

SCHEDULE 4

SUBORDINATE LEGISLATION RELATING TO AUDITORS AND ACCOUNTANTS

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⁽¹⁾ 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—

- (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—

(1) S.I.1994/526.

Status: This is the original version (as it was originally made).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

“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.