
STATUTORY INSTRUMENTS

2017 No. 1212

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 13

Public offers of securities

Meaning of “securities”

156. In this Chapter, “securities” means shares or debentures.

Prohibition on offering securities to the public

157.—(1) A protected cell company must not—

- (a) offer to the public any securities issued on behalf of any part of the protected cell company; or
- (b) allot or agree to allot any securities issued on behalf of any part of the protected cell company with a view to their being offered to the public.

(2) Unless the contrary is proved, an allotment or agreement to allot securities is presumed to be made with a view to their being offered to the public if an offer of the securities (or any of them) to the public is made—

- (a) within a period of six months beginning with the date of the allotment or agreement to allot; or
- (b) before the receipt by the protected cell company of the whole of the consideration to be received by it in respect of the securities.

Meaning of “offer to the public”

158.—(1) This regulation explains what is meant in regulation 157 by an offer of securities to the public.

(2) An offer to the public includes an offer to any section of the public, however selected.

(3) An offer is not to be regarded as an offer to the public if it can properly be regarded, in all the circumstances, as—

- (a) not being calculated to result, directly or indirectly, in securities issued by the protected cell company becoming available to persons other than those receiving the offer; or
- (b) otherwise being a private concern of the person receiving it and the person making it.

(4) An offer is to be regarded (unless the contrary is proved) as being a private concern of the person receiving it and the person making it if it is made to a person already connected with the protected cell company and, where it is made on terms allowing that person to renounce the person’s

rights, the rights may only be renounced in favour of another person already connected with the protected cell company.

(5) For the purposes of this regulation, “person already connected with the protected cell company” means—

- (a) a person holding securities issued on behalf of the part of the protected cell company to which the offer relates; or
- (b) a trustee (acting in the capacity as trustee) of a trust of which the principal beneficiary is a person within sub-paragraph (a).

Restraining order

159.—(1) The High Court or, in Scotland, the Court of Session may make an order under this regulation if it appears to the court on an application under this regulation that a protected cell company is proposing to act in contravention of regulation 157.

(2) An order under this regulation is an order restraining the protected cell company from contravening that regulation.

(3) An application for an order under this regulation may be made by—

- (a) the FCA;
- (b) a person holding securities issued by the protected cell company; or
- (c) a creditor of the protected cell company.

Remedial orders

160.—(1) A “remedial order” is an order for the purpose of putting a person affected by anything done in contravention of regulation 157 in the position the person would have been in if it had not been done.

(2) The High Court or, in Scotland, the Court of Session may make a remedial order under this regulation if it appears to the court on an application under this regulation that a protected cell company has acted in contravention of regulation 157.

(3) The following provisions are without prejudice to the generality of the power to make a remedial order.

(4) Where a protected cell company has—

- (a) allotted securities pursuant to an offer to the public; or
- (b) allotted or agreed to allot securities with a view to their being offered to the public,

a remedial order may require any person knowingly concerned in the contravention of regulation 157 to offer to purchase any of those securities at such price and on such other terms as the court thinks fit.

(5) A remedial order may be made—

- (a) against any person knowingly concerned in the contravention, whether or not the person is an officer of the protected cell company;
- (b) notwithstanding anything in the protected cell company’s instrument of incorporation (which includes, for this purpose, the terms on which any securities are allotted or held);
- (c) whether or not the holder of the securities subject to the order is the person to whom the protected cell company allotted or agreed to allot them.

(6) Where a remedial order is made in respect of a part of a protected cell company, the court may provide for the reduction of that part’s capital accordingly.

Validity of allotment etc not affected

161. Nothing in this Chapter affects the validity of any allotment or sale of securities or of any agreement to allot or sell securities.