

2009 No. 2461

COMPANIES

**The Financial Services and Markets Act 2000 (Amendment)
Regulations 2009**

<i>Made</i>	- - - -	<i>8th September 2009</i>
<i>Laid before Parliament</i>		<i>9th September 2009</i>
<i>Coming into force</i>	- -	<i>1st October 2009</i>

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to insider dealing and market manipulation;

In exercise of the powers conferred upon them by section 2(2) of that Act, the Treasury make the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendment) Regulations 2009.

(2) These Regulations come into force on 1st October 2009.

Disclosure rules: persons responsible for compliance

2.—(1) In section 96B of the Financial Services and Markets Act 2000 (disclosure rules: persons responsible for compliance)(c), for subsection (2) substitute—

“(2) Schedule 11B (connected persons) has effect for the purposes of the provisions of this Part relating to disclosure rules.”.

(2) After Schedule 11A insert the Schedule 11B contained in the Schedule to these Regulations.

(3) The above amendments supersede the amendment in paragraph 181(2) of Schedule 1 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009(d).

Bob Blizzard
Dave Watts

8th September 2009

Two of the Lords' Commissioners of Her Majesty's Treasury

(a) S.I. 2004/2642.

(b) 1972 c.68; section 2(2) and paragraph 2 of Schedule 2 to the 1972 Act were amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51).

(c) 2000 c.8; section 96B was inserted by S.I. 2005/381, and subsequently amended by section 1272 of and Schedule 15 to the Companies Act 2006 (c. 46).

(d) S.I. 2009/1941.

SCHEDULE

Regulation 2(2)

“SCHEDULE 11B

Section 96B(2)

CONNECTED PERSONS

PART 1

MEANING OF “CONNECTED PERSON”

Introduction

1.—(1) In this Schedule “manager” means a person discharging managerial responsibilities within an issuer.

(2) This Schedule defines what is meant by references in the provisions of this Part relating to disclosure rules to a person being “connected” with a manager (or a manager being “connected” with a person).

Meaning of “connected person”

- 2.—(1) The following persons (and only those persons) are connected with a manager—
- (a) members of the manager’s family (see paragraph 3);
 - (b) a body corporate with which the manager is associated (as defined in paragraph 4);
 - (c) a person acting in his capacity as trustee of a trust—
 - (i) the beneficiaries of which include the manager or a person who by virtue of paragraph (a) or (b) is connected with him, or
 - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the manager or any such person,other than a trust for the purposes of an employees’ share scheme or a pension scheme;
 - (d) a person acting in his capacity as partner—
 - (i) of the manager, or
 - (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that manager;
 - (e) a firm that is a legal person under the law by which it is governed and in which—
 - (i) the manager is a partner,
 - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the manager, or
 - (iii) a partner is a firm in which the manager is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director.

(2) References to a person connected with a manager do not include a person who is also a manager of the issuer in question.

Family members

3.—(1) This paragraph defines what is meant by references to members of a manager’s family.

(2) The members of a manager’s family are—

- (a) the manager's spouse or civil partner;
- (b) any relative of the manager who, on the date of the transaction in question, has shared the same household as the manager for at least 12 months;
- (c) the manager's children or step-children under the age of 18.

Associated bodies corporate

4.—(1) This paragraph defines what is meant by a manager being “associated” with a body corporate.

(2) A manager is associated with a body corporate if, but only if—

- (a) the manager, or a person connected with the manager, is a director or senior executive who has the power to make management decisions affecting the future development and business prospects of the body corporate; or
- (b) the manager and the persons connected with the manager together—
 - (i) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or
 - (ii) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.

(3) The rules set out in Part 2 of this Schedule (references to interest in shares or debentures) apply for the purposes of this paragraph.

(4) References in this paragraph to voting power the exercise of which is controlled by a manager include voting power whose exercise is controlled by a body corporate controlled by the manager.

(5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this paragraph.

Control of a body corporate

5.—(1) This paragraph defines what is meant by a manager “controlling” a body corporate.

(2) A manager is taken to control a body corporate if, but only if—

- (a) the manager or a person connected with the manager—
 - (i) is interested in any part of the equity share capital of that body, or
 - (ii) is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body, and
- (b) the manager, the persons connected with the manager and the other managers of the issuer in question, together—
 - (i) are interested in more than 50% of that share capital, or
 - (ii) are entitled to exercise or control the exercise of more than 50% of that voting power.

(3) The rules set out in Part 2 of this Schedule (references to interest in shares or debentures) apply for the purposes of this paragraph.

(4) References in this paragraph to voting power the exercise of which is controlled by a manager include voting power whose exercise is controlled by a body corporate controlled by the manager.

(5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this paragraph.

Supplementary provisions

6. For the purposes of paragraphs 4 and 5 (associated bodies corporate and control of a body corporate)—

- (a) a body corporate with which a manager is associated is not treated as connected with that manager unless it is also connected with that manager by virtue of sub-paragraph (1)(c) or (d) of that paragraph (connection as trustee or partner); and
- (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a manager is associated is not treated as connected with a manager by reason only of that fact.

PART 2

CONNECTED PERSONS: REFERENCES TO AN INTEREST IN SHARES OR DEBENTURES

Introduction

6.—(1) The provisions of this Part of this Schedule have effect for the interpretation of references in paragraphs 4 and 5 (associated bodies corporate and control of a body corporate) to an interest in shares or debentures.

(2) The provisions are expressed in relation to shares but apply to debentures as they apply to shares.

General provisions

7.—(1) A reference to an interest in shares includes any interest of any kind whatsoever in shares.

(2) Any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded.

(3) It is immaterial that the shares in which a person has an interest are not identifiable.

(4) Persons having a joint interest in shares are deemed each of them to have that interest.

Rights to acquire shares

8.—(1) A person who enters into a contract to acquire shares is taken to have an interest in the shares.

(2) A person who—

- (a) has a right to call for delivery of shares to the person or to the person's order, or
- (b) has a right to acquire an interest in shares or is under an obligation to take an interest in shares,

is taken to have an interest in the shares, whether the right or obligation is conditional or absolute.

(3) Rights or obligations to subscribe for shares are not to be taken for the purposes of sub-paragraph (2) to be rights to acquire or obligations to take an interest in shares.

(4) A person ("A") ceases to have an interest in shares by virtue of this paragraph—

- (a) on the shares being delivered to another person at A's order—
 - (i) in fulfilment of a contract for their acquisition by A, or
 - (ii) in satisfaction of a right of A's to call for their delivery;
- (b) on a failure to deliver the shares in accordance with the terms of such a contract or on which such a right falls to be satisfied;

- (c) on the lapse of A's right to call for the delivery of shares.

Right to exercise or control exercise of rights

9.—(1) A person who, not being the registered holder, is entitled—

- (a) to exercise any right conferred by the holding of the shares, or
- (b) to control the exercise of any such right.

is taken to have an interest in the shares.

(2) For this purpose a person is taken to be entitled to exercise or control the exercise of a right conferred by the holding of shares who—

- (a) has a right (whether subject to conditions or not) the exercise of which would make the person so entitled, or
- (b) is under an obligation (whether or not so subject) the fulfilment of which would make the person so entitled.

(3) A person who—

- (a) has been appointed a proxy to exercise any of the rights attached to the shares, or
- (b) has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members,

is not, by reason only of that fact, to be taken by virtue of this paragraph to be interested in the shares.

Bodies corporate

10.—(1) A person is taken to be interested in shares if a body corporate is interested in them and—

- (a) the body corporate or its directors are accustomed to act in accordance with the person's directions or instructions, or
- (b) the person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of the body corporate.

(2) For the purposes of sub-paragraph (1)(b) where—

- (a) a person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of a body corporate, and
- (b) that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate,

the voting power mentioned in paragraph (b) above is taken to be exercisable by that person.

Trusts

11.—(1) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is taken to have an interest in shares, subject as follows.

(2) So long as a person is entitled to receive, during the lifetime of that person or another, income from trust property comprising shares, an interest in the shares in reversion or remainder or (as regards Scotland) in fee shall be disregarded.

(3) A person is treated as not interested in shares if and so long as the person holds them—

- (a) under the law in force in any part of the United Kingdom, as a bare trustee or as a custodian trustee, or
- (b) under the law in force in Scotland, as a simple trustee.

(4) There shall be disregarded any interest of a person subsisting by virtue of—

- (a) an authorised unit trust scheme (within the meaning of section 237 (other definitions));
 - (b) a scheme made under section 22 or 22A of the Charities Act 1960 (c. 58), section 25 of the Charities Act (Northern Ireland) 1964 (c. 33 (N.I.)) or section 24 or 25 of the Charities Act 1993 (c. 10), section 11 of the Trustee Investments Act 1961 (c. 62) or section 42 of the Administration of Justice Act 1982 (c. 53); or
 - (c) the scheme set out in the Schedule to the Church Funds Investment Measure 1958 (1958 No. 1).
- (5) There shall be disregarded any interest—
- (a) of the Church of Scotland General Trustees or of the Church of Scotland Trust in shares held by them;
 - (b) of any other person in shares held by those Trustees or that Trust otherwise than as simple trustees.

“The Church of Scotland General Trustees” are the body incorporated by the order confirmed by the Church of Scotland (General Trustees) Order Confirmation Act 1921 (1921 c. xxv), and “the Church of Scotland Trust” is the body incorporated by the order confirmed by the Church of Scotland Trust Order Confirmation Act 1932 (1932 c. xxi).”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations continue the implementation of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation^(a) and Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6 of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers’ transactions and the notification of suspicious transactions^(b).

They replace section 96B(2) of the Financial Services and Markets Act 2000 (FSMA), which defines a person “connected” with a person discharging managerial responsibilities within an issuer in part by reference to section 346 of the Companies Act 1985. The new section 96B(2) and the Schedule 11B to FSMA which is inserted by these Regulations sets out the substance of the provisions now in section 96B of FSMA, section 346 of and Schedule 13 (Part 1) to the 1985 Act in full.

This is being done to ensure that the amendment of section 96B(2) inadvertently made by paragraph 181(2) of Schedule 1 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941) will not take effect.

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(a) OJ No L 96, 12.4.2003, p.16.
 (b) OJ No L162, 30.4.2004, p.70.

STATUTORY INSTRUMENTS

2009 No. 2461

COMPANIES

The Financial Services and Markets Act 2000 (Amendment)
Regulations 2009

£5.50