

## SCHEDULES

### SCHEDULE 1

Regulation 12

#### Exceptions from prohibition on offers to the public

### PART 1

#### Offers not contravening prohibition

##### *General exceptions*

1. An offer of relevant securities to the public where the total consideration for the relevant securities being offered in the United Kingdom cannot exceed £5 million, or an equivalent amount (see paragraph 18).
2. An offer of relevant securities made solely to qualified investors (see paragraph 15).
3. An offer of relevant securities made to fewer than 150 persons in the United Kingdom, other than qualified investors.
4. An offer of relevant securities whose denomination per unit amounts to at least £50,000, or an equivalent amount.
5. An offer of relevant securities made to persons who acquire securities for a total consideration of at least £100,000, or an equivalent amount, per investor, for each separate offer.

##### *Offer of transferable securities admitted or to be admitted to trading*

6. An offer of transferable securities where—
  - (a) the offer is conditional on the admission of the transferable securities to trading on a regulated market or primary MTF, or
  - (b) the transferable securities being offered are at the time of the offer admitted to trading on a regulated market or primary MTF.

##### *Offers to existing holders of shares*

7. An offer of shares in substitution for shares of the same class already issued, if the issuing of the new shares does not involve any increase in the issued share capital.
8. Dividends that are paid out to persons who hold shares—
  - (a) in the form of shares of the same class as the shares in respect of which the dividends are paid, or
  - (b) in the form of cash under an arrangement under which the persons to whom the dividend is payable may elect for the cash to be applied to the acquisition of further shares of the same class as the shares in respect of which the dividends are paid,

where (in either case) a written statement is made available on the number and nature of the shares and the reasons for and details of the offer.

*Offer to persons already connected with offeror company*

9.—(1) An offer that is made by or on behalf of a company (“the offeror company”) and as respects which the following conditions are met.

(2) Condition A is that the offer is of equity securities of the offeror company.

(3) Condition B is that—

- (a) the offer is made only to persons already connected with the offeror company, and
- (b) where the offer is made on terms enabling a person to whom the offer is made to renounce the person’s entitlement to the equity securities in question, those terms enable the entitlement to be renounced only in favour of—
  - (i) another person already connected with the offeror company, or
  - (ii) a person in relation to whom an offer by the offeror company of the equity securities in question would fall within paragraph 2, 5 or 11.

(4) Condition C is that—

- (a) the equity securities offered are not admitted to trading on a regulated market or primary MTF, and
- (b) the offer is not conditional on their admission to trading on a regulated market or primary MTF.

(5) Condition D is that the offer is made in writing and includes or is accompanied by a written statement as to—

- (a) the equity securities being offered,
- (b) the terms of the offer,
- (c) the estimated gross proceeds of the offer,
- (d) the costs of making the offer, and
- (e) the proposed use of the net proceeds.

(6) For the purposes of sub-paragraph (3), “person already connected with the offeror company” means—

- (a) a person who holds equity securities of the offeror company, whether or not of the same class as those being offered,
- (b) a member of the family of such a person,
- (c) a trustee (acting in the trustee’s capacity as such) of a trust of which the principal beneficiary is a person within paragraph (a) or (b).

(7) For the purposes of sub-paragraph (6)(b) the members of a person’s family are—

- (a) the person’s spouse or civil partner, and
- (b) the person’s children (including step-children) and their descendants.

(8) In this paragraph “company” has the meaning given in section 1(1) of the Companies Act 2006.

*Offer in connection with takeovers etc*

**10.**—(1) An offer of relevant securities of the offeror or a member of the offeror’s group, where the following conditions are met in relation to the offer.

(2) Condition A is that—

- (a) the relevant securities are offered to some or all persons holding equity securities of a particular class of a company (“the offeree company”), in exchange for equity securities of the offeree company, or
- (b) the relevant securities—
  - (i) are offered in connection with an offer falling within paragraph (a), and
  - (ii) are offered to some or all persons holding relevant securities of the offeree company other than those to which the offer falling within paragraph (a) relates, in exchange for those other relevant securities of the offeree company.

(3) Condition B is that—

- (a) the relevant securities offered are not admitted to trading on a regulated market or primary MTF, and
- (b) the offer is not conditional on their admission to trading on a regulated market or primary MTF.

(4) Condition C is that the offer includes or is accompanied by a written statement—

- (a) containing a description of the offeror and of any group of which the offeror is a member,
- (b) containing details of—
  - (i) the terms of the offer, including the relevant securities offered, and
  - (ii) any fees or expenses payable by the offeror in connection with the offer,
- (c) describing the impact of the offer on the offeree company and on the group of the offeror, and
- (d) stating the offeror’s intentions in relation to—
  - (i) the business of the offeree company, and
  - (ii) any defined benefit pension scheme of the offeree company.

(5) In this paragraph—

“company” means—

- (a) a company as defined in section 1(1) of the Companies Act 2006, or
- (b) an overseas company as defined in section 1044 of that Act;

“defined benefit pension scheme” means a pension scheme as defined in section 1(5) of the Pension Schemes Act 1993<sup>(1)</sup> which is not a money purchase scheme as defined in section 181 of that Act;

“equity securities” means—

- (a) shares, or
- (b) rights to subscribe for, or to convert securities into, shares.

*Offer of securities to directors or employees*

**11.**—(1) An offer of relevant securities that—

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(1) 1993 c. 48. Section 1(5) was inserted by section 239 of the Pensions Act 2004 (c. 35).

- (a) is made to existing or former directors or employees—
  - (i) by their employer,
  - (ii) by an undertaking that is part of the same group as their employer, or
  - (iii) by a person who, in pursuance of an employee share scheme or a proposed employee share scheme, holds or will hold the securities as trustee, and
- (b) includes or is accompanied by a statement containing information on—
  - (i) the number and nature of the securities, and
  - (ii) the reason for, and details of, the offer or allotment.

(2) In this paragraph “employee share scheme” has the meaning given in article 60(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005<sup>(2)</sup>.

*Securities offered under banking or central counterparty special resolution regime*

- 12.** An offer of relevant securities resulting from the conversion or exchange, directly or indirectly, of other securities, own funds or other liabilities under—
- (a) Part 1 of the Banking Act 2009 (special resolution regime), or
  - (b) Schedule 11 to the Financial Services and Markets Act 2023 (central counterparties).

*Offer made by means of a regulated platform*

**13.—**(1) An offer of relevant securities that is made by means of a regulated platform.

(2) An offer of relevant securities is made “by means of a regulated platform” if it is made in the course of the carrying on, by a person who has a Part 4A permission for the regulated activity specified in article 25DB of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(3)</sup> (operating an electronic system for public offers of relevant investments), of that regulated activity.

## PART 2

### Supplementary provisions relating to Part 1

**14.** In determining whether paragraph 1 is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of relevant securities issued or to be issued by the same offeror which was open at any time within the period of 12 months ending with the day on which offer A is first made, if or to the extent that the earlier offer was exempt from the prohibition in regulation 12(1) by reason only of paragraph 1.

**15.—**(1) In paragraphs 2 and 3, “qualified investor”, in relation to an offer of relevant securities, means—

- (a) a person described in paragraph 3 of Schedule 1 to the markets in financial instruments regulation<sup>(4)</sup>, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of that Schedule;

<sup>(2)</sup> [S.I. 2005/1529](#). Article 60(2) was amended by [S.I. 2005/3392](#).

<sup>(3)</sup> [S.I. 2001/544](#); article 25DB is inserted by regulation 46 of these Regulations.

<sup>(4)</sup> Schedule 1 was inserted by [S.I. 2018/1403](#).

- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with paragraphs 5 and 6 of that Schedule and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of that Schedule;
  - (c) a person who—
    - (i) is an eligible counterparty for the purposes of Section 6 of Chapter 3 of the Conduct of Business sourcebook, and
    - (ii) has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of Schedule 1 to the markets in financial instruments regulation; or
  - (d) a person whom—
    - (i) any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of Article 71.6 (transitional provisions) of [Directive 2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives [85/611/EEC](#) and [93/6/EEC](#) and [Directive 2000/12/EC](#) of the European Parliament and of the Council and repealing Council Directive [93/22/EEC](#), and
    - (ii) the firm was entitled immediately before IP completion day to continue to treat as a professional client by virtue of Section II.2 of Annex II to [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending [Directive 2002/92/EC](#) and [Directive 2011/61/EU](#).
- (2) In sub-paragraph (1)—
- (a) “relevant firm” means an investment firm or qualifying credit institution acting in connection with the offer;
  - (b) the reference to the Conduct of Business sourcebook is a reference to that sourcebook in the Handbook of Rules and Guidance published by the FCA under FSMA 2000, as it has effect from time to time.

**16. Where—**

- (a) a person (“the client”) who is not a qualified investor has engaged a qualified investor falling within paragraph 3(a) of Schedule 1 to the markets in financial instruments regulation to act as the client’s agent, and
- (b) the terms on which the qualified investor is engaged enable the qualified investor to make decisions concerning the acceptance of offers of relevant securities on the client’s behalf without reference to the client,

an offer made to or directed at the qualified investor is not to be regarded for the purposes of paragraph 2 or 3 as also having been made to or directed at the client.

**17. For the purposes of paragraph 3, the making of an offer of relevant securities to—**

- (a) trustees of a trust,
- (b) members of a partnership in their capacity as such, or
- (c) two or more persons jointly,

is to be treated as the making of an offer to a single person.

**18.—(1)** For the purposes of Part 1 of this Schedule, an amount is an “equivalent amount”, in relation to an amount denominated in sterling, if it is an amount of equal value denominated wholly or partly in another currency or unit of account.

(2) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.