

2001 No. 1335

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001

Made - - - - - 2nd April 2001

Coming into force in accordance with article 1

ARRANGEMENT OF ORDER

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

1. Citation and commencement
2. Interpretation: general
3. Interpretation: unlisted companies

PART II

CONTROLLED ACTIVITIES AND CONTROLLED INVESTMENTS

4. Definition of controlled activities and controlled investments

PART III

EXEMPTIONS: INTERPRETATION AND APPLICATION

5. Interpretation: financial promotion restriction
6. Interpretation: communications
7. Interpretation: real time communications
8. Interpretation: solicited and unsolicited real time communications
9. Degree of prominence to be given to required indications
10. Application to qualifying contracts of insurance
11. Combination of different exemptions

PART IV

EXEMPT COMMUNICATIONS: ALL CONTROLLED ACTIVITIES

12. Communications to overseas recipients
13. Communications from customers and potential customers
14. Follow up non-real time communications and solicited real time communications
15. Introductions
16. Exempt persons
17. Generic promotions
18. Mere conduits
19. Investment professionals
20. Communications by journalists

PART V

EXEMPT COMMUNICATIONS: DEPOSITS AND INSURANCE

21. Interpretation: relevant insurance activity
22. Deposits: non-real time communications
23. Deposits: real time communications
24. Relevant insurance activity: non-real time communications
25. Relevant insurance activity: non-real time communications: reinsurance and large risks
26. Relevant insurance activity: real time communications

PART VI

EXEMPT COMMUNICATIONS: CERTAIN CONTROLLED ACTIVITIES

27. Application of exemptions in this Part
28. One off non-real time communications and solicited real time communications
29. Communications required or authorised by enactments
30. Overseas communicators: solicited real time communications
31. Overseas communicators: non-real time communications to previously overseas customers
32. Overseas communicators: unsolicited real time communications to previously overseas customers
33. Overseas communicators: unsolicited real time communications to knowledgeable customers
34. Governments, central banks etc.
35. Industrial and provident societies
36. Nationals of EEA States other than United Kingdom
37. Financial markets
38. Persons in the business of placing promotional material
39. Joint enterprises
40. Participants in certain recognised collective investment schemes
41. Bearer instruments: promotions required or permitted by market rules
42. Bearer instruments: promotions to existing holders
43. Members and creditors of certain bodies corporate
44. Members and creditors of open-ended investment companies
45. Group companies
46. Qualifying credit to bodies corporate

47. Persons in the business of disseminating information
48. Certified high net worth individuals
49. High net worth companies, unincorporated associations etc.
50. Sophisticated investors
51. Associations of high net worth or sophisticated investors
52. Common interest group of a company
53. Settlors, trustees and personal representatives
54. Beneficiaries of trust, will or intestacy
55. Communications by members of professions
56. Remedy following report by Parliamentary Commissioner for Administration
57. Persons placing promotional material in particular publications
58. Acquisition of interest in premises run by management companies
59. Annual accounts and directors' report
60. Participation in employee share schemes
61. Sale of goods and supply of services
62. Sale of body corporate
63. Takeovers of relevant unlisted companies: interpretation
64. Takeovers of relevant unlisted companies
65. Takeovers of relevant unlisted companies: warrants etc.
66. Takeovers of relevant unlisted companies: application forms
67. Promotions required or permitted by market rules
68. Promotions in connection with admission to certain EEA markets
69. Promotions of securities already admitted to certain markets
70. Promotions in connection with listing applications
71. Promotions included in listing particulars etc.
72. Promotions included in prospectus for public offer of unlisted securities
73. Material relating to prospectus for public offer of unlisted securities

PART VII

TRANSITIONAL PROVISION

74. Approval of communication prior to Order coming into force

SCHEDULES

SCHEDULE 1

CONTROLLED ACTIVITIES AND CONTROLLED INVESTMENTS

- Part I Controlled activities
- Part II Controlled investments

SCHEDULE 2

COUNTRIES AND TERRITORIES

SCHEDULE 3

MARKETS AND EXCHANGES

- Part I Criteria for relevant EEA markets
- Part II Certain investment exchanges operating relevant EEA markets
- Part III Certain non-EEA investment exchanges operating relevant EEA markets
- Part IV Other relevant markets

SCHEDULE 4

TAKEOVERS OF RELEVANT UNLISTED COMPANIES

- Part I Requirements relating to the offer
- Part II Accompanying material
- Part III Additional material available for inspection

Whereas this is the first Order to be made under subsections (5), (9) and (10) of section 21 of the Financial Services and Markets Act 2000 (**a**) and is therefore an Order to which section 429(4) of that Act applies;

Whereas a draft of this Order has been approved by resolution of both Houses of Parliament;

The Treasury in the exercise of the powers conferred on them by section 21(5), (9) and (10), and section 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000 and of all other powers enabling them in that behalf hereby make the following Order:—

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.

(2) Except as provided by paragraph (3), this Order comes into force on the day on which section 19 of the Act comes into force.

(3) This Order comes into force—

(a) for the purposes of paragraphs 9 and 25 of Schedule 1 (qualifying funeral plan contracts) on 1st January 2002; and

(b) for the purposes of paragraphs 10 and 26 of Schedule 1 (qualifying credit) nine months after section 19 of the Act comes into force.

Interpretation: general

2.—(1) In this Order, except where the context otherwise requires—

“the 1985 Act” means the Companies Act 1985(**b**);

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(**c**).

“the Act” means the Financial Services and Markets Act 2000;

“close relative” in relation to a person means—

(a) his spouse;

(b) his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and

(c) the spouse of any person within sub-paragraph (b);

“controlled activity” has the meaning given by article 4 and Schedule 1;

“controlled investment” has the meaning given by article 4 and Schedule 1;

“deposit” means a sum of money which is a deposit for the purposes of article 5 of the Regulated Activities Order;

“equity share capital” has the meaning given in the 1985 Act or in the 1986 Order;

“financial promotion restriction” has the meaning given by article 5;

“government” means the government of the United Kingdom, the Scottish Administration, the Executive Committee of the Northern Ireland Assembly, the National Assembly for Wales and any government of any country or territory outside the United Kingdom;

“instrument” includes any record whether or not in the form of a document;

“international organisation” means any body the members of which comprise—

(a) states including the United Kingdom or another EEA State; or

(b) bodies whose members comprise states including the United Kingdom or another EEA State;

(**a**) 2000 c. 8.

(**b**) 1985 c. 6.

(**c**) S.I. 1986/1032 (N.I. 6).

“overseas communicator” has the meaning given by article 30;
“previously overseas customer” has the meaning given by article 31;
“publication” means—
(a) a newspaper, journal, magazine or other periodical publication;
(b) a web site;
(c) any programme forming part of a service consisting of the broadcast or transmission of television or radio programmes;
(d) any teletext service, that is to say a service consisting of television transmissions consisting of a succession of visual displays (with or without accompanying sound) capable of being selected and held for separate viewing or other use;

“qualifying contract of insurance” has the meaning given in the Regulated Activities Order;

“qualifying credit” has the meaning given by paragraph 10 of Schedule 1;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a);

“relevant insurance activity” has the meaning given by article 21;

“relevant investment activities” has the meaning given by article 30;

“solicited real time communication” has the meaning given by article 8;

“units”, in a collective investment scheme, has the meaning given by Part XVII of the Act;

“unsolicited real time communication” has the meaning given by article 8.

(2) References to a person engaging in investment activity are to be construed in accordance with subsection (8) of section 21 of the Act; and for these purposes, “controlled activity” and “controlled investment” in that subsection have the meaning given in this Order.

Interpretation: unlisted companies

3.—(1) In this Order, an “unlisted company” means a body corporate the shares in which are not—

- (a) listed or quoted on an investment exchange whether in the United Kingdom or elsewhere;
- (b) shares in respect of which information is, with the agreement or approval of any officer of the company, published for the purpose of facilitating deals in the shares indicating prices at which persons have dealt or are willing to deal in them other than persons who, at the time the information is published, are existing members of a relevant class;
- (c) subject to a marketing arrangement which accords to the company the facilities referred to in section 163(2)(b) of the 1985 Act or article 173(2)(b) of the 1986 Order; or
- (d) the subject of an offer (whether in the United Kingdom or elsewhere) in relation to which a copy of the prospectus must be delivered to the relevant registrar of companies in accordance with section 64 of the 1985 Act or article 74 of the 1986 Order or Part II of the Public Offers of Securities Regulations 1995(b).

(2) For the purpose of paragraph (1)(b), a person is to be regarded as a member of a relevant class if he was, at the relevant time—

- (a) an existing member or debenture holder of the company;
- (b) an existing employee of the company;
- (c) a close relative of such a member or employee; or
- (d) a trustee (acting in his capacity as such) of a trust, the principal beneficiary of which is a person within any of sub-paragraphs (a), (b) and (c).

(3) In this Order references to shares in and debentures of an unlisted company are references to—

- (a) in the case of a body corporate which is a company within the meaning of the 1985 Act, shares and debentures within the meaning of that Act;

(a) S.I. 2001/544.

(b) S.I. 1995/1537; various amendments have been made by the Public Offers of Securities (Amendment) Regulations 1999 (S.I. 1999/734) and the Public Offers of Securities (Amendment No. 2) Regulations 1999 (S.I. 1999/1146).

- (b) in the case of a body corporate which is a company within the meaning of the 1986 Order, shares and debentures within the meaning of that Order;
- (c) in the case of any other body corporate, investments falling within paragraph 14 or 15 of Schedule 1 to this Order.

PART II

CONTROLLED ACTIVITIES AND CONTROLLED INVESTMENTS

Definition of controlled activities and controlled investments

4.—(1) For the purposes of section 21(9) of the Act, a controlled activity is an activity which falls within any of paragraphs 1 to 11 of Schedule 1.

(2) For the purposes of section 21(10) of the Act, a controlled investment is an investment which falls within any of paragraphs 12 to 27 of Schedule 1.

PART III

EXEMPTIONS: INTERPRETATION AND APPLICATION

Interpretation: financial promotion restriction

5. In this Order, any reference to the financial promotion restriction is a reference to the restriction in section 21(1) of the Act.

Interpretation: communications

6. In this Order—

- (a) any reference to a communication is a reference to the communication, in the course of business, of an invitation or inducement to engage in investment activity;
- (b) any reference to a communication being made to another person is a reference to a communication being addressed, whether verbally or in legible form, to a particular person or persons (for example where it is contained in a telephone call or letter);
- (c) any reference to a communication being directed at persons is a reference to a communication being addressed to persons generally (for example where it is contained in a television broadcast or web site);
- (d) “communicate” includes causing a communication to be made or directed;
- (e) a “recipient” of a communication is the person to whom the communication is made or, in the case of a non-real time communication which is directed at persons generally, any person who reads or hears the communication.

Interpretation: real time communications

7.—(1) In this Order, references to a real time communication are references to any communication made in the course of a personal visit, telephone conversation or other interactive dialogue.

(2) A non-real time communication is a communication not falling within paragraph (1).

(3) For the purposes of this Order, non-real time communications include communications made by letter or e-mail or contained in a publication.

(4) For the purposes of this Order, the factors in paragraph (5) are to be treated as indications that a communication is a non-real time communication.

(5) The factors are that—

- (a) the communication is made to or directed at more than one recipient in identical terms (save for details of the recipient’s identity);
- (b) the communication is made or directed by way of a system which in the normal course constitutes or creates a record of the communication which is available to the recipient to refer to at a later time;

- (c) the communication is made or directed by way of a system which in the normal course does not enable or require the recipient to respond immediately to it.

Interpretation: solicited and unsolicited real time communications

- 8.—(1) A real time communication is solicited where it is made in the course of a personal visit, telephone call or other interactive dialogue if that call, visit or dialogue—
- (a) was initiated by the recipient of the communication; or
 - (b) takes place in response to an express request from the recipient of the communication.
- (2) A real time communication is unsolicited where it is made otherwise than as described in paragraph (1).
- (3) For the purposes of paragraph (1)—
- (a) a person is not to be treated as expressly requesting a call, visit or dialogue—
 - (i) because he omits to indicate that he does not wish to receive any or any further visits or calls or to engage in any or any further dialogue;
 - (ii) because he agrees to standard terms that state that such visits, calls or dialogue will take place, unless he has signified clearly that, in addition to agreeing to the terms, he is willing for them to take place;
 - (b) a communication is solicited only if it is clear from all the circumstance when the call, visit or dialogue is initiated or requested that during the course of the visit, call or dialogue communications will be made concerning the kind of controlled activities or investments to which the communications in fact made relate;
 - (c) it is immaterial whether the express request was made before or after this article comes into force.
- (4) Where a real time communication is solicited by a recipient (“R”), it is treated as having also been solicited by any other person to whom it is made at the same time as it is made to R if that other recipient is—
- (a) a close relative of R; or
 - (b) expected to engage in any investment activity jointly with R.

Degree of prominence to be given to required indications

9. Where a communication must, if it is to fall within any provision of this Order, be accompanied by an indication of any matter, the indication must be presented to the recipient—
- (a) in a way that can be easily understood; and
 - (b) in such manner as, depending on the means by which the communication is made or directed, is best calculated to bring the matter in question to the attention of the recipient and to allow him to consider it.

Application to qualifying contracts of insurance

- 10.—(1) Nothing in this Order exempts from the application of the financial promotion restriction a communication which invites or induces a person to enter into a qualifying contract of insurance with a person who is not—
- (a) an authorised person;
 - (b) an exempt person who is exempt in relation to effecting or carrying out contracts of insurance of the class to which the communication relates;
 - (c) a company which has its head office in an EEA State other than the United Kingdom and which is entitled under the law of that State to carry on there insurance business of the class to which the communication relates;
 - (d) a company which has a branch or agency in an EEA State other than the United Kingdom and is entitled under the law of that State to carry on there insurance business of the class to which the communication relates;
 - (e) a company authorised to carry on insurance business of the class to which the communication relates in any country or territory which is listed in Schedule 2.

- (2) In this article, references to a class of insurance are references to the class of insurance contract described in Schedule 1 to the Regulated Activities Order into which the effecting and carrying out of the contract to which the communication relates would fall.

Combination of different exemptions

11.—(1) In respect of a communication relating to—

(a) a controlled activity falling within paragraph 2 of Schedule 1 carried on in relation to a qualifying contract of insurance; or

(b) a controlled activity falling within any of paragraphs 3 to 11 of Schedule 1,

a person may rely on the application of one or more of the exemptions in Parts IV and VI.

(2) A person may rely, in respect of a communication relating to an activity falling within paragraph 1 of Schedule 1, on the application of one or more of the exemptions in Parts IV and V.

(3) A person may rely, in respect of a communication relating to a relevant insurance activity, on the application of one or more of the exemptions in Parts IV and V.

PART IV

EXEMPT COMMUNICATIONS: ALL CONTROLLED ACTIVITIES

Communications to overseas recipients

12.—(1) Subject to paragraph (2), the financial promotion restriction does not apply to any communication—

(a) which is made (whether from inside or outside the United Kingdom) to a person who receives the communication outside the United Kingdom; or

(b) which is directed (whether from inside or outside the United Kingdom) only at persons outside the United Kingdom.

(2) Paragraph (1) does not apply to an unsolicited real time communication unless—

(a) it is made from a place outside the United Kingdom; and

(b) it is made for the purposes of a business which is carried on outside the United Kingdom and which is not carried on in the United Kingdom.

(3) For the purposes of paragraph (1)(b)—

(a) if the conditions set out in paragraph (4)(a), (b), (c) and (d) are met, a communication directed from a place inside the United Kingdom is to be regarded as directed only at persons outside the United Kingdom;

(b) if the conditions set out in paragraph (4)(c) and (d) are met, a communication directed from a place outside the United Kingdom is to be regarded as directed only at persons outside the United Kingdom;

(c) in any other case where one or more of the conditions in paragraph (4)(a) to (e) are met, that fact is to be taken into account in determining whether or not a communication is to be regarded as directed only at persons outside the United Kingdom (but a communication may still be regarded as directed only at persons outside the United Kingdom even if none of the conditions in paragraph (4) is met).

(4) The conditions are that—

(a) the communication is accompanied by an indication that it is directed only at persons outside the United Kingdom;

(b) the communication is accompanied by an indication that it must not be acted upon by persons in the United Kingdom;

(c) the communication is not referred to in, or directly accessible from, any other communication which is made to a person or directed at persons in the United Kingdom by or on behalf of the same person;

(d) there are in place proper systems and procedures to prevent recipients in the United Kingdom (other than those to whom the communication might otherwise lawfully have been made) engaging in the investment activity to which the communication relates with the person directing the communication, a close relative of his or a member of the same group;

(e) the communication is included in—

- (i) a web site, newspaper, journal, magazine or periodical publication which is principally accessed in or intended for a market outside the United Kingdom;
 - (ii) a radio or television broadcast or teletext service transmitted principally for reception outside the United Kingdom.
- (5) For the purpose of paragraph (1)(b), a communication may be treated as directed only at persons outside the United Kingdom even if—
- (a) it is also directed, for the purposes of article 19(1)(b), at investment professionals falling within article 19(5) (but disregarding paragraph (6) of that article for this purpose);
 - (b) it is also directed, for the purposes of article 49(1)(b), at high net worth persons to whom article 49 applies (but disregarding paragraph (2)(e) of that article for this purpose) and it relates to a controlled activity to which article 49 applies.
- (6) Where a communication falls within paragraph (5)—
- (a) the condition in paragraph (4)(a) is to be construed as requiring an indication that the communication is directed only at persons outside the United Kingdom or persons having professional experience in matters relating to investments or high net worth persons (as the case may be);
 - (b) the condition in paragraph (4)(b) is to be construed as requiring an indication that the communication must not be acted upon by persons in the United Kingdom or by persons who do not have professional experience in matters relating to investments or who are not high net worth persons (as the case may be).

Communications from customers and potential customers

- 13.—(1) The financial promotion restriction does not apply to any communication made by or on behalf of a person (“customer”) to one other person (“supplier”—
- (a) in order to obtain information about a controlled investment available from or a controlled service provided by the supplier; or
 - (b) in order that the customer can acquire a controlled investment from that supplier or be supplied with a controlled service by that supplier.
- (2) For the purposes of paragraph (1), a controlled service is a service the provision of which constitutes engaging in a controlled activity by the supplier.

Follow up non-real time communications and solicited real time communications

14.—(1) Where a person makes or directs a communication (“the first communication”) which is exempt from the financial promotion restriction because, in compliance with the requirements of another provision of this Order, it is accompanied by certain indications or contains certain information, then the financial promotion restriction does not apply to any subsequent communication which complies with the requirements of paragraph (2).

- (2) The requirements of this paragraph are that the subsequent communication—
- (a) is a non-real time communication or a solicited real time communication;
 - (b) is made by the same person who made the first communication;
 - (c) is made to a recipient of the first communication;
 - (d) relates to the same controlled activity and the same controlled investment as the first communication; and
 - (e) is made within 12 months of the recipient receiving the first communication.

(3) A communication made or directed before this article comes into force is to be treated as a first communication falling within paragraph (1) if it would have fallen within that paragraph had it been made or directed after this article comes into force.

Introductions

15.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any real time communication which is made with a view to or for the purposes of introducing the recipient to—

- (a) an authorised person who carries on the controlled activity to which the communication relates; or

- (b) an exempt person where the communication relates to a controlled activity which is also a regulated activity in relation to which he is an exempt person.
- (2) The requirements of this paragraph are that—
- (a) the maker of the communication (“A”) is not a close relative of, nor a member of the same group as, the person to whom the introduction is, or is to be, made;
 - (b) A does not receive from any person other than the recipient any pecuniary reward or other advantage arising out of his making the introduction; and
 - (c) it is clear in all the circumstances that the recipient, in his capacity as an investor, is not seeking and has not sought advice from A as to the merits of the recipient engaging in investment activity (or, if the client has sought such advice, A has declined to give it, but has recommended that the recipient seek such advice from an authorised person).

Exempt persons

- 16.** The financial promotion restriction does not apply to any communication which—
- (a) is a non-real time communication or a solicited real time communication;
 - (b) is made or directed by an exempt person; and
 - (c) is for the purposes of that exempt person’s business of carrying on a controlled activity which is also a regulated activity in relation to which he is an exempt person.

Generic promotions

- 17.** The financial promotion restriction does not apply to any communication which—
- (a) does not identify (directly or indirectly) a person who provides the controlled investment to which the communication relates; and
 - (b) does not identify (directly or indirectly) any person as a person who carries on a controlled activity in relation to that investment.

Mere conduits

- 18.—(1)** The financial promotion restriction does not apply to any communication which is made or directed by a person who acts as a mere conduit for it.
- (2) A person acts as a mere conduit for a communication if—
- (a) he communicates it in the course of a business carried on by him, the principal purpose of which is transmitting or receiving material provided to him by others;
 - (b) the content of the communication is wholly devised by another person; and
 - (c) the nature of the service provided by him in relation to the communication is such that he does not select, modify or otherwise exercise control over its content prior to its transmission or receipt.
- (3) For the purposes of paragraph (2)(c) a person does not select, modify or otherwise exercise control over the content of a communication merely by removing or having the power to remove material—
- (a) which is, or is alleged to be, illegal, defamatory or in breach of copyright;
 - (b) in response to a request to a body which is empowered by or under any enactment to make such a request; or
 - (c) when otherwise required to do so by law.

Investment professionals

- 19.—(1)** The financial promotion restriction does not apply to any communication which—
- (a) is made only to recipients whom the person making the communication believes on reasonable grounds to be investment professionals; or
 - (b) may reasonably be regarded as directed only at such recipients.
- (2) For the purposes of paragraph (1)(b), if all the conditions set out in paragraph (4)(a) to (c) are met in relation to the communication, it is to be regarded as directed only at investment professionals.

(3) In any other case in which one or more of the conditions set out in paragraph (4)(a) to (c) are met, that fact is to be taken into account in determining whether the communication is directed only at investment professionals (but a communication may still be regarded as so directed even if none of the conditions in paragraph (4) is met).

(4) The conditions are that—

- (a) the communication is accompanied by an indication that it is directed at persons having professional experience in matters relating to investments and that any investment or investment activity to which it relates is available only to such persons or will be engaged in only with such persons;
- (b) the communication is accompanied by an indication that persons who do not have professional experience in matters relating to investments should not rely on it;
- (c) there are in place proper systems and procedures to prevent recipients other than investment professionals engaging in the investment activity to which the communication relates with the person directing the communication, a close relative of his or a member of the same group.

(5) “Investment professionals” means—

- (a) an authorised person;
- (b) an exempt person where the communication relates to a controlled activity which is a regulated activity in relation to which the person is exempt;
- (c) any other person
 - (i) whose ordinary activities involve him in carrying on the controlled activity to which the communication relates for the purpose of a business carried on by him; or
 - (ii) who it is reasonable to expect will carry on such activity for the purposes of a business carried on by him;
- (d) a government, local authority (whether in the United Kingdom or elsewhere) or an international organisation;
- (e) a person (“A”) who is a director, officer or employee of a person (“B”) falling within any of sub-paragraphs (a) to (d) where the communication is made to A in that capacity and where A’s responsibilities when acting in that capacity involve him in the carrying on by B of controlled activities.

(6) For the purposes of paragraph (1), a communication may be treated as made only to or directed only at investment professionals even if it is also made to or directed at other persons to whom it may lawfully be communicated.

Communications by journalists

20.—(1) Subject to paragraph (2), the financial promotion restriction does not apply to any non-real time communication if—

- (a) the content of the communication is devised by a person acting in the capacity of a journalist; and
- (b) the communication is contained in a qualifying publication.

(2) Paragraph (1) does not apply to a communication requiring disclosure unless—

- (a) it is accompanied by an indication explaining the nature of the author’s financial interest or that of his close relative (as the case may be);
- (b) the authors are subject to proper systems and procedures which prevent the publication of communications requiring disclosure without the explanation referred to in sub-paragraph (a); or
- (c) the publication in which the communication appears falls within the remit of the Code of Practice issued by the Press Complaints Commission.

(3) For the purposes of this article—

- (a) the authors of the communication are the person who devises the content of the communication and the person who is responsible for deciding to include the communication in the qualifying publication;
- (b) a communication requires disclosure if an author of the communication or a close relative of his is likely to obtain a financial benefit or avoid a financial loss if people act in accordance with the invitation or inducement contained in the communication;

- (c) a “qualifying publication” is a publication or service of the kind mentioned in paragraph (1) or (2) of article 54 of the Regulated Activities Order and which is of the nature described in that article, and for the purposes of this article, a certificate given under article 54(3) of the Regulated Activities Order and not revoked is conclusive evidence of the matters certified.

PART V

EXEMPT COMMUNICATIONS: DEPOSITS AND INSURANCE

Interpretation: relevant insurance activity

21. In this Part, a “relevant insurance activity” means a controlled activity falling within paragraph 2 of Schedule 1 carried on in relation to an investment falling within paragraph 13 of that Schedule where that investment is not a qualifying contract of insurance.

Deposits: non-real time communications

22.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any non-real time communication which relates to a controlled activity falling within paragraph 1 of Schedule 1.

(2) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) of the full name of the person with whom the investment which is the subject of the communication is to be made (“deposit-taker”);
- (b) of the country or territory in which a deposit-taker that is a body corporate is incorporated (described as such);
- (c) if different, of the country or territory in which the deposit-taker’s principal place of business is situated (described as such);
- (d) whether or not the deposit-taker is regulated in respect of his deposit-taking business;
- (e) if the deposit-taker is so regulated, of the name of the regulator in the deposit-taker’s principal place of business, or if there is more than one such regulator, the prudential regulator;
- (f) whether any transaction to which the communication relates would, if entered into by the recipient and the deposit-taker, fall within the jurisdiction of any dispute resolution scheme or deposit guarantee scheme and if so, identifying each such scheme;
- (g) the necessary capital information.

(3) In this article—

“full name”, in relation to a person, means the name under which that person carries on business and, if different, that person’s corporate name;

“liabilities” includes provisions where such provisions have not been deducted from the value of the assets;

“necessary capital information” means—

- (a) in relation to a deposit-taker which is a body corporate, either the amount of its paid up capital and reserves, described as such, or a statement that the amount of its paid up capital and reserves exceeds a particular amount (stating it);
- (b) in relation to a deposit-taker which is not a body corporate, either the amount of the total assets less liabilities (described as such) or a statement that the amount of its total assets exceeds a particular amount (stating it) and that its total liabilities do not exceed a particular amount (stating it).

Deposits: real time communications

23. The financial promotion restriction does not apply to any real time communication (whether solicited or unsolicited) which relates to an activity falling within paragraph 1 of Schedule 1.

Relevant insurance activity: non-real time communications

24.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any non-real time communication which relates to a relevant insurance activity.

(2) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) of the full name of the person with whom the investment which is the subject of the communication is to be made (“the insurer”);
- (b) of the country or territory in which the insurer is incorporated (described as such);
- (c) if different, of the country or territory in which the insurer’s principal place of business is situated (described as such);
- (d) whether or not the insurer is regulated in respect of its insurance business;
- (e) if the insurer is so regulated, of the name of the regulator of the insurer in its principal place of business or, if there is more than one such regulator, the name of the prudential regulator;
- (f) whether any transaction to which the communication relates would, if entered into by the recipient and the insurer, fall within the jurisdiction of any dispute resolution scheme or compensation scheme and if so, identifying each such scheme.

(3) In this article “full name”, in relation to a person, means the name under which that person carries on business and, if different, that person’s corporate name.

Relevant insurance activity: non-real time communications: reinsurance and large risks

25.—(1) The financial promotion restriction does not apply to any non-real time communication which relates to a relevant insurance activity and concerns only—

- (a) a contract of reinsurance; or
- (b) a contract that covers large risks.

(2) “Large risks” means—

- (a) risks falling within paragraph 4 (railway rolling stock), 5 (aircraft), 6 (ships), 7 (goods in transit), 11 (aircraft liability) or 12 (liability of ships) of Schedule 1 to the Regulated Activities Order;
- (b) risks falling within paragraph 14 (credit) or 15 (suretyship) of that Schedule provided that the risks relate to a business carried on by the recipient;
- (c) risks falling within paragraph 3 (land vehicles), 8 (fire and natural forces), 9 (damage to property), 10 (motor vehicle liability), 13 (general liability) or 16 (miscellaneous financial loss) of that Schedule provided that the risks relate to a business carried on by the recipient and that the condition specified in paragraph (3) is met in relation to that business.

(3) The condition specified in this paragraph is that at least two of the three following criteria were exceeded in the most recent financial year for which information is available prior to the making of the communication—

- (a) the balance sheet total of the business (with the meaning of section 247(5) of the 1985 Act or article 255(5) of the 1986 Order) was 6.2 million euros;
- (b) the net turnover (within the meaning given to “turnover” by section 262(1) of the 1985 Act or article 270(1) of the 1986 Order) was 12.8 million euros;
- (c) the number of employees (within the meaning given by section 247(6) of the 1985 Act or article 255(6) of the 1996 Order) was 250;

and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the recipient shall be proportionately adjusted.

(4) For the purposes of paragraph (3), where the recipient is a member of a group for which consolidated accounts (within the meaning of the Seventh Company Law Directive) are drawn up, the question whether the condition met in that paragraph is met is to be determined by reference to those accounts.

Relevant insurance activity: real time communication

26. The financial promotion restriction does not apply to any real time communication (whether solicited or unsolicited) which relates to a relevant insurance activity.

PART VI

EXEMPT COMMUNICATIONS: CERTAIN CONTROLLED ACTIVITIES

Application of exemptions in this Part

27. Except where otherwise stated, the exemptions in this Part apply to communications which relate to—

- (a) a controlled activity falling within paragraph 2 of Schedule 1 carried on in relation to a qualifying contract of insurance;
- (b) controlled activities falling within any of paragraphs 3 to 11 of Schedule 1.

One off non-real time communications and solicited real time communications

28.—(1) The financial promotion restriction does not apply to a one off communication which is either a non-real time communication or a solicited real time communication.

(2) If all the conditions set out in paragraph (3) are met in relation to a communication it is to be regarded as a one off communication. In any other case in which one or more of those conditions are met, that fact is to be taken into account in determining whether the communication is a one off communication (but a communication may still be regarded as a one off communication even if none of the conditions in paragraph (3) is met).

(3) The conditions are that—

- (a) the communication is made only to one recipient or only to one group of recipients in the expectation that they would engage in any investment activity jointly;
- (b) the identity of the product or service to which the communication relates has been determined having regard to the particular circumstances of the recipient;
- (c) the communication is not part of an organised marketing campaign.

(4) Notwithstanding article 11, the financial promotion restriction does not apply to a one off solicited real time communication relating to the controlled activity falling within paragraph 10 of Schedule 1 (or within paragraph 11 in so far as it relates to that activity) even if the communication also relates to the controlled activity falling within paragraph 1 of that Schedule.

Communications required or authorised by enactments

29.—(1) Subject to paragraph (2), the financial promotion restriction does not apply to any communication which is required or authorised by or under any enactment other than the Act.

(2) This article does not apply to a communication which relates to a controlled activity falling within paragraph 10 of Schedule 1 or within paragraph 11 in so far as it relates to that activity.

Overseas communicators: solicited real time communications

30.—(1) The financial promotion restriction does not apply to any solicited real time communication which is made by an overseas communicator from outside the United Kingdom in the course of or for the purposes of his carrying on the business of engaging in relevant investment activities outside the United Kingdom.

(2) In this article—

“overseas communicator” means a person who carries on relevant investment activities outside the United Kingdom but who does not carry on any such activity from a permanent place of business maintained by him in the United Kingdom;

“relevant investment activities” means controlled activities which fall within paragraphs 3 to 7 of Schedule 1 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule.

Overseas communicators: non-real time communications to previously overseas customers

31.—(1) The financial promotion restriction does not apply to any non-real time communication which is communicated by an overseas communicator from outside the United Kingdom to a previously overseas customer of his.

(2) In this article a “previously overseas customer” means a person with whom the overseas communicator has done business within the period of twelve months ending with the day on which the communication was received (“the earlier business”) and where—

- (a) at the time that the earlier business was done, the customer was neither resident in the United Kingdom nor had a place of business there; or
- (b) at the time the earlier business was done, the overseas communicator had on a former occasion done business with the customer, being business of the same description as the business to which the communication relates, and on that former occasion the customer was neither resident in the United Kingdom nor had a place of business there.

(3) For the purposes of this article, an overseas communicator has done business with a customer if, in the course of carrying on his relevant investment activities outside the United Kingdom, he has—

- (a) effected a transaction, or arranged for a transaction to be effected, with the customer;
- (b) provided, outside the United Kingdom, a service to the customer as described in paragraph 6 of Schedule 1 (whether or not that paragraph was in force at the time the business was done); or
- (c) given, outside the United Kingdom, any advice to the customer as described in paragraph 7 of that Schedule (whether or not that paragraph was in force at the time the business was done).

Overseas communicators: unsolicited real time communications to previously overseas customers

32.—(1) If the requirements of paragraphs (2) and (3) are met, the financial promotion restriction does not apply to an unsolicited real time communication which is made by an overseas communicator from outside the United Kingdom to a previously overseas customer of his.

(2) The requirements of this paragraph are that the terms on which previous transactions and services had been effected or provided by the overseas communicator to the previously overseas customer were such that the customer would reasonably expect, at the time that the unsolicited real time communication is made, to be contacted by the overseas communicator in relation to the investment activity to which the communication relates.

(3) The requirements of this paragraph are that the previously overseas customer has been informed by the overseas communicator on an earlier occasion—

- (a) that the protections conferred by or under the Act will not apply to any unsolicited real time communication which is made by the overseas communicator and which relates to that investment activity;
- (b) that the protections conferred by or under the Act may not apply to any investment activity that may be engaged in as a result of the communication; and
- (c) whether any transaction between them resulting from the communication would fall within the jurisdiction of any dispute resolution scheme or compensation scheme or, if there is no such scheme, of that fact.

(4) Where the earlier occasion referred to in paragraph (3) occurs before this article comes into force, the references in that paragraph to the protections conferred by or under the Act are to be construed as references to the protections to be conferred by or under the Act.

Overseas communicators: unsolicited real time communications to knowledgeable customers

33.—(1) If the requirements of paragraphs (2), (3) and (4) are met, the financial promotion restriction does not apply to an unsolicited real time communication which is made by an overseas communicator from outside the United Kingdom in the course of his carrying on relevant investment activities outside the United Kingdom.

(2) The requirements of this paragraph are that the overseas communicator believes on reasonable grounds that the recipient is sufficiently knowledgeable to understand the risks associated with engaging in the investment activity to which the communication relates.

(3) The requirements of this paragraph are that, in relation to any particular investment activity, the recipient has been informed by the overseas communicator on an earlier occasion—

- (a) that the protections conferred by or under the Act will not apply to any unsolicited real time communication which is made by him and which relates to that activity;
- (b) that the protections conferred by or under the Act may not apply to any investment activity that may be engaged in as a result of the communication; and
- (c) whether any transaction between them resulting from the communication would fall within the jurisdiction of any dispute resolution scheme or compensation scheme or, if there is no such scheme, of that fact.

(4) The requirements of this paragraph are that the recipient, after being given a proper opportunity to consider the information given to him in accordance with paragraph (3), has clearly signified that he understands the warnings referred to in paragraph (3)(a) and (b) and that he accepts that he will not benefit from the protections referred to.

(5) Where the earlier occasion referred to in paragraph (3) occurs before this article comes into force, the references in that paragraph to the protection conferred by or under the Act are to be construed as references to the protections to be conferred by or under the Act.

Governments, central banks etc.

34. The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is communicated by and relates only to controlled investments issued by—
 - (i) any government;
 - (ii) any local authority (in the United Kingdom or elsewhere);
 - (iii) any international organisation;
 - (iv) the Bank of England;
 - (v) the European Central Bank;
 - (vi) the central bank of any country or territory outside the United Kingdom.

Industrial and provident societies

35. The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is communicated by an industrial and provident society; and
- (c) relates only to an investment falling within paragraph 15 of Schedule 1 which is issued by the society in question.

Nationals of EEA States other than United Kingdom

36. The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is communicated by a national of an EEA State other than the United Kingdom in the course of any controlled activity lawfully carried on by him in that State; and
- (c) conforms with any rules made by the Authority under section 145 of the Act (financial promotion rules) which are relevant to a communication of that kind.

Financial markets

37.—(1) The financial promotion restriction does not apply to any communication—

- (a) which is a non-real time communication or a solicited real time communication;
- (b) which is communicated by a relevant market; and
- (c) to which paragraph (2) or (3) applies.

(2) This paragraph applies to a communication if—

- (a) it relates only to facilities provided by the market; and

- (b) it does not identify (directly or indirectly)—
 - (i) any particular investment issued by or available from an identified person as one that may be traded or dealt in on the market; or
 - (ii) any particular person as a person through whom transactions on the market may be effected.
- (3) This paragraph applies to a communication if—
 - (a) it relates only to a particular investment falling within paragraph 21, 22 or 23 of Schedule 1; and
 - (b) it identifies the investment as one that may be traded or dealt in on the market.
- (4) “Relevant market” means a market which—
 - (a) meets the criteria specified in Part I of Schedule 3; or
 - (b) is specified in, or is established under the rules of an exchange specified in, Part II, III or IV of that Schedule.

Persons in the business of placing promotional material

38. The financial promotion restriction does not apply to any communication which is made to a person whose business it is to place, or arrange for the placing of, promotional material provided that it is communicated so that he can place or arrange for placing it.

Joint enterprises

39.—(1) The financial promotion restriction does not apply to any communication which is communicated by a participator in a joint enterprise to another participator in the same joint enterprise in connection with or for the purposes of that enterprise.

(2) “Joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial purposes related to a business or businesses (other than the business of engaging in a controlled activity) carried on by them; and, where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the enterprise.

- (3)** “Participator” includes potential participator.

Participants in certain recognised collective investment schemes

40. The financial promotion restriction does not apply to any non-real time communication or solicited real time communication which is made—

- (a)** by a person who is the operator of a scheme recognised under section 270 or 272 of the Act; and
 - (b)** to persons in the United Kingdom who are participants in any such recognised scheme operated by the person making the communication,
- and which relates only to such recognised schemes as are operated by that person or to units in such schemes.

Bearer instruments: promotions required or permitted by market rules

41.—(1) The financial promotion restriction does not apply to any communication which—

- (a)** is a non-real time communication or a solicited real time communication;
- (b)** is communicated by a body corporate (“A”) that is not an open-ended investment company;
- (c)** is made to or may reasonably be regarded as directed at persons entitled to bearer instruments issued by A, a parent undertaking of A or a subsidiary undertaking of A; and
- (d)** is required or permitted by the rules of a relevant market to be communicated to holders of instruments of a class which consists of or includes the bearer instruments in question.

(2) “Bearer instrument” means any of the following investments title to which is capable of being transferred by delivery—

- (a)** any investment falling within paragraph 14 or 15 of Schedule 1;

- (b) any investment falling within paragraph 17 or 18 of that Schedule which confers rights in respect of an investment falling within paragraph 14 or 15.
- (3) For the purpose of this article, a bearer instrument falling within paragraph 17 or 18 of Schedule 1 is treated as issued by the person (“P”) who issued the investment in respect of which the bearer instrument confers rights if it is issued by—
- (a) an undertaking in the same group as P; or
 - (b) a person acting on behalf of, or pursuant to arrangements made with, P.
- (4) “Relevant market”, in relation to instruments of any particular class, means any market on which instruments of that class can be traded or dealt in and which—
- (a) meets the criteria specified in Part I of Schedule 3; or
 - (b) is specified in, or established under the rules of an exchange specified in, Part II or III of that Schedule.

Bearer instruments: promotions to existing holders

- 42.**—(1) The financial promotion restriction does not apply to any communication which—
- (a) is a non-real time communication or a solicited real time communication;
 - (b) is communicated by a body corporate (“A”) that is not an open-ended investment company;
 - (c) is made to or may reasonably be regarded as directed at persons entitled to bearer instruments issued by A, a parent undertaking of A or a subsidiary undertaking of A;
 - (d) relates only to instruments of a class which consists of or includes either the bearer instruments to which the communication relates or instruments in respect of which those bearer instruments confer rights; and
 - (e) is capable of being accepted or acted on only by persons who are entitled to instruments (whether or not bearer instruments) issued by A, a parent undertaking of A or a subsidiary undertaking of A.
- (2) “Bearer instruments” has the meaning given by article 41.
- (3) For the purposes of this article, an instrument falling within paragraph 17 or 18 of Schedule 1 is treated as issued by the person (“P”) who issued the investment in respect of which the bearer instrument confers rights if it is issued by—
- (a) an undertaking in the same group as P; or
 - (b) a person acting on behalf of, or pursuant to arrangements made with, P.

Members and creditors of certain bodies corporate

- 43.**—(1) The financial promotion restriction does no apply to any non-real time communication or solicited real time communication which is communicated—
- (a) by a body corporate (“A”) that is not an open-ended investment company; and
 - (b) to persons whom the person making the communication believes on reasonable grounds to be persons to whom paragraph (2) applies,
- and which relates only to a relevant investment which is issued or to be issued by A, or by an undertaking (“U”) in the same group as A that is not an open-ended investment company.
- (2) This paragraph applies to—
- (a) a creditor or member of A or of U;
 - (b) a person who is entitled to a relevant investment which is issued by A or by U;
 - (c) a person who is entitled, whether conditionally or unconditionally, to become a member of A or U but who has not yet done so;
 - (d) a person who is entitled, whether conditionally or unconditionally, to have transferred to him title to a relevant investment which is issued by A or U but has not yet acquired title to the investment.
- (3) “Relevant investment” means—
- (a) an investment falling within paragraph 14 or 15 of Schedule 1;
 - (b) an investment falling within paragraph 17 or 18 of that Schedule so far as relating to any investments within sub-paragraph (a).

- (4) For the purposes of this article, an investment falling within paragraph 17 or 18 of Schedule 1 is treated as issued by the person (“P”) who issued the investment in respect of which the instrument confers rights if it is issued by—
- an undertaking in the same group as P; or
 - a person acting on behalf of, or pursuant to arrangements made with, P.

Members and creditors of open-ended investment companies

- 44.**—(1) The financial promotion restriction does not apply to any communication which—
- is a non-real time communication or a solicited real time communication;
 - is communicated by an open-ended investment company;
 - is communicated to persons whom the person making or directing the communication believes on reasonable grounds to be persons to whom paragraph (2) applies; and
 - relates only to an investment falling within paragraph 15, 17 or 19 of Schedule 1 which is issued or to be issued by the open-ended investment company.
- (2) This paragraph applies to—
- a creditor or member of the open-ended investment company;
 - a person who is entitled to an investment falling within paragraph 15, 17 or 19 of Schedule 1 which is issued by the open-ended investment company;
 - a person who is entitled, whether conditionally or unconditionally, to become a member of the open-ended investment company but who has not yet done so;
 - a person who is entitled, whether conditionally or unconditionally, to have transferred to him title to an investment falling within paragraph 15, 17 or 19 of Schedule 1 which is issued by the open-ended investment company but has not yet acquired title to the investment.
- (3) For the purposes of this article, an investment falling within paragraph 17 of Schedule 1 is treated as issued by the person (“P”) who issued the investment in respect of which the instrument confers rights if it is issued by—
- an undertaking in the same group as P; or
 - a person acting on behalf of, or pursuant to arrangements made with, P.

Group companies

- 45.** The financial promotion restriction does not apply to any communication made by one body corporate in a group to another body corporate in the same group.

Qualifying credit to bodies corporate

- 46.** The financial promotion restriction does not apply to any communication which relates to a controlled activity falling within paragraph 10 of Schedule 1 (or within paragraph 11 so far as it relates to that activity) if the communication is—
- made to or directed at bodies corporate only; or
 - accompanied by an indication that the qualifying credit to which it relates is only available to bodies corporate.

Persons in the business of disseminating information

- 47.**—(1) The financial promotion restriction does not apply to any communication which is made only to recipients whom the person making the communication believes on reasonable grounds to be persons to whom paragraph (2) applies.
- (2) This paragraph applies to—
- a person who receives the communication in the course of a business which involves the dissemination through a publication of information concerning controlled activities;
 - a person whilst acting in the capacity of director, officer or employee of a person falling within sub-paragraph (a) being a person whose responsibilities when acting in that capacity involve him in the business referred to in that sub-paragraph;
 - any person to whom the communication may otherwise lawfully be made.

Certified high net worth individuals

48.—(1) If the requirements of paragraph (4) are met, the financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is made to a certified high net worth individual;
- (c) does not invite or induce the recipient to engage in investment activity with the person who has signed the certificate of high net worth referred to in paragraph (2)(a); and
- (d) relates only to one or more investments falling within paragraph (5).

(2) “Certified high net worth individual” means any individual—

- (a) who has a current certificate of high net worth; and
- (b) who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

“I make this statement so that I am able to receive promotions which are exempt from the restriction on financial promotion in section 21 of the Financial Services and Markets Act 2000. The exemption relates to certified high net worth individuals and I declare that I qualify as such. I accept that the content of promotions and other material that I receive may not have been approved by a person who has been authorised under that Act and that their content may not therefore be subject to controls which would apply if the promotion were made or approved by an authorised person. I am aware that it is open to me to seek advice from someone who is authorised under the Act and who specialises in advising on this kind of investment”.

(3) For the purposes of paragraph (2)(a) a certificate of high net worth—

- (a) must be in writing or other legible form;
- (b) is current if it is signed and dated within the period of twelve months ending with the day on which the communication is made;
- (c) must state that in the opinion of the person signing the certificate, the person to whom the certificate relates either—
 - (i) had, during the financial year immediately preceding the date on which the certificate is signed, an annual income of not less than £100,000; or
 - (ii) held, throughout the financial year immediately preceding the date on which the certificate is signed, net assets to the value of not less than £250,000;
- (d) must be signed by the recipient’s accountant or by the recipient’s employer.

(4) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that it is exempt from the general restriction (in section 21 of the Financial Services and Markets Act 2000) on the communication of invitations or inducements to engage in investment activity on the grounds that it is made to a certified high net worth individual;
- (b) of the requirements that must be met for a person to qualify as a certified high net worth individual;
- (c) that the content of the communication has not been approved by an authorised person and that such approval is, unless this exemption or any other exemption applies, required by section 21 of the Act;
- (d) that reliance on the communication for the purpose of engaging in any investment activity may expose the individual to a significant risk of losing all of the property invested;
- (e) that any person who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.

(5) An investment falls within this paragraph if—

- (a) it is an investment falling within paragraph 14 of Schedule 1 being stock or shares in an unlisted company;
- (b) it is an investment falling within 15 of Schedule 1 being an instrument acknowledging the indebtedness of an unlisted company;

- (c) it is an investment falling within paragraphs 17 or 18 of Schedule 1 conferring entitlement or rights with respect to investments falling within sub-paragraph (a) or (b);
 - (d) it comprises units in a collective investment scheme being a scheme which invests wholly or predominantly in investments falling within sub-paragraph (a) or (b);
 - (e) it is an investment falling within paragraph 21 of Schedule 1 to acquire or dispose of an investment falling within sub-paragraph (a), (b) or (c);
 - (f) it is an investment falling within paragraph 22 of Schedule 1 being rights under a contract for the sale of an investment falling within sub-paragraph (a), (b) or (c);
 - (g) it is an investment falling within paragraph 23 of Schedule 1 being a contract relating to, or to fluctuations in the value or price of, an investment falling within sub-paragraph (a), (b) or (c),
- provided in each case that it is an investment under the terms of which the investor cannot incur a liability or obligation to pay or contribute more than he commits by way of investment.

- (6) In determining an individual's "net assets" no account shall be taken of—
- (a) the property which is his primary residence or any loan secured on that residence;
 - (b) any rights of his under a qualifying contract of insurance; or
 - (c) any benefits (in the form of pensions or otherwise) which are payable on the termination of his service or on his death or retirement and to which he is (or his dependents are), or may be, entitled.

High net worth companies, unincorporated associations etc.

- 49.—(1) The financial promotion restriction does not apply to any communication which—
- (a) is made only to recipients whom the person making the communication believes on reasonable grounds to be persons to whom paragraph (2) applies; or
 - (b) may reasonably be regarded as directed only at persons to whom paragraph (2) applies.
- (2) This paragraph applies to—
- (a) any body corporate which has a called-up share capital or net asset of—
 - (i) in the case of a body corporate which has more than 20 members or which is a subsidiary undertaking of a parent undertaking which has more than 20 members, not less than £500,000;
 - (ii) in the case of any other body corporate, not less than £5 million;
 - (b) any unincorporated association or partnership which has net assets of not less than £5 million;
 - (c) the trustee of a high value trust;
 - (d) any person ("A") whilst acting in the capacity of director, officer or employee of a person ("B") falling within any of sub-paragraphs (a) to (c) where A's responsibilities when acting in that capacity, involve him in B's engaging in investment activity;
 - (e) any person to whom the communication may otherwise lawfully be made.
- (3) For the purposes of paragraph (1)(b)—
- (a) if all the conditions set out in paragraph (4)(a) to (c) are met, the communication is to be regarded as directed at persons to whom paragraph (2) applies;
 - (b) in any other case in which one or more of those conditions are met, that fact is to be taken into account in determining whether the communication is directed at persons to whom paragraph (2) applies (but a communication may still be regarded as so directed even if none of the conditions in paragraph (4) is met).
- (4) The conditions are that—
- (a) the communication includes an indication of the description of persons to whom it is directed and an indication of the fact that the controlled investment or controlled activity to which it relates is available only to such persons;
 - (b) the communication includes an indication that persons of any other description should not act upon it;

- (c) there are in place proper systems and procedures to prevent recipients other than persons to whom paragraph (2) applies engaging in the investment activity to which the communication relates with the person directing the communication, a close relative of his or a member of the same group.
- (5) “Called-up share capital” has the meaning given in the 1985 Act or in the 1986 Order.
- (6) “High value trust” means 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)—
 - (a) is £10 million or more; or
 - (b) has been £10 million or more at any time during the year immediately preceding the date on which the communication in question was first made or directed.
- (7) “Net assets” has the meaning given by section 264 of the 1985 Act or the equivalent provision of the 1986 Order.

Sophisticated investors

- 50.**—(1) “Certified sophisticated investor”, in relation to any description of investment, means a person—
- (a) who has a current certificate in writing or other legible form signed by an authorised person to the effect that he is sufficiently knowledgeable to understand the risks associated with that description of investment; and
 - (b) who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:
- “I make this statement so that I am able to receive promotions which are exempt from the restrictions on financial promotion in the Financial Services and Markets Act 2000. The exemption relates to certified sophisticated investors and I declare that I qualify as such in relation to investments of the following kind [list them]. I accept that the contents of promotions and other material that I receive may not have been approved by an authorised person and that their content may not therefore be subject to controls which would apply if the promotion were made or approved by an authorised person. I am aware that it is open to me to seek advice from someone who specialises in advising on this kind of investment”.
- (2) If the requirements of paragraph (3) are met, the financial promotion restriction does not apply to any communication which—
 - (a) is made to a certified sophisticated investor;
 - (b) does not invite or induce the recipient to engage in investment activity with the person who has signed the certificate referred to in paragraph (1)(a); and
 - (c) relates only to a description of investment in respect of which that investor is certified.
 - (3) The requirements of this paragraph are that the communication is accompanied by an indication—
 - (a) that it is exempt from the general restriction (in section 21 of the Financial Services and Markets Act 2000) on the communication of invitations or inducements to engage in investment activity on the ground that it is made to a certified sophisticated investor;
 - (b) of the requirements that must be met for a person to qualify as a certified sophisticated investor;
 - (c) that the content of the communication has not been approved by an authorised person and that such approval is, unless this exemption or any other exemption applies, required by section 21 of the Act;
 - (d) that reliance on the communication for the purpose of engaging in any investment activity may expose the individual to a significant risk of losing all of the property invested or of incurring additional liability;
 - (e) that any person who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.
 - (4) For the purposes of paragraph (1)(a), a certificate is current if it is signed and dated not more than three years before the date on which the communication is made.

Associations of high net worth or sophisticated investors

51. The financial promotion restriction does not apply to any non-real time communication or solicited real time communication which—

- (a) is made to an association the membership of which the person making the communication believes on reasonable grounds comprises wholly or predominantly persons who are—
 - (i) certified high net worth individuals within the meaning of article 48;
 - (ii) high net worth persons falling within article 49(2)(a) to (d);
 - (iii) certified sophisticated investors within the meaning of article 50; and
- (b) relates only to an investment under the terms of which a person cannot incur a liability or obligation to pay or contribute more than he commits by way of investment.

Common interest group of a company

52.—(1) “Common interest group”, in relation to a company, means an identified group of persons who at the time the communication is made might reasonably be regarded as having an existing and common interest with each other and that company in—

- (a) the affairs of the company; and
- (b) what is done with the proceeds arising from any investment to which the communication relates.

(2) If the requirements of paragraphs (3) and either (4) or (5) are met, the financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is made only to persons who are members of a common interest group of a company, or may reasonably be regarded as directed only at such persons; and
- (c) relates to investments falling within paragraph 14 or 15 of Schedule 1 which are issued by that company.

(3) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that the directors of the company (or its promoters named in the communication) have taken all reasonable care to ensure that every statement of fact or opinion included in the communication is true and not misleading given the form and context in which it appears;
- (b) that the directors of the company (or its promoters named in the communication) have not limited their liability with respect to the communication; and
- (c) that any person who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.

(4) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that the directors of the company (or its promoters named in the communication) have taken all reasonable care to ensure that any person belonging to the common interest group (and his professional advisers) can have access, at all reasonable times, to all the information that he or they would reasonably require, and reasonably expect to find, for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company and of the rights attaching to the investments in question; and

- (b) describing the means by which such information can be accessed.

(5) The requirements of this paragraph are that the communication is accompanied by an indication that any person considering subscribing for the investments in question should regard any subscription as made primarily to assist the furtherance of the company's objectives (other than any purely financial objectives) and only secondarily, if at all, as an investment.

(6) For the purposes of paragraph (2)(b)—

- (a) if all the conditions set out in paragraph (7)(a) to (c) are met, the communication is to be regarded as directed at persons who are members of the common interest group;
- (b) in any other case in which one or more of those conditions are met, that fact shall be

taken into account in determining whether the communication is directed at persons who are members of the common interest group (but a communication may still be regarded as directed only at such persons even if none of the conditions in paragraph (7) is met).

(7) The conditions are that—

- (a) the communication is accompanied by an indication that it is directed at persons who are members of the common interest group and that any investment or activity to which it relates is available only to such persons;
- (b) the communication is accompanied by an indication that it must not be acted upon by persons who are not members of the common interest group;
- (c) there are in place proper systems and procedures to prevent recipients other than members of the common interest group engaging in the investment activity to which the communication relates with the person directing the communication, a close relative of his or a member of the same group.

(8) Person are not to be regarded as having an interest of the kind described in paragraph (1) if the only reason why they would be so regarded is that—

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

Settlors, trustees and personal representatives

53. The financial promotion restriction does not apply to any communication which is made between—

- (a) a person when acting as a settlor or grantor of a trust, a trustee or a personal representative; and
- (b) a trustee of the trust, a fellow trustee or a fellow personal representative (as the case may be),

if the communication is made for the purposes of the trust or estate.

Beneficiaries of trust, will or intestacy

54. The financial promotion restriction does not apply to any communication which is made—

- (a) between a person when acting as a settlor or grantor of a trust, trustee or personal representative and a beneficiary under the trust, will or intestacy; or
- (b) between a beneficiary under a trust, will or intestacy and another beneficiary under the same trust, will or intestacy,

if the communication relates to the management or distribution of that trust fund or estate.

Communications by members of professions

55.—(1) The financial promotion restriction does not apply to a real time communication (whether solicited or unsolicited) which—

- (a) is made by a person (“P”) who carries on a regulated activity to which the general prohibition does not apply by virtue of section 327 of the Act; and
- (b) is made to a recipient who has, prior to the communication being made, engaged P to provide professional services,

where the controlled activity to which the communication relates is an excluded activity which would be undertaken by P for the purposes of, and incidental to, the provision by him of professional services to or at the request of the recipient.

(2) “Professional services” has the meaning given in section 327 of the Act.

(3) An “excluded activity” is an activity to which the general prohibition would apply but for the application of—

- (a) section 327 of the Act; or
- (b) article 67 of the Regulated Activities Order.

Remedy following report by Parliamentary Commissioner for Administration

56. The financial promotion restriction does not apply to any communication made or directed by a 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(a) to have occurred, to be remedied with respect to the recipient.

Persons placing promotional material in particular publications

57. The financial promotion restriction does not apply to any communication received by a person who receives the publication in which the communication is contained because he has himself placed an advertisement in that publication.

Acquisition of interest in premises run by management companies

- 58.—(1)** “Management company” means a company established for the purpose of—
(a) managing the common parts or fabric of premises used for residential or business purposes; or
(b) supplying services to such premises.
(2) The financial promotion restriction does not apply to any non-real time communication or solicited real time communication if it relates to an investment falling within paragraph 14 of Schedule 1 which—
(a) is issued, or to be issued, by a management company; and
(b) is to be acquired by any person in connection with the acquisition of an interest in the premises in question.

Annual accounts and directors' report

- 59.—(1)** If the requirements in paragraphs (2) to (5) are met, the financial promotion restriction does not apply to any communication by a body corporate (other than an open-ended investment company) which—
(a) consists of, or is accompanied by, the whole or any part of the annual accounts of a body corporate (other than an open-ended investment company); or
(b) is accompanied by any report which is prepared and approved by the directors of such a body corporate under—
(i) sections 234 and 234A of the 1985 Act(b);
(ii) the corresponding Northern Ireland enactment; or
(iii) the law of an EEA State other than the United Kingdom which corresponds to the provisions mentioned in paragraph (i) or (ii).
(2) The requirements of this paragraph are that the communication—
(a) does not contain any invitation to persons to underwrite, subscribe for, or otherwise acquire or dispose of, a controlled investment; and
(b) does not advise persons to engage in any of the activities within sub-paragraph (a).
(3) The requirements of this paragraph are that the communication does not contain any invitation to persons to—
(a) effect any transaction with the body corporate (or with any named person) in the course of that body's (or person's) carrying on of any activity falling within any of paragraphs 3 to 11 of Schedule 1; or
(b) make use of any services provided by that body corporate (or by any named person) in the course of carrying on such activity.
(4) The requirements of this paragraph are that the communication does not contain any inducement relating to an investment other than one issued by the body corporate (or another body corporate in the same group) which falls within—
(a) paragraph 14 or 15 of Schedule 1; or

(a) 1967 c. 13. This Act has been amended by the Parliamentary Commissioner Act 1994 (c. 14).

(b) Section 234 was substituted, and section 234A was inserted, by section 8(1) of the Companies Act 1989 (c. 40). Section 234 was subsequently amended by S.I. 1996/189 and S.I. 1997/571.

- (b) paragraph 17 or 18 of that Schedule, so far as relating to any investments within subparagraph (a).
- (5) The requirements of this paragraph are that the communication does not contain any reference to—
- (a) the price at which investments issued by the body corporate have in the past been bought or sold; or
 - (b) the yield on such investments,
- unless it is also accompanied by an indication that past performance cannot be relied on as a guide to future performance.

(6) For the purposes of paragraph (5)(b), a reference, in relation to an investment, to earnings, dividend or nominal rate of interest payable shall not be taken to be a reference to the yield on the investment.

- (7) “Annual accounts” means—
- (a) accounts produced by virtue of Part VII of the 1985 Act(a) (or of that Part as applied by virtue of any other enactment);
 - (b) accounts produced by virtue of the corresponding Northern Ireland enactment (or of that enactment as applied by virtue of any other enactment);
 - (c) a summary financial statement prepared under section 251 of the 1985 Act(b);
 - (d) accounts delivered to the registrar under Chapter II of Part XXIII of the 1985 Act(c);
 - (e) accounts which are produced or published by virtue of the law of an EEA State other than the United Kingdom and which correspond to accounts within any of subparagraphs (a) to (d).

Participation in employee share schemes

60.—(1) The financial promotion restriction does not apply to any communication by a person (“C”), a member of the same group as C or a relevant trustee where the communication is for the purposes of an employee share scheme and relates to any of the following investments issued by C—

- (a) investments falling within paragraph 14 or 15 of Schedule 1;
- (b) investments falling within paragraph 17 or 18 of that Schedule so far as relating to any investments within subparagraph (a); or
- (c) investments falling within paragraph 27 so far as relating to any investments within subparagraph (a) or (b).

(2) “Employee share scheme”, in relation to any investments issued by C, means arrangements made or to be made by C or by a person in the same group as C to enable or facilitate—

- (a) transactions in those investments between or for the benefit of—
 - (i) the bona fide employees or former employees of C or of another member of the same group as C;
 - (ii) the wives, husbands, widows, widowers, or children or step children under the age of eighteen of such employees or former employees; or
- (b) the holding of those investments by, or for the benefit of, such persons.

(3) ”Relevant trustee” means a person who, in pursuance of an actual or proposed employee share scheme, holds as trustee or will hold as trustee investments issued by C.

Sale of goods and supply of services

61.—(1) In this article—

“supplier” means a person whose main business is to sell goods or supply services and not to carry on controlled activities falling within any of paragraphs 3 to 7 of Schedule 1 and, where the supplier is a member of a group, also means any other member of that group;

-
- (a) Part VII of the 1985 Act has been amended by Part I of the Companies Act 1989 (c. 40) and has subsequently been amended by S.I. 1992/3003 and S.I. 2000/968.
 - (b) Section 251 was substituted by section 15 of the Companies Act 1989.
 - (c) Chapter II of Part XXIII of the 1985 Act was substituted by section 23 of the Companies Act 1989.

“customer” means a person, other than an individual, to whom a supplier sells goods or supplies services, or agrees to do so, and, where the customer is a member of a group, also means any other member of that group;

“a related sale or supply” means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the same purpose as the sale or supply mentioned above.

(2) The financial promotion restriction does not apply to any non-real time communication or any solicited real time communication made by a supplier to a customer of his for the purposes of, or in connection with, the sale of goods or supply of services or a related sale or supply.

- (3) But the exemption in paragraph (2) does not apply if the communication relates to—
- (a) a qualifying contract of insurance or units in a collective investment scheme; or
 - (b) investments falling within paragraph 27 of Schedule 1 so far as relating to investments within paragraph (a).

Sale of body corporate

62.—(1) The financial promotion restriction does not apply to any communication by a body corporate, a partnership, a single individual or a group of connected individuals which relates to a transaction falling within paragraph (2).

- (2) A transaction falls within this paragraph if—
- (a) it is one to acquire or dispose of shares in a body corporate other than an open-ended investment company, or is entered into for the purposes of such an acquisition or disposal; and
 - (b) either—
 - (i) the conditions set out in paragraph (3) are met; or
 - (ii) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.
- (3) The conditions mentioned in paragraph (2)(b) are that—
- (a) the shares consist of or include 50 per cent or more of the voting shares in the body corporate; or
 - (b) the shares, together with any already held by the person acquiring them, consist of or include at least that percentage of such shares; and
 - (c) in either case, the acquisition or disposal is, or is to be, between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.
- (4) “A group of connected individuals” means—
- (a) in relation to a party disposing of shares in a body corporate, a single group of persons each of whom is—
 - (i) a director or manager of the body corporate;
 - (ii) a close relative of any such director or manager; or
 - (iii) a person acting as trustee for any person falling within paragraph (i) or (ii); and
 - (b) in relation to a party acquiring shares in a body corporate, a single group of persons each of whom is—
 - (i) a person who is or is to be a director or manager of the body corporate;
 - (ii) a close relative of any such person; or
 - (iii) a person acting as trustee for any person falling within paragraph (i) or (ii).

(5) “Voting shares”, in relation to a body corporate, means shares carrying voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of that body corporate.

Takeovers of relevant unlisted companies: interpretation

63.—(1) In this article and in articles 64, 65 and 66, a “relevant unlisted company”, in relation to a takeover offer, means a company which is an unlisted company at the time that the offer is made and which has been an unlisted company throughout the period of ten years immediately preceding the date of the offer.

(2) In this article and in articles 64, 65 and 66, references to a takeover offer for a relevant unlisted company are references to an offer which meets the requirements of Part I of Schedule 4 and which is an offer—

- (a) for all the shares in, or all the shares comprised in the equity or non-equity share capital of, a relevant unlisted company (other than any shares already held by or on behalf of the person making the offer); or
- (b) for all the debentures of such a company (other than any debentures already held by or on behalf of the person making the offer).

(3) Shares in or debentures of an unlisted company are to be regarded as being held by or on behalf of the person making the offer if the person who holds them, or on whose behalf they are held, has agreed that an offer should not be made in respect of them.

Takeovers of relevant unlisted companies

64.—(1) If the requirements of paragraphs (2) and (3) are met, the financial promotion restriction does not apply to any communication which is communicated in connection with a takeover offer for a relevant unlisted company.

(2) The requirements of this paragraph are that the communication is accompanied by the material listed in Part II of Schedule 4.

(3) The requirements of this paragraph are that the material listed in Part III of Schedule 4 is available at a place in the United Kingdom at all times during normal office hours for inspection free of charge.

Takeovers of relevant unlisted companies: warrants etc.

65. The financial promotion restriction does not apply to any communication which—

- (a) is communicated at the same time as, or after, a takeover offer for a relevant unlisted company is made; and
- (b) relates to investments falling within paragraph 17 or 18 of Schedule 1 so far as relating to the shares in or debentures of the unlisted company which are the subject of the offer.

Takeovers of relevant unlisted companies: application forms

66. The financial promotion restriction does not apply to any communication made in connection with a takeover offer for a relevant unlisted company which is a form of application for—

- (a) shares in or debentures of the unlisted company; or
- (b) investments falling within paragraph 17 or 18 of Schedule 1 so far as relating to the shares in or debentures of the company which are the subject of the offer.

Promotions required or permitted by market rules

67.—(1) The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) relates to an investment which falls within any of paragraphs 14 to 18 of Schedule 1 and which is permitted to be traded or dealt in on a relevant market; and
- (c) is required or permitted to be communicated by—
 - (i) the rules of the relevant market;
 - (ii) a body which regulates the market; or
 - (iii) a body which regulates offers or issues of investments to be traded on such a market.

- (2) “Relevant market” means a market which—
(a) meets the criteria specified in Part I of Schedule 3; or
(b) is specified in, or established under the rules of an exchange specified in, Part II or III of that Schedule.

Promotions in connection with admission to certain EEA markets

- 68.—(1)** The financial promotion restriction does not apply to any communication—
(a) which is a non-real time communication or a solicited real time communication;
(b) which a relevant EEA market requires to be communicated before an investment can be admitted to trading on that market;
(c) which, if it were included in a prospectus issued in accordance with Part II of the Public Offers of Securities Regulations 1995, would be required to be communicated by those Regulations; and
(d) which is not accompanied by any information other than information which is required or permitted to be published by the rules of that market.
- (2) In this article “relevant EEA market” means any market on which investments can be traded or dealt in and which—
(a) meets the criteria specified in Part I of Schedule 3; or
(b) is specified in, or established under the rules of an exchange specified in, Part II of that Schedule.

Promotions of securities already admitted to certain markets

- 69.—(1)** In this article—
“relevant investment” means any investment falling within—
(a) paragraph 14 or 15 of Schedule 1; or
(b) paragraph 17 or 18 of that Schedule so far as relating to any investment mentioned in sub-paragraph (a);
“relevant market” means any market on which investments can be traded or dealt in and which—
(a) meets the criteria specified in Part I of Schedule 3; or
(b) is specified in, or established under the rules of an exchange specified in, Part II or III of that Schedule.
- (2) If the requirements of paragraphs (3) to (6) are met, the financial promotion restriction does not apply to any communication which is—
(a) a non-real time communication or a solicited real time communication;
(b) communicated by a body corporate (“A”), other than an open-ended investment company; and
(c) relates only to investments issued by A or by another body corporate in the same group,
if relevant investments issued by A or by any parent undertaking of A are permitted to be traded, or dealt in, on a relevant market.
- (3) The requirements of this paragraph are that the communication—
(a) is not, and is not accompanied by, an invitation to underwrite, subscribe for, or otherwise acquire or dispose of, a controlled investment; and
(b) does not advise persons to engage in one of the activities within sub-paragraph (a).
- (4) The requirements of this paragraph are that the communication is not, and is not accompanied by, an invitation to—
(a) effect any transaction with A (or with any named person) in the course of the carrying on by A (or the named person) of any activity falling within any of paragraphs 3 to 11 of Schedule 1; or
(b) make use of any services provided by A (or by any named person) in the course of carrying on such activity.
- (5) The requirements of this paragraph are that the communication is not, and is not accompanied by, an inducement relating to a relevant investment other than one issued by A (or another body corporate in the same group).

(6) The requirements of this paragraph are that the communication does not refer, and is not accompanied by a reference, to—

- (a) the price at which the investments have been bought or sold in the past; or
- (b) the yield on such investments,

unless it is also accompanied by an indication that past performance cannot be relied on as a guide to future performance.

(7) For the purposes of paragraph (6)(b), a reference, in relation to an investment, to earnings, dividend or nominal rate of interest payable shall not be taken to be a reference to the yield on the investment.

Promotions in connection with listing applications

70. The financial promotion restriction does not apply to any non-real time communication or any solicited real time communication to which listing rules made under section 98(1) of the Act apply.

Promotions included in listing particulars etc.

71.—(1) The financial promotion restriction does not apply to any non-real time communication which is included in—

- (a) listing particulars;
- (b) supplementary listing particulars;
- (c) a prospectus approved in accordance with listing rules made under section 84 or 87 of the Act;
- (d) a supplementary prospectus approved in accordance with listing rules made for the purposes of section 81 of the Act as applied by section 86 or 87; or
- (e) any other document required or permitted to be published by listing rules under Part VI of the Act.

(2) In this article “listing particulars” and “listing rules” have the meaning given by Part VI of the Act.

Promotions included in prospectus for public offer of unlisted securities

72. The financial promotion restriction does not apply to any non-real time communication which is included in a prospectus or supplementary prospectus that is issued in accordance with Part II of the Public Offers of Securities Regulations 1995.

Material relating to prospectus for public offer of unlisted securities

73.—(1) The financial promotion restriction does not apply to any non-real time communication relating to a prospectus or supplementary prospectus where the only reason for considering it to be an invitation or inducement is that it does one or more of the following—

- (a) it states the name and address of the person by whom the securities to which the prospectus or supplementary prospectus relates are to be offered;
- (b) it gives other details for contacting that person;
- (c) it states the nature and the nominal value of the securities to which the prospectus or supplementary prospectus relates, the number offered and the price at which they are offered;
- (d) it states that a prospectus or supplementary prospectus is or will be available (and, if it is not yet available, when it is expected to be);
- (e) it gives instructions for obtaining a copy of the prospectus or supplementary prospectus.

(2) In this article—

- (a) “securities” and “offer” have the same meaning as in Part II of the Public Offers of Securities Regulations 1995;
- (b) references to a prospectus or supplementary prospectus are references to a prospectus or supplementary prospectus which is published in accordance with Part II of the Public Offers of Securities Regulations 1995.

PART VII

TRANSITIONAL PROVISION

Approval of communication prior to Order coming into force

- 74.—(1) The financial promotion restriction does not apply to a communication which falls within paragraph (2) or (3).
- (2) A communication falls within this paragraph if—
- (a) before this article comes into force, the content of the communication has been approved for the purposes of section 57 of the Financial Services Act 1986 by a person authorised under Chapter III of Part I of that Act; and
 - (b) the communication is made or directed within one month starting with the date on which this article comes into force.
- (3) A communication falls within this paragraph if—
- (a) before this article comes into force, the content of the communication had been approved by a person who is an authorised person (within the meaning of the Act) immediately after this article comes into force;
 - (b) the approval if it had been given immediately after this article comes into force would have complied with any relevant rules made by the Authority under section 145; and
 - (c) the communication is made or directed within the period of one month starting with the date on which this article comes into force.
- (4) For the purpose of paragraph (2)(b) and (3)(c) a communication contained in a web site is directed on the date when it is posted on the site.

*David Clelland
Greg Pope*

Two of the Lords Commissioners of
Her Majesty's Treasury

2nd April 2001

SCHEDULE 1

Article 4

PART I

CONTROLLED ACTIVITIES

Accepting deposits

1. Accepting deposits is a controlled activity if—
 - (a) money received by way of deposit is lent to others; or
 - (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit,
- and the person accepting the deposit holds himself out as accepting deposits on a day to day basis.

Effecting and carrying out contracts of insurance

- 2.—(1) Effecting a contract of insurance as principal is a controlled activity.
- (2) Carrying out a contract of insurance as principal is a controlled activity.
- (3) There is excluded from sub-paragraph (1) or (2) the effecting or carrying out of a contract of insurance of the kind described in article 12 of the Regulated Activities Order by a person who does not otherwise carry on an activity falling within those sub-paragraphs.

Dealing in securities and contractually based investments

- 3.—(1) Buying, selling, subscribing for or underwriting securities or contractually based investments (other than investments of the kind specified by paragraph 25, or paragraph 27 so far as relevant to that paragraph) as principal or agent is a controlled activity.
- (2) A person does not carry on the activity in sub-paragraph (1) by accepting an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.
- (3) The reference in sub-paragraph (2) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Arranging deals in investments

- 4.—(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—
 - (a) a security;
 - (b) a contractually based investment; or
 - (c) an investment of the kind specified by paragraph 24, or paragraph 27 so far as relevant to that paragraph,is a controlled activity.
- (2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within sub-paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a controlled activity.
- (3) A person does not carry on an activity falling within paragraph (2) merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

Managing investments

5. Managing assets belonging to another person, in circumstances involving the exercise of discretion, is a controlled activity if—
 - (a) the assets consist of or include any investment which is a security or a contractually based investment; or
 - (b) the arrangements for their management are such that the assets may consist of or include such investments, and either the assets have at any time since 29th April 1988 done so, or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.

Safeguarding and administering investments

- 6.—(1) The activity consisting of both—
 - (a) the safeguarding of assets belonging to another; and

(b) the administration of those assets,
or arranging for one or more other persons to carry on that activity, is a controlled activity if either the condition in paragraph (a) or (b) of sub-paragraph (2) is met.

(2) The condition is that—

- (a) the assets consist of or include any investment which is a security or a contractually based investment; or
- (b) the arrangements for their safeguarding and administration are such that the assets may consist of or include investments of the kind mentioned in sub-paragraph (a) and either the assets have at any time since 1st June 1997 done so, or the arrangements have at any time (whether before or after that date) been held out as ones under which such investments would be safeguarded and administered.

(3) For the purposes of this article—

- (a) it is immaterial that title to the assets safeguarded and administered is held in uncertificated form;
- (b) it is immaterial that the assets safeguarded and administered may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

(4) For the purposes of this article, the following activities do not constitute the administration of assets—

- (a) providing information as to the number of units or the value of any assets safeguarded;
- (b) converting currency;
- (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

Advising on investments

7. Advising a person is a controlled activity if the advice is—

- (a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
- (b) advice on the merits of his doing any of the following (whether as principal or agent)—
 - (i) buying, selling, subscribing for or underwriting a particular investment which is a security or a contractually based investment; or
 - (ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

Advising on syndicate participation at Lloyd's

8. Advising a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate is a controlled activity.

Providing funeral plan contracts

9.—(1) Entering as provider into a qualifying funeral plan contract is a controlled activity.

(2) A “qualifying funeral plan contract” is a contract under which—

- (a) a person (“the customer”) makes one or more payments to another person (“the provider”);
- (b) the provider undertakes to provide, or to secure that another person provides, a funeral in the United Kingdom for the customer (or some other person who is living at the date when the contract is entered into) on his death; and
- (c) the provider is a person who carries on the regulated activity specified in article 59 of the Regulated Activities Order.

Providing qualifying credit

10.—(1) Providing qualifying credit is a controlled activity.

(2) “Qualifying credit” is a credit provided pursuant to an agreement under which—

- (a) the lender is a person who carries on the regulated activity specified in article 61 of the Regulated Activities Order; and
- (b) the obligation of the borrower to repay is secured (in whole or in part) on land.

(3) “Credit” includes a cash loan and any other form of financial accommodation.

Agreeing to carry on specified kinds of activity

11. Agreeing to carry on any controlled activity falling within any of paragraphs 3 to 10 above is a controlled activity.

PART II

CONTROLLED INVESTMENTS

12. A deposit.

13. Rights under a contract of insurance.

14.—(1) Shares or stock in the share capital of—

- (a) any body corporate (wherever incorporated);
- (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom.

(2) Sub-paragraph (1) includes—

- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986(a);
- (b) any transferable shares in a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body.

(3) But subject to sub-paragraph (2) there are excluded from sub-paragraph (1) shares or stock in the share capital of—

- (a) an open-ended investment company;
- (b) a building society incorporated under the law of, or any part of, the United Kingdom;
- (c) any body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions;
- (d) any body constituted under the law of an EEA State for purposes equivalent to those of a body falling within paragraph (b) or (c).

Instruments creating or acknowledging indebtedness

15.—(1) Subject to sub-paragraph (2), such of the following as do not fall within paragraph 16—

- (a) debentures;
- (b) debenture stock;
- (c) loan stock;
- (d) bonds;
- (e) certificates of deposit;
- (f) any other instrument creating or acknowledging indebtedness.

(2) If and to the extent that they would otherwise fall within sub-paragraph (1), there are excluded from that sub-paragraph—

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
- (c) a banknote, a statement showing a balance on a current, deposit or saving account, a lease or other disposition of property, a heritable security; and
- (d) a contract of insurance.

(3) An instrument excluded from sub-paragraph (1) of paragraph 16 by paragraph 16(2)(b) is not thereby to be taken to fall within sub-paragraph (1) of this paragraph.

Government and public securities

16.—(1) Subject to sub-paragraph (2), loan stock, bonds and other instruments—

- (a) creating or acknowledging indebtedness; and
- (b) issued by or on behalf of a government, local authority (whether in the United Kingdom or elsewhere) or international organisation.

(2) There are excluded from sub-paragraph (1)—

- (a) so far as applicable, the instruments mentioned in paragraph 15(2)(a) to (d);
- (b) any instrument creating or acknowledging indebtedness in respect of—

(a) 1986 c. 53.

- (i) money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank;
- (ii) money raised under the National Loans Act 1968(a) under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972(b).

Instruments giving entitlements to investments

- 17.**—(1) Warrants and other instruments entitling the holder to subscribe for any investment falling within paragraph 14, 15 or 16.
- (2) It is immaterial whether the investment to which the entitlement relates is in existence or identifiable.
- (3) An investment falling within this paragraph shall not be regarded as falling within paragraph 21, 22 or 23.

Certificates representing certain securities

- 18.**—(1) Subject to sub-paragraph (2), certificates or other instruments which confer contractual or property rights (other than rights consisting of an investment of the kind specified by paragraph 21)—
- (a) in respect of any investment of the kind specified by any of paragraphs 14 to 17 being an investment held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
 - (b) the transfer of which may be effected without the consent of that person.
- (2) There is excluded from sub-paragraph (1) any instrument which confers rights in respect of two or more investments issued by different persons, or in respect of two or more different investments of the kind specified by paragraph 16 and issued by the same person.

Units in a collective investment scheme

- 19.** Units in a collective investment scheme.

Rights under a stakeholder pension scheme

- 20.**—(1) Rights under a stakeholder pension scheme.
- (2) “Stakeholder pension scheme” has the meaning given by section 1 of the Welfare Reform and Pensions Act 1999(c).

Options

- 21.** Options to acquire or dispose of—
- (a) a security or contractually based investment (other than one of a kind specified in this paragraph);
 - (b) currency of the United Kingdom or of any other country or territory;
 - (c) palladium, platinum, gold or silver; or
 - (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of sub-paragraph (a), (b) or (c).

Futures

- 22.**—(1) Subject to sub-paragraph (2), rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.
- (2) There are excluded from sub-paragraph (1) rights under any contract which is made for commercial and not investment purposes.
- (3) For the purposes of sub-paragraph (2), in considering whether a contract is to be regarded as made for investment purposes or for commercial purposes, the indicators set out in article 84 of the Regulated Activities Order shall be applied in the same way as they are applied for the purposes of that article.

Contracts for differences etc.

- 23.**—(1) Subject to sub-paragraph (2), rights under—
- (a) a contract for differences; or

(a) 1968 c. 13.

(b) 1972 c. 65.

(c) 1999 c. 30.

- (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
 - (i) the value or price of property of any description;
 - (ii) an index or other factor designated for that purpose in the contract.
- (2) There are excluded from sub-paragraph (1)—
 - (a) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates;
 - (b) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor;
 - (c) rights under any contract under which—
 - (i) money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank; or
 - (ii) money is raised under the National Loans Act 1968 under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972;
 - (d) rights under a qualifying contract of insurance.

Lloyd's syndicate capacity and syndicate membership

- 24.**—(1) The underwriting capacity of a Lloyd's syndicate.
 (2) A person's membership (or prospective membership) of a Lloyd's syndicate.

Funeral plan contracts

- 25.** Rights under a qualifying funeral plan contract.

Agreements for qualifying credit

- 26.** Rights under an agreement for qualifying credit.

Rights to or interests in investments

- 27.**—(1) Subject to sub-paragraphs (2) and (3), any right to or interest in anything which is specified by any other provision of this Part of this Schedule (other than paragraph 26).
 (2) Sub-paragraph (1) does not apply to interests under the trusts of an occupational pension scheme.
 (3) Sub-paragraph (1) does not apply to anything which falls within any other provision of this Part of this Schedule.

Interpretation

- 28.** In this Schedule unless the context otherwise requires—
 “buying” includes acquiring for valuable consideration;
 “contract of insurance” has the meaning given in the Regulated Activities Order;
 “contractually based investment” means—
 - (a) rights under a qualifying contract of insurance;
 - (b) any investment of the kind specified by any of paragraphs 21, 22, 23 and 25.
 - (c) any investment of the kind specified by paragraph 27 so far as relevant to an investment falling within (a) or (b);
 “occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;
 “property” includes currency of the United Kingdom or any other country or territory;
 “qualifying funeral plan contract” has the meaning given by paragraph 9;
 “security” means a controlled investment falling within any of paragraphs 14 to 20 or, so far as relevant to any such investment, paragraph 27;
 “selling”, in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes “disposing” includes—
 - (a) in the case of an investment consisting of rights under a contract—
 - (i) surrendering, assigning or converting those rights; or
 - (ii) assuming the corresponding liabilities under the contract;

- (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and
 - (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
- “syndicate” has the meaning given in the Regulated Activities Order.

SCHEDULE 2

Article 10

COUNTRIES AND TERRITORIES

1. The Bailiwick of Guernsey.
2. The Isle of Man.
3. The Commonwealth of Pennsylvania.
4. The State of Iowa.
5. The Bailiwick of Jersey.

SCHEDULE 3

Articles 37, 41, 67, 68 and 69

MARKETS AND EXCHANGES

PART I

CRITERIA FOR RELEVANT EEA MARKETS

The criteria are—

- (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;
 - (iv) the reporting and publication of transactions effected by means of its facilities.

PART II

CERTAIN INVESTMENT EXCHANGES OPERATING RELEVANT EEA MARKETS

Aktietorget I Norden (Sweden).

Amsterdam Stock Exchange (Netherlands).

Amsterdam Options Exchange (Netherlands).

Amsterdam Financial Futures Market (Netherlands).

Amsterdam New Market (Netherlands).

Athens Stock Exchange (Greece).

Athens Derivative Exchange (Greece).

Barcelona Stock Exchange (Spain).

Bavarian Stock Exchange (Germany).

Belfox Futures and Options Exchange (Belgium).

Belgian Secondary Market for Treasury Certificates (Belgium).

Berlin Stock Exchange (Germany).

Bilbao Stock Exchange (Spain).

Bremen Stock Exchange (Germany).

Brussels Stock Exchange (including Primary, Secondary and New Markets) (Belgium).

Copenhagen Stock Exchange (Denmark).

COREDEAL (UK).

Danish Authorised Market Place (Denmark).

Dusseldorf Stock Market (Germany).

EASDAQ (Belgium).

Eurex Deutschland (Germany).

Frankfurt Stock Exchange (including Neuer Markt) (Germany).

Hamburg Stock Exchange (Germany).

Hanover Stock Exchange (Germany).

Hex Ltd (including Helsinki Stock Exchange and Securities and Derivatives Exchange) (Finland).

IDEM—Derivatives Market (Italy).

IM Marketplace—(Sweden).

Irish Stock Exchange (Ireland).

Italian/Milan Stock Exchange (Italy).

Italian and Foreign Government Bonds Market (Italy).

Jiway (UK).

Le MATIF (France).

Le Monep (France).

Le Noveau Marche (France).

Lisbon Stock Exchange (including Exchanges for the Officially Quoted, Secondary and Unquoted Markets) (Portugal).

London International Financial Futures and Options Exchange (UK).

London Stock Exchange (UK).

Luxembourg Stock Exchange (Luxembourg).

Madrid Stock Exchange (Spain).

Market for Public Debt (Spain).

MEFF Renta Variable Futures & Options Exchange (Spain).

MEFF Renta fija Equity Futures Exchange (Spain).

MIF Derivatives Market (Italy).

Neuvo Mercato (Italy).

OMLX (UK).

OM Stockholm (Sweden).

Paris Stock Exchange (France).

Porto Derivatives Exchange (Portugal).

Stockholm Stock Exchange (Sweden).

Stuttgart Stock Exchange (Germany).

Swedish Bond & Money Market Exchange (Sweden).

Unlisted Securities Market (Italy).

Valencia Stock Exchange (Spain).

Vienna Stock Exchange (Austria).

Virt-x (UK).

PART III

CERTAIN NON-EEA INVESTMENT EXCHANGES OPERATING RELEVANT MARKETS

Alberta Stock Exchange.

America Stock Exchange.

Australian Stock Exchange.

Basler Effektenbourse.

Boston Stock Exchange.

Bourse de Geneve.

Buenos Aires Stock Exchange.

Chicago Board Options Exchange.

Cincinnati Stock Exchange.

Effektenborsenverein Zurich.

Fukuoka Stock Exchange.

Hiroshima Stock Exchange.

Iceland Stock Exchange.

Johannesburg Stock Exchange.

Korean Stock Exchange.

Kuala Lumpur Stock Exchange.

Kyoto Stock Exchange.

Midwest Stock Exchange.

Montreal Stock Exchange.

Nagoya Stock Exchange.

NASDAQ

New York Stock Exchange.

New Zealand Stock Exchange.

Niigita Stock Exchange.

Osaka Stock Exchange.

Oslo Stock Exchange.

Pacific Stock Exchange.

Philadelphia Stock Exchange.

Sapporo Stock Exchange.

Securities Exchange of Thailand.

Singapore Stock Exchange.

Stock Exchange of Hong Kong Limited.

Tokyo Stock Exchange.

Toronoto Stock Exchange.

Vancouver Stock Exchange.

Winnipeg Stock Exchange.

PART IV

OTHER RELEVANT MARKETS

American Commodity Exchange.
Amex Commodity Corporation.
Australian Financial Futures Market.
Cantor Financial Futures Exchange.
Chicago Board of Trade.
Chicago Mercantile Exchange.
Chicago Rice and Cotton Exchange.
Commodity Exchange Inc.
Eurex Zurich.
International Securities Market Association.
International Petroleum Exchange.
Kansas City Board of Trade.
London Metal Exchange.
Mid-America Commodity Exchange.
Minneapolis Grain Exchange.
New York Board of Trade.
New York Futures Exchange.
New York Mercantile Exchange.
New Zealand Futures Exchange.
Pacific Commodity Exchange.
Pacific Futures Exchange.
Philadelphia Board of Trade.
Singapore International Monetary Exchange.
Sydney Futures Exchange.
Toronto Futures Exchange.
Twin Cities Board of Trade.

SCHEDULE 4

Articles 63 and 64

TAKEOVERS OF RELEVANT UNLISTED COMPANIES

PART I

REQUIREMENTS RELATING TO THE OFFER

1. The terms of the offer must be recommended by all the directors of the company other than any director who is—
 - (a) the person by whom, or on whose behalf, an offer is made (“offeror”); or
 - (b) a director of the offeror.
- 2.—(1) This paragraph applies to an offer for debentures or for non-equity share capital.
(2) Where, at the date of the offer, shares carrying 50 per cent or less of the voting rights attributable to the equity share capital are held by or on behalf of the offeror, the offer must include or be accompanied by an offer made by the offeror for the rest of the shares comprised in the equity share capital.
- 3.—(1) This paragraph applies to an offer for shares comprised in the equity share capital.

(2) Where, at the date of the offer, shares which carry 50 per cent or less of the categories of voting rights described in sub-paragraph (3) are held by or on behalf of the offeror, it must be a condition of the offer that sufficient shares will be acquired or agreed to be acquired by the offeror pursuant to or during the offer so as to result in shares carrying more than 50 per cent of one or both categories of relevant voting rights being held by him or on his behalf.

(3) The categories of voting rights mentioned in sub-paragraph (2) are—

- (a) voting rights exercisable in general meetings of the company;
- (b) voting rights attributable to the equity share capital.

4.—(1) Subject to sub-paragraph (2), the offer must be open for acceptance by every recipient for the period of at least 21 days beginning with the day after the day on which the invitation or inducement in question was first communicated to recipients of the offer.

(2) Sub-paragraph (1) does not apply if the offer is totally withdrawn and all persons released from any obligation incurred under it.

5. The acquisition of the shares or debentures to which the offer relates must not be conditional upon the recipients approving, or consenting, to any payment or other benefit being made or given to any director or former director of the company in connection with, or as compensation or consideration for,—

- (a) his ceasing to be a director;
- (b) his ceasing to hold any office held in conjunction with any directorship; or
- (c) in the case of a former director, his ceasing to hold any office which he held in conjunction with his former directorship and which he continued to hold after ceasing to be a director.

6. The consideration for the shares or debentures must be—

- (a) cash; or
- (b) in the case of an offeror which is a body corporate other than an open-ended investment company, either cash or shares in, or debentures of, the body corporate or any combination of such cash, shares or debentures.

PART II

ACCOMPANYING MATERIAL

7. An indication of the identity of the offeror and, if the offer is being made on behalf of another person, the identity of that person.

8. An indication of the fact that the terms of the offer are recommended by all directors of the company other than (if that is the case) any director who is the offeror or a director of the offeror.

9. An indication to the effect that any person who is in any doubt about the invitation or inducement should consult a person authorised under the Act.

10. An indication that, except insofar as the offer may be totally withdrawn and all persons released from any obligation incurred under it, the offer is open for acceptance by every recipient for the period of at least 21 days beginning with the day after the day on which the invitation or inducement in question was first communicated to recipients of the offer.

11. An indication of the date on which the invitation or inducement was first communicated to the recipients of the offer.

12. An indication that the acquisition of the shares or debentures to which the offer relates is not conditional upon the recipients approving, or consenting, to any payment or other benefit being made or given to any director or former director of the company in connection with, or as compensation or consideration for,—

- (a) his ceasing to be a director;
- (b) his ceasing to hold any office held in conjunction with any directorship; or
- (c) in the case of a former director, his ceasing to hold any office which he held in conjunction with his former directorship and which he continued to hold after ceasing to be a director.

13. An indication of the place where additional material listed in Part III may be inspected.

14. The audited accounts of the company in respect of the latest accounting reference period for which the period for laying and delivering accounts under the 1985 Act or the 1986 Order has passed or, if accounts in respect of a later accounting reference period have been delivered under the relevant legislation, as shown in those accounts and not the earlier accounts.

15. Advice to the directors of the company on the financial implications of the offer which is given by a competent person who is independent of and who has no substantial financial interest in the company or the offeror, being advice which gives the opinion of that person in relation to the offer.

- 16.** An indication by the directors of the company, acting as a board, of the following matters—
- (a) whether or not there has been any material change in the financial position or prospects of the company since the end of the latest accounting reference period in respect of which audited accounts have been delivered to the relevant registrar of companies under the relevant legislation;
 - (b) if there has been any such change, the particulars of it;
 - (c) any interests, in percentage terms, which any of them have in the shares in or debentures of the company and which are required to be entered in the register kept by the company under section 325 of the 1985 Act or article 333 of the 1986 Order;
 - (d) any interests, in percentage terms, which any of them have in the shares in or debentures of any offeror which is a body corporate and which, if the director were a director of the offeror, would—
 - (i) in the case of a company within the meaning of the 1985 Act or the 1986 Order, be required to be entered in the register kept by the offeror under section 325 of the 1985 Act or article 333 of the 1986 Order; and
 - (ii) in any other case, be required to be so entered if the offeror were such a company.
- 17.** An indication of any material interest which any director has in any contract entered into by the offeror and in any contract entered into by any member of any group of which the offeror is a member.
- 18.** An indication as to whether or not each director intends to accept the offer in respect of his own beneficial holdings in the company.
- 19.** In the case of an offeror which is a body corporate and the shares in or debentures of which are to be the consideration or any part of the consideration for the offer, an indication by the directors of the offeror that the information concerning the offeror and those shares or debentures contained in the document is correct.
- 20.** If the offeror is making the offer on behalf of another person—
- (a) an indication by the offeror as to whether or not he has taken any steps to ascertain whether that person will be in a position to implement the offer;
 - (b) if he has taken any such steps, an indication by him as to what those steps are; and
 - (c) the offeror's opinion as to whether that person will be in a position to implement the offer.
- 21.** An indication that each of the following—
- (a) each of the directors of the company;
 - (b) the offeror; and
 - (c) if the offeror is a body corporate, each of the directors of the offeror;
- is responsible for the information required by Part I and this Part of this Schedule insofar as it relates to themselves or their respective bodies corporate and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case) the information is in accordance with the facts and that no material fact has been omitted.
- 22.** The particulars of—
- (a) all shares in or debentures of the company; and
 - (b) all investments falling within paragraph 17, 19 or 21 of Schedule 1 so far as relating to shares in or debentures of the company;
- which are held by or on behalf of the offeror or each offeror, if there is more than one, or if none are so held an appropriate negative statement.
- 23.** An indication as to whether or not the offer is conditional upon acceptance in respect of a minimum number of shares or debentures being received and, if the offer is so conditional, what the minimum number is.
- 24.** Where the offer is conditional upon acceptances, an indication of the date which is the latest date on which it can become unconditional.
- 25.** If the offer is, or has become, unconditional an indication of the fact that it will remain open until further notice and that at least 14 days notice will be given before it is closed.
- 26.** An indication as to whether or not, if circumstances arise in which an offeror is able compulsorily to acquire shares of any dissenting minority under Part XIII A of the 1985 Act or articles 421 or 423 of the 1986 Order, that offeror intends to so acquire those shares.
- 27.** If shares or debentures are to be acquired for cash, an indication of the period within which the payment will be made.

28.—(1) Subject to sub-paragraph (2), if the consideration or any part of the consideration for the shares or debentures to be acquired is shares in or debentures of an offeror—

- (a) an indication of the nature and particulars of the offeror's business, its financial and trading prospects and its place of incorporation;
- (b) the following information, in respect of any offeror which is a body corporate and in respect of the company, for the period of five years immediately preceding the date on which the invitation or information in question was first communicated to recipients of the offer—
 - (i) turnover,
 - (ii) profit on ordinary activities before and after tax,
 - (iii) extraordinary items,
 - (iv) profits and loss, and
 - (v) the rate per cent of any dividends paid, adjusted as appropriate to take account of relevant changes over the period and the total amount absorbed thereby.

(2) In the case of a body corporate—

- (a) which was incorporated during the period of five years immediately preceding the date on which the invitation or information in question was first communicated to recipients of the offer; or
- (b) which has, at any time during that period, passed a resolution in accordance with section 252 of the 1985 Act or article 260 of the 1986 Order;

the information described in sub-paragraph (1) with respect to that body corporate need be included only in relation to the period since its incorporation or since it last ceased to be exempt from the obligation to appoint auditors, as the case may be.

29. Particulars of the first dividend in which any such shares or debentures will participate and of the rights attaching to them (including in the case of debentures, rights as to interest) and of any restrictions on their transfer.

30. An indication of the effect of the acceptance on the capital and income position of the holder of the shares in or debentures of the company.

31. Particulars of all material contracts (not being contracts which were entered into in the ordinary course of business) which were entered into by each of the company and the offeror during the period of two years immediately preceding the date on which the invitation or information in question was first communicated to recipients of the offer.

32. Particulars of the terms on which shares in or debentures of the company acquired in pursuance of the offer will be transferred and any restrictions on their transfer.

33. An indication as to whether or not it is proposed, in connection with the offer, that any payment or other benefit be made or given to any director or former director of the company in connection with, or as compensation or consideration for—

- (a) his ceasing to be a director;
- (b) his ceasing to hold any office held in conjunction with any directorship; or
- (c) in the case of a former director, his ceasing to hold any office which he held in conjunction with his former directorship and which he continued to hold after ceasing to be a director;

and, if such payments or benefits are proposed, details of each one.

34. An indication as to whether or not there exists any agreement or arrangement between—

- (a) the offeror or any person with whom the offeror has an agreement of the kind described in section 204 of the 1985 Act or article 216 of the 1986 Order; and
- (b) any director or shareholder of the company or any person who has been such a director or shareholder;

at any time during the period of twelve months immediately preceding the date on which the invitation or inducement in question was first communicated to recipients of the offer, being an agreement or arrangement which is connected with or dependent on the offer and, if there is any such agreement or arrangement particulars of it.

35. An indication whether or not the offeror has reason to believe that there has been any material change in the financial position or prospects of the company since the end of the accounting reference period to which the accounts referred to in paragraph 14 relate, and if the offeror has reason to believe that there has been such a change, the particulars of it.

36. An indication as to whether or not there is any agreement or arrangement whereby any shares or debentures acquired by the offeror in pursuance of the offer will or may be transferred to any other person, together with the names of the parties to any such agreement or arrangement and particulars of all shares and debentures in the company held by such persons.

37. Particulars of any dealings—

- (a) in the shares in or debentures of the company; and

(b) if the offeror is a body corporate, in the shares in or debentures of the offeror; which took place during the period of twelve months immediately preceding the date on which the invitation or inducement in question was first communicated to recipients of the offer and which were entered into by every person who was a director of either the company or the offeror during that period; and, if there have been no such dealings, an indication to that effect.

38. In a case in which the offeror is a body corporate which is required to deliver accounts under the 1985 Act or the 1986 Order, particulars of the assets and liabilities as shown in its audited accounts in respect of the latest accounting reference period for which the period for laying and delivering accounts under the relevant legislation has passed or, if accounts in respect of a later accounting reference period have been delivered under the relevant legislation, as shown in those accounts and not the earlier accounts.

39. Where valuations of assets are given in connection with the offer, the basis on which the valuation was made and the names and addresses of the persons who valued them and particulars of any relevant qualifications.

40. If any profit forecast is given in connection with the offer, an indication of the assumptions on which the forecast is based.

PART III

ADDITIONAL MATERIAL AVAILABLE FOR INSPECTION

41. The memorandum and articles of association of the company.

42. If the offeror is a body corporate, the memorandum and articles of association of the offeror or, if there is no such memorandum and articles, any instrument constituting or defining the constitution of the offeror and, in either case, if the relevant document is not written in English, a certified translation in English.

43. In the case of a company that does not fall within paragraph 45—

- (a) the audited accounts of the company in respect of the last two accounting reference periods for which the laying and delivering of accounts under the 1985 Act or the 1986 Order has passed; and
- (b) if accounts have been delivered to the relevant registrar of companies, in respect of a later accounting reference period, a copy of those accounts;

44. In the case of an offeror which is required to deliver accounts to the registrar of companies and which does not fall within paragraph 45—

- (a) the audited accounts of the offeror in respect of the last two accounting reference periods for which the laying and delivering of accounts under the 1985 Act or the 1986 Order has passed; and
- (b) if accounts have been delivered to the relevant registrar of companies in respect of a later accounting reference period, a copy of those accounts.

45. In the case of a company or an offeror—

- (a) which was incorporated during the period of three years immediately preceding the date on which the invitation or inducement in question was first communicated to recipients of the offer; or
- (b) which has, at any time during that period, passed a resolution in accordance with section 252 of the 1985 Act or article 260 of the 1986 Order;

the information described in whichever is relevant of paragraph 43 or 44 with respect to that body corporate need be included only in relation to the period since its incorporation or since it last ceased to be exempt from the obligation to appoint auditors, as the case may be.

46. All existing contracts of service entered into for a period of more than one year between the company and any of its directors and, if the offeror is a body corporate, between the offeror and any of its directors.

47. Any report, letter, valuation or other document any part of which is exhibited or referred to in the information required to be made available by Part I and this Part of this Schedule.

48. If the offer document contains any statement purporting to have been made by an expert, that expert's written consent to the inclusion of that statement.

49. All material contracts (if any) of the company and of the offeror (not, in either case, being contracts which were entered into in the ordinary course of business) which were entered into during the period of two years immediately preceding the date on which the invitation or inducement in question was first communicated to recipients of the offer.

EXPLANATORY NOTE

(This note does not form part of the Order)

This Order specifies the kinds of activities and investments which are controlled activities and controlled investments for the purposes of section 21 of the Financial Services and Markets Act 2000 (c. 8) (“the Act”). Any invitation or inducement which is made in the course of business and which invites or induces someone either to enter into an agreement the making of which constitutes a controlled activity or to exercise rights conferred by a controlled investment is subject to the restriction imposed by section 21(1). Section 21(1) precludes anyone from communicating such an invitation or inducement unless either he is an authorised person within the meaning of the Act or the content of the communication is approved by an authorised person. Contravention of that prohibition is a criminal offence.

The Order also sets out, pursuant to the power in section 21(6) of the Act, a number of exemptions from the restriction on financial promotions. Some of these exemptions apply in relation to all kinds of controlled activities and some relate to some activities only.

Part I of the Order makes provision for the citation and commencement of the Order and sets out the definitions of some terms used in the Order. The Order comes into force for most purposes on the date when section 19 of the Act comes into force but it comes into force at later dates in relation to the provision of funeral plan contracts and qualifying credit. Provisions in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) address the application of certain provisions of the Consumer Credit Act 1974 (c. 39) to communications relating to qualifying credit.

Article 4 in Part II defines the terms “controlled activities” and “controlled investment” for the purposes of section 21 of the Act, by referring to the activities and investments set out in Schedule 1 to the Order.

Part III of the Order provides further definitions of terms that are used in the subsequent provisions conferring exemptions on certain kinds of communications. Article 10 provides that none of the exemptions set out in the Order applies where the communication invites or induces a person to enter into certain contracts of insurance with an insurer other than one falling within the categories listed. Article 11 provides that different combinations of exemptions can be relied on in relation to a single communication.

Part IV of the Order sets out some exemptions which apply to communications relating to all kinds of controlled activity.

Part V sets out exemptions which apply only to communications which invite or induce people to enter into an agreement with a deposit taker or with an insurer (in relation to general insurance and certain kinds of long term insurance contracts). These exemptions and the exemptions in Part IV are the only ones which are conferred in respect of these controlled activities.

Part VI of the Order sets out exemptions which apply to communications relating to some or all investments other than deposits and those insurance contracts covered by Part V. Some of these exemptions depend on whether the communicator and the recipient are present in the United Kingdom. Some depend on the kind of business in the course of which the communicator makes the communication and some depend on the identity of the recipient of the communication.

Part VII of the Order contains transitional provision for cases where the content of the communication was approved prior to commencement of the Order but the communication is made after article 74 comes into force.

Schedule 1 to the Order lists the controlled activities and controlled investments which set the scope of what is meant by “engaging in investment activity” for the purposes of the restriction imposed by section 21 of the Act.

Schedule 2 lists the countries or territories in which an insurer may be established in order for the exemptions relating to insurance business to apply to invitations or inducements to do business with him.

Schedule 3 lists certain investment exchanges in Europe and elsewhere in the world for the purpose of the exemptions which relate to communications by such markets or in relation to investments traded on such markets.

Schedule 4 sets out information which must be made available to recipients of communications arising in the course of the takeover of an unlisted company for the purposes of articles 63 and 64 of the Order.