

## 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 or 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 a controlled activity.

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(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.

### **Arranging qualifying credit etc.**

- 10A.** Making arrangements—
- (a) for another person to enter as borrower into an agreement for the provision of qualifying credit; or
  - (b) for a borrower under a regulated mortgage contract, within the meaning of article 61(3) of the Regulated Activities Order, entered into after the coming into force of that article, to vary the terms of that contract in such a way as to vary his obligations under that contract,
- is a controlled activity.

### **Advising on qualifying credit etc.**

- 10B.**—(1) Advising a person is a controlled activity if the advice is—
- (a) given to the person in his capacity as a borrower or potential borrower; and
  - (b) advice on the merits of his doing any of the following—

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- (i) entering into an agreement for the provision of qualifying credit, or
- (ii) varying the terms of a regulated mortgage contract entered into by him after the coming into force of article 61 of the Regulated Activities Order in such a way as to vary his obligations under that contract.

(2) In this paragraph, “borrower” and “regulated mortgage contract” have the meaning given by article 61(3) of the Regulated Activities Order.

### **Agreeing to carry on specified kinds of activity**

**11.** Agreeing to carry on any controlled activity falling within any of paragraphs 3 to 10B 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 <sup>M1</sup>;
- (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).

#### **Marginal Citations**

**M1** 1986 c. 53.

### **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 a present or future 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—
    - (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 <sup>M2</sup> 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 <sup>M3</sup>.

#### **Marginal Citations**

**M2** 1968 c. 13.

**M3** 1972 c. 65.

### **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.

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(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.** Rights under a stakeholder pension scheme (as defined in article 72(4)(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

- (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.

(2A) Sub-paragraph (1) does not apply to any right or interest acquired as a result of entering into a funeral plan contract (and for this purpose a “funeral plan contract” is a contract of a kind described in paragraph 9(2)(a) and (b)).

(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—

“buying” includes acquiring for valuable consideration;

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

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“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” has the meaning given by section 1 of the Pensions Schemes Act 1993 <sup>M4</sup>;

“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.

#### Marginal Citations

**M4** The definition of occupational pension scheme in section 1 has been amended by the [Pensions Schemes Act 2004 \(c. 35\)](#), [section 239](#).

## 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-Bremen Stock Exchange (Germany).  
Bilbao Stock Exchange (Spain).  
Boag Borsen AG  
Bremen Stock Exchange (Germany)  
Brussels Stock Exchange (including Primary, Secondary and New Markets) (Belgium).  
Copenhagen Stock Exchange (Denmark).  
Danish Authorised Market Place (Denmark).  
Dusseldorf Stock Market (Germany).

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EASDAQ (Belgium).  
EDX (UK).  
Eurex Deutschland (Germany).  
Frankfurt Stock Exchange (including Neuer Markt) (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).  
Le MATIF (France).  
Le Monep (France).  
Le Nouveau 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).  
Nuovo Mercato (Italy).  
OFEX (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*

America Stock Exchange.  
Australian Stock Exchange.  
Basler Effektenbourse.  
Boston Stock Exchange.  
Bourse de Geneve.  
Buenos Aires Stock Exchange.  
Canadian Venture Exchange.  
Chicago Board Options Exchange.  
Chicago 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.  
National Stock Exchange.  
New York Stock Exchange.  
New Zealand Stock Exchange Limited.  
Niigata Stock Exchange.  
Osaka Stock Exchange.  
Oslo Stock Exchange  
Pacific Stock Exchange.  
Philadelphia Stock Exchange.  
Sapporo Stock Exchange.  
Singapore Stock Exchange.  
Stock Exchange of Hong Kong Limited.  
Stock Exchange of Thailand.  
Tokyo Stock Exchange.  
Toronto Stock Exchange.

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## **PART IV**

### *Other Relevant Markets*

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

#### 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.

(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 are 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

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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 inducement in question was first communicated to recipients of the offer—
  - (i) turnover,
  - (ii) profit on ordinary activities before and after tax,

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- (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 inducement in question was first communicated to recipients of the offer; or
- (b) which has, at any time during that period, been exempt from the provisions of Part VII of the 1985 Act relating to the audit of accounts by virtue of section 249A or 249AA of that Act<sup>M5</sup> or been exempt from the provisions of Part VIII of the 1986 Order relating to the audit of accounts by virtue of article 257A or 257AA of that Order<sup>M6</sup>;

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 those provisions of Part VII of the 1985 Act or Part VIII of the 1986 Order as the case may be.

#### Marginal Citations

**M5** Sections 249A and 249AA inserted by [S.I. 1994/1935](#) and amended by [S.I. 1996/189](#), [S.I. 1997/936](#) and [S.I. 2000/1430](#).

**M6** Article 257A was inserted by SR (N.I.) 1995/128 and amended by SR (N.I.) 1997/500 and SR (N.I.) 2001/153. Article 257AA was inserted by SR (N.I.) 2001/153 and amended by [S.I. 2001/3649](#).

**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 inducement 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

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- (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, been exempt from the provisions of Part VII of the 1985 Act relating to the audit of accounts by virtue of section 249A or 249AA of that Act <sup>M7</sup> or been exempt from the provisions of Part VIII of the 1986 Order relating to the audit of accounts by virtue of article 257A or 257AA of that Order <sup>M8</sup>;

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 those provisions of Part VII of the 1985 Act or Part VIII of the 1986 Order, as the case may be.

#### Marginal Citations

**M7** Sections 249A and 249AA inserted by S.I. 1994/1935 and amended by S.I. 1996/189, S.I. 1997/936 and S.I. 2000/1430.

**M8** Article 257A was inserted by SR (N.I.) 1995/128 and amended by SR (N.I.) 1997/500 and SR (N.I.) 2001/153. Article 257AA was inserted by SR (N.I.) 2001/153 and amended by S.I. 2001/3649.

**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 II 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.

SCHEDULE 5

Articles 48 and 50A

STATEMENTS FOR CERTIFIED HIGH NET WORTH INDIVIDUALS  
AND SELF-CERTIFIED SOPHISTICATED INVESTORS

**PART I**

*STATEMENT FOR CERTIFIED HIGH NET WORTH INDIVIDUALS*

1. The statement to be signed for the purposes of article 48(2) (definition of high net worth individual) must be in the following form and contain the following content—

**“ Statement for Certified High Net Worth Individual**

I declare that I am a certified high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

I understand that this means:

- (a) (a) I can receive financial promotions that may not have been approved by a person authorised by the Financial Services Authority;
- (b) the content of such financial promotions may not conform to rules issued by the Financial Services Authority;
- (c) **by signing this statement I may lose significant rights;**
- (d) I may have no right to complain to either of the following—
  - (i) the Financial Services Authority; or
  - (ii) the Financial Ombudsman Scheme;
- (e) I may have no right to seek compensation from the Financial Services Compensation Scheme.

I am a certified high net worth individual because **at least one of the following applies**—

- (a) (a) I had, during the financial year immediately preceding the date below, an annual income to the value of £100,000 or more;
  - (b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more. Net assets for these purposes do not include—
    - (i) the property which is my primary residence or any loan secured on that residence;
    - (ii) any rights of mine under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- or
- (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on investments.

Signature

Date”.

**Status:** Point in time view as at 06/10/2006.

**Changes to legislation:** There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. (See end of Document for details)

## PART II

### STATEMENT FOR SELF-CERTIFIED SOPHISTICATED INVESTORS

2. The statement to be signed for the purposes of article 50A(1) (definition of self-certified sophisticated investor) must be in the following form and contain the following content—

#### “Statement for Self-Certified Sophisticated Investor

I declare that I am a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act (Financial Promotion) Order 2005.

I understand that this means:

- (a) (a) I can receive financial promotions that may not have been approved by a person authorised by the Financial Services Authority;
- (b) the content of such financial promotions may not conform to rules issued by the Financial Services Authority;
- (c) **by signing this statement I may lose significant rights;**
- (d) I may have no right to complain to either of the following—
  - (i) the Financial Services Authority; or
  - (ii) the Financial Ombudsman Scheme;
- (e) I may have no right to seek compensation from the Financial Services Compensation Scheme.

I am a self-certified sophisticated investor because **at least one of the following applies—**

- (a) (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
- (b) I have made more than one investment in an unlisted company in the two years prior to the date below;
- (c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;
- (d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on investments.

Signature

Date”.

SCHEDULE 6

Article 74

REVOCATION

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*Order*

*Reference*

*Extent of revocation*

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001	S.I. 2001/1335	The whole Order
The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001	S.I. 2001/2633	The whole Order
The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001	S.I. 2001/3650	Article 4 and 5
The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No. 2) Order 2001	S.I. 2001/3800	The whole Order
The Financial Services and Markets Act 2000 (Financial Promotion and Miscellaneous Amendments) Order 2002	S.I. 2002/1310	Article 2
The Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002	S.I. 2002/1777	Article 4
The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Communications Directive) Order 2002	S.I. 2002/2157	The whole Order
The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2003	S.I. 2003/1676	The whole Order
The Financial Services and Markets Act 2000 (Financial Promotion and Promotion of Collective Investment Schemes) (Miscellaneous Amendments) Order 2005	S.I. 2005/270	Article 2 and Schedule 1

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**Status:**

Point in time view as at 06/10/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.