- (c) in relation to a reporting accountant, the institution or authorised institution in relation to which his report is made;

‘of material significance’ means of material significance for the exercise of the Bank’s functions under the Act or under the Regulations;.”

(3) In paragraph (1) of regulation 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.

(4) After that paragraph there shall be inserted the following paragraph—

“(1A) Where the institution concerned is a credit institution, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—

(a) to give the auditor or reporting accountant reasonable cause to believe, as regards the institution concerned—

- (i) that its authorisation could be revoked under section 11 of the Act otherwise than by virtue of subsection (1)(a) of that section;
- (ii) that there is or has been, or may be or may have been, a failure to fulfil any of the criteria specified in Schedule 3 to the Act and that the failure is likely to be of material significance;
- (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
- (iv) that its continuous functioning may be affected; or

(1) S.I.1994/524.

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- (b) in the case of the auditor of the institution concerned, to preclude him from stating in his report that its annual accounts have been properly prepared in accordance with the Companies Act 1985.”
- (5) In paragraph (2) of that regulation—
 - (a) there shall be inserted at the beginning the words “Where the institution concerned is not a credit institution,”;
 - (b) in sub-paragraph (a), for the words from “the authorised institution” to the end there shall be substituted the words “the institution concerned”; and
 - (c) in sub-paragraph (b), the words “for the exercise” to the end shall be omitted.

Building Societies (Auditors) Order 1994

2.—(1) In relation to any time before it is varied or revoked by an order made under subsection (9) of section 82 of the Building Societies Act, the Building Societies (Auditors) Order 1994(2) shall have effect as if it were amended as follows.

- (2) In article 2—
 - (a) for the definition of “auditor” there shall be substituted the following definition—
 - “‘auditor’ means—
 - (a) an auditor of a building society; or
 - (b) an auditor of a body with which a building society is closely linked by control where he is also either an auditor of the society or an accountant appointed by the society to make a report under section 52(5)(d) of the Act,”.
 - (b) after that definition there shall be inserted the following definitions—
 - “‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;
 - ‘of material significance’ means of material significance for the exercise of the Commission’s functions under the Act or under the Regulations,”
 - (c) for the definition of “the Regulations” there shall be substituted the following definition—
 - “‘reporting accountant’ means an accountant appointed to make a report under section 52(5)(d) of the Act,”
 - (d) for the word “and” immediately following the definition of “society” there shall be substituted the following definition—
 - “‘the society concerned’ means—
 - (a) in relation to an auditor of a society, that society;
 - (b) in relation to an auditor of a body with which a society is closely linked by control, that society;
 - (c) in relation to a reporting accountant, the society in relation to which his report is made;”.
- (3) In paragraph (1) of article 3, after the words “the auditor” there shall be inserted the words “or reporting accountant”.
- (4) For paragraph (2) of that article there shall be substituted the following paragraph—
 - “(2) The circumstances referred to in paragraph (1) above are circumstances in which the information of the description prescribed by paragraph (3) below is such as—

- (a) to give the auditor or reporting accountant reasonable cause to believe, as regards the society concerned—
 - (i) that its authorisation could be revoked under section 43 of the Act otherwise than by virtue of section 45 of the Act;
 - (ii) that there is or has been, or may be or may have been, a failure to satisfy any of the criteria of prudent management in section 45(3) of the Act and that the failure is likely to be of material significance;
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
 - (iv) that its continuous functioning may be affected; or
- (b) in the case of the auditor of the society concerned, to preclude him from stating in his report that its annual accounts have been prepared—
 - (i) so as to conform with the requirements of Part VIII of the Act and regulations made under it; or
 - (ii) so as to give a true and fair view of the matters specified in section 78(4) of the Act.”
- (5) In paragraph (3) of that article—
 - (a) after the words “the auditor”, in the first place where they occur, there shall be inserted the words “or reporting accountant”; and
 - (b) for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”.

Auditors (Financial Services Act 1986) Rules 1994

3.—(1) In relation to any time before they are varied or revoked by rules made under subsection (2) of section 109 of the Financial Services Act, the Auditors (Financial Services Act 1986) Rules 1994⁽³⁾ shall have effect as if they were amended as follows.

- (2) In rule 2—
 - (a) for the definition of “auditor” there shall be substituted the following definition—

“‘auditor’ means—

 - (a) an auditor of an authorised person;
 - (b) an auditor of a body with which a qualifying person is closely linked by control who is also an auditor of that person; or
 - (c) an auditor of qualifying undertaking;”
 - (b) after that definition there shall be inserted the following definitions—

“‘closely linked by control’, in relation to a UK investment firm, shall be construed in accordance with regulation 2 of the Financial Institutions (Prudential Supervision) Regulations 1996;

‘contravene’, in relation to any provision of the Act or any rules or regulations made under it, includes fail to comply with the provision, rules or regulations;”
 - (c) after the definition of “disciplinary action” there shall be inserted the following definition—

“‘of material significance’ means of material significance for determining either—

(3) S.I. 1994/526.

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- (a) whether a person is a fit and proper person to carry on investment business; or
 - (b) whether disciplinary action should be taken, or powers of intervention exercised, in order to protect investors from a significant risk of loss;”
- (d) after the definition of “matter” there shall be inserted the following definition—
 - “‘the person concerned’ means—
 - (a) in relation to an auditor of an authorised person, that person;
 - (b) in relation to an auditor of a body with which a qualifying person is closely linked by control, that person;
 - (c) in relation to an auditor of a qualifying undertaking, that undertaking;”
- (e) after the definition of “powers of intervention” there shall be inserted the following definitions—
 - “‘qualifying person’ means a UK investment firm, or a trustee or manager of a qualifying undertaking;
 - ‘qualifying undertaking’ means an undertaking to which the UCITS Directive applies and which is, within the meaning of that Directive, situated in the United Kingdom;”; and
- (f) after the definition of “the relevant regulator” there shall be inserted the following definitions—
 - “‘the relevant requirements’ means the requirements of such of the following as are applicable, namely—
 - (a) the Companies Act 1985;
 - (b) regulations made under section 81, 107 or 107A of the Act; and
 - (c) the rules of a recognised self-regulating organisation;
 - ‘the UCITS Directive’ means the Council Directive of 20th December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No.85/611/EEC);.”
- (3) In paragraph (1) of rule 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.
- (4) After that paragraph there shall be inserted the following paragraphs—
 - “(1A) Where the person concerned is a qualifying person or a qualifying undertaking, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—
 - (a) to give the auditor reasonable cause to believe, as regards the person or undertaking—
 - (i) that there is or has been, or may be or may have been, a contravention of any provision of the Act or any rules or regulations made under it and that the contravention is likely to be of material significance;
 - (ii) that, in purported compliance with any such provision, he or it has furnished the Board with false, inaccurate or misleading information;
 - (iii) that there is or has been, or may be or may have been, a contravention of any prohibition or requirement imposed under the Act and that the contravention is likely to be of material significance; or
 - (iv) that his or its continuous functioning may be affected; or

- (b) to preclude the auditor from stating in his report that the annual accounts of the person or undertaking have been properly prepared in accordance with the relevant requirements.
- (1B) The rules, prohibitions and requirements referred to in paragraph (1A) above include—
 - (a) where the person concerned is a member of a recognised self-regulating organisation, the rules of that organisation and any prohibition or requirement imposed by virtue of those rules;
 - (b) where that person is a person certified by a recognised professional body, the rules of that body which regulate the carrying on by that person of investment business and any prohibition or requirement imposed by virtue of those rules.”
- (5) In paragraph (2) of that rule—
 - (a) there shall be inserted at the beginning the words “Where the person concerned is neither a qualifying person nor a qualifying undertaking,”; and
 - (b) the words from “for determining” to the end shall be omitted.

Friendly Societies (Auditors) Order 1994

4.—(1) In relation to any time before it is varied or revoked by an order made under subsection (9) of section 79 of the Friendly Societies Act, the Friendly Societies (Auditors) Order 1994⁽⁴⁾ shall have effect as if it were amended as follows.

- (2) In article 2—
 - (a) for the definition of “auditor” there shall be substituted the following definition—

“‘auditor’ means—

 - (a) an auditor of a society; or
 - (b) an auditor of a body with which a society to which section 37(2) or (3) of the Act applies is closely linked by control where he is also either an auditor of the society or an accountant appointed by the society to make a report under section 62(3)(d) of the Act;”
 - (b) after that definition there shall be inserted the following definitions—

“‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;

‘of material significance’ means of material significance for the exercise of the Commission’s functions;”
 - (c) after the definition of “relevant information” there shall be inserted the following definition—

“‘reporting accountant’ means an accountant appointed to make a report under section 62(3)(d) of the Act by a friendly society to which section 37(2) or (3) of the Act applies;”
 - (d) for the word “and” immediately following the definition of “society” there shall be substituted the following definition—

“‘the society concerned’ means—

 - (a) in relation to an auditor of a society, that society;

(4) S.I. 1994/132.

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- (b) in relation to an auditor of a body with which a society to which section 37(2) or (3) of the Act applies is closely linked by control, that society;
 - (c) in relation to a reporting accountant, the society in relation to which his report is made;”.
- (3) In paragraph (1) of article 3—
 - (a) after the words “The auditor” there shall be inserted the words “or reporting accountant”; and
 - (b) for the words “paragraph (2) below” there shall be substituted the words “paragraph (1A) or (2) below”.
- (4) After that paragraph there shall be inserted the following paragraph—

“(1A) Where the society concerned is one to which section 37(2) or (3) of the Act applies, the circumstances referred to in paragraph (1) above are circumstances in which the information of the description prescribed in paragraph (3) below is such as—

 - (a) to give the auditor or reporting accountant reasonable cause to believe, as regards the society concerned—
 - (i) that its authorisation could be withdrawn under section 40(3) of the Act;
 - (ii) that there is or has been, or may be or may have been, a failure to satisfy any of the criteria of prudent management in section 50(3) of the Act and that the failure is likely to be of material significance;
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
 - (iv) that its continuous functioning may be affected; or
 - (b) in the case of the auditor of the society concerned, to preclude him from stating in his report that its annual accounts have been prepared—
 - (i) so as to conform with the requirements of Part VI of the Act and regulations made under it; or
 - (ii) so as to give a true and fair view of the matters specified in section 73(5) of the Act.”
- (5) In paragraph (2) of that article—
 - (a) there shall be inserted at the beginning the words “Where the institution concerned is not one to which section 37(2) or (3) of the Act applies,”;
 - (b) for the words “an auditor” there shall be substituted the words “the auditor”;
 - (c) in sub-paragraph (a), for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”; and
 - (d) in sub-paragraph (b), the words from “for the exercise” to the end shall be omitted.
- (6) In paragraph (3) of that article—
 - (a) after the words “the auditor”, in the first place where they occur, there shall be inserted the words “or reporting accountant”; and
 - (b) for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”.

Auditors (Insurance Companies Act 1982) Regulations 1994

5.—(1) In relation to any time before they are varied or revoked by regulations made under subsection (2) of section 21A of the Insurance Companies Act, the Auditors (Insurance Companies Act 1982) Regulations 1994(5) shall have effect as if they were amended as follows.

(2) In regulation 2—

(a) for the definition of “auditor”, there shall be substituted the following definitions—

“‘auditor’ means—

- (a) auditor of an insurance company to which Part II of the Act applies; or
- (b) auditor of a body with which a UK or non-EC company is closely linked by control who is also auditor of the company;

‘of material significance’ means of material significance for determining whether any of the powers of intervention conferred on the Secretary of State by sections 38 to 45 of the Act should be exercised;”

(b) after that definition there shall be inserted the following definitions—

“‘the company concerned’ means—

- (a) in relation to an auditor of an insurance company to which Part II of the Act applies, that company;
- (b) in relation to an auditor of a body with which a UK or non-EC company is closely linked by control, that company;

‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;”;

(c) in the definition of “matters”, after the word “applies” there shall be inserted the words “, or of a body with which a UK or non-EC company is closely linked by control,”.

(3) In paragraph (1) of regulation 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.

(4) After that paragraph there shall be inserted the following paragraph—

“(1A) Where the company concerned is a UK or non-EC company, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—

(a) to give the auditor reasonable cause to believe, as regards the company concerned—

- (i) that its authorisation could be withdrawn under section 11 of the Act otherwise than by virtue of subsection (2)(ab) of that section;
- (ii) that there is or has been, or may be or may have been, a failure to fulfil any of the criteria of sound and prudent management and that the failure is likely to be of material significance;
- (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or

(iv) that its continuous functioning may be affected; or

(b) in the case of the auditor of the company concerned, to preclude him from stating in his report that its annual accounts have been properly prepared in accordance with the Companies Act 1985 or section 17 of the Act.”

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- (5) In paragraph (2) of that regulation—
 - (a) there shall be inserted at the beginning the words “Where the company concerned is not a UK or non-EC company,”; and
 - (b) the words from “for determining” to the end shall be omitted.