

## SCHEDULE

### Consequential Amendments

#### **The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005**

9. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(1) is amended as follows—

- (a) in the following articles for “or 15”, wherever those words occur, substitute “, 15 or 15A”—
  - (i) article 3(3)(c);
  - (ii) article 41(2)(a) and (b);
  - (iii) article 43(3)(a);
  - (iv) article 52(2)(c);
  - (v) article 59(4)(a);
  - (vi) article 60(1)(a);
  - (vii) article 69(1)(a);
- (b) in article 35(c) after “paragraph 15” insert “or 15A”;
- (c) in article 44(1)(d) and (2)(b) and (d) after “paragraph 15,”, wherever those words occur, insert “15A,”;
- (d) after article 48(8)(b) insert—

“(ba) it is an investment falling within paragraph 15A of Schedule 1 being an investment constituting an alternative finance investment bond issued by an unlisted company;”;
- (e) after article 50A(8)(b) insert—

“(ba) it is an investment falling within paragraph 15A of Schedule 1 being an investment constituting an alternative finance investment bond issued by an unlisted company;”;
- (f) in Part 2 of Schedule 1—
  - (i) in paragraph 15(1) for “paragraph 16” substitute “paragraph 15A or 16”;
  - (ii) in paragraph 15(2) after paragraph (d) insert—

“(e) an instrument which does not fall within paragraph 15A by reason only of failing to meet the requirements of either paragraph (e) or (f) (or both) of sub-paragraph (2) of paragraph 15A”;
  - (iii) after paragraph 15 insert—

#### **“Alternative finance investment bonds**

**15A.—**(1) Rights under an alternative finance investment bond, to the extent that they do not fall within paragraph 16.

(2) For the purposes of this paragraph, arrangements constitute an alternative finance investment bond if—

- (a) the arrangements provide for a person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”);

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(1) [S.I.2005/1529](#), to which there are amendments not relevant to this Order.

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- (b) the arrangements identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”);
  - (c) the arrangements specify a period at the end of which they cease to have effect (“the bond term”);
  - (d) the bond-issuer undertakes under the arrangements—
    - (i) to make a repayment in respect of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond term (whether or not in instalments); and
    - (ii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“the additional payments”);
  - (e) the amount of the additional payments does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital; and
  - (f) the arrangements are a security admitted to—
    - (i) an official list (in accordance with the provisions of Directive [2001/34/EC](#) of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities); or
    - (ii) trading on a regulated market (within the meaning of Article 4.1(14) of Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments) or on a recognised investment exchange (within the meaning of section 285 of the Act).
- (3) For the purposes of sub-paragraph (2)—
- (a) the bond-issuer may acquire the bond assets before or after the arrangements take effect;
  - (b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer;
  - (c) the identification of the bond assets mentioned in sub-paragraph (2)(b) and the undertakings mentioned in sub-paragraph (2)(d) may (but need not) be described as, or accompanied by a document described as, a declaration of trust;
  - (d) the reference to a period in sub-paragraph (2)(c) includes any period specified to end upon the redemption of the bond by the bond-issuer;
  - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term;
  - (f) the amount of the additional payments may be—
    - (i) fixed at the beginning of the bond term;
    - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets; or
    - (iii) determined in some other way;
  - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in sub-paragraph (2)(e) to the amount

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of the additional payments is a reference to the maximum amount of the additional payments;

- (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them; and
- (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.

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

(iv) in paragraph 16(2), before the words “There are excluded” insert “Subject to sub-paragraph (3),”;

(v) after paragraph 16(2) insert—

“(3) Sub-paragraph (2)(a) does not exclude an instrument which meets the requirements set out in paragraphs (a) to (e) of paragraph 15A(2).”.