
STATUTORY INSTRUMENTS

1995 No. 1537

FINANCIAL SERVICES

The Public Offers of Securities Regulations 1995

Approved by Parliament

Made - - - - 14th June 1995

Coming into force - - 19th June 1995

Whereas the Treasury are a government department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to listing of securities on a stock exchange and information concerning listed securities and also in relation to measures relating to prospectuses on offers of transferable securities to the public;

And whereas a draft of these Regulations has been approved by a resolution of each House of Parliament under section 2(2) of and paragraph 2(2) of Schedule 2 to that Act;

Now, therefore, the Treasury, in exercise of the powers conferred upon them by section 2(2) of that Act and of all other powers enabling them in that behalf, hereby make the following Regulations:—

PART I
GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Public Offers of Securities Regulations 1995 and shall come into force on 19th June 1995.

(2) These Regulations extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires

“the Act” means the Financial Services Act 1986(3);

“approved exchange” means, in relation to dealings in securities, a recognised investment exchange approved by the Treasury for the purposes of these Regulations either generally or

(1) S.I.1992/1315.
(2) 1972 c. 68.
(3) 1986 c. 60.

in relation to such dealings, and the Treasury shall give notice in such manner as they think appropriate of the exchanges which are for the time being approved;

“body corporate” shall be construed in accordance with section 207(1) of the Act “ “convertible securities”” means

- (i) securities falling within paragraph 2 of Schedule 1 to the Act which can be converted into or exchanged for, or which confer rights to acquire, securities; or
- (ii) securities falling within paragraph 4 or 5 of that Schedule; and

“conversion” in relation to convertible securities means their conversion into or exchange for, or the exercise of rights conferred by them to acquire, other securities (“underlying securities”);

“credit institution” has the same meaning as it has for the purposes of paragraph 3 of Schedule 11A to the Act;

“director” shall be construed in accordance with section 207(1) of the Act;

“ecu” has the same meaning as it has for the purposes of paragraph 3 of Schedule 11A to the Act;

“European institution” has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992(4);

“Euro-securities” has the same meaning as it has for the purposes of paragraph 3 of Schedule 11A to the Act;

“financial institution” has the same meaning as it has for the purposes of paragraph 3 of Schedule 11A to the Act;

“group” has the meaning given in section 207 (1) of the Act;

“home-regulated investment business” has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992;

“issuer”, in relation to any securities, means the person by whom they have been or are to be issued;

“member State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(5) as adjusted by the Protocol signed at Brussels on 17th March 1993(6);

“private company” has the meaning given in section 1(3) of the Companies Act 1985(7);

“the registrar of companies”, in relation to a prospectus relating to any securities, means

- (a) if the securities are or are to be issued by a company incorporated in Great Britain, the registrar of companies in England and Wales or the registrar of companies in Scotland according to whether the company’s registered office is in England and Wales or in Scotland;
- (b) if the securities are or are to be issued by a company incorporated in Northern Ireland, the registrar of companies for Northern Ireland;
- (c) in any other case, any of those registrars;

“recognised investment exchange” has the meaning given in section 207(1) of the Act; “securities” means investments to which Part II of these Regulations applies; and “sale” includes any disposal for valuable consideration.

(4) S.I. 1992/3218.

(5) OJ No. L1, 3.1.94, p. 3.

(6) OJ No. L1, 3.1.94, p. 572.

(7) 1985 c. 6.

(2) In the application of these Regulations to Scotland, references to a matter being actionable at the suit of a person shall be construed as references to the matter being actionable at the instance of that person.

(3) References to the Companies Act 1985 include references to the corresponding Northern Ireland provision.

PART II

PUBLIC OFFERS OF UNLISTED SECURITIES

Investments to which this Part applies

- 3.—(1) This Part of these Regulations applies to any investment which—
- (a) is not admitted to official listing, nor the subject of an application for listing, in accordance with Part IV of the Act; and
 - (b) falls within paragraph 1, 2, 4 or 5 of Schedule 1 to the Act.
- (2) In the application of those paragraphs for the purposes of these Regulations—
- (a) debentures having a maturity of less than one year from their date of issue shall be deemed to be excluded from paragraph 2;
 - (b) the note to paragraph 1 shall have effect with the omission of the words “, except in relation to any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986,”;
 - (c) paragraphs 4 and 5 shall have effect with the omission of references to investments falling within paragraph 3; and
 - (d) paragraph 4 shall have effect as though after the words “subscribe for” there were inserted “or acquire”.

Registration and publication of prospectus

4.—(1) When securities are offered to the public in the United Kingdom for the first time the offeror shall publish a prospectus by making it available to the public, free of charge, at an address in the United Kingdom, from the time he first offers the securities until the end of the period during which the offer remains open.

(2) The offeror shall, before the time of publication of the prospectus, deliver a copy of it to the registrar of companies for registration.

(3) Paragraph (2) and regulations 5, 6 and 8 to 15 shall not apply to a prospectus submitted for approval in accordance with listing rules made under section 156A of the Act.

Offers of securities

5. A person is to be regarded as offering securities if, as principal
- (a) the makes an offer which, if accepted, would give rise to a contract for the issue or sale of the securities by him or by another person with whom he has made arrangements for the issue or sale of the securities; or
 - (b) he invites a person to make such an offer;

but not otherwise; and, except where the context otherwise requires, in this Part of these Regulations “offer” and “offeror” shall be construed accordingly.

Offers to the public in the United Kingdom

6. A person offers securities to the public in the United Kingdom if, to the extent that the offer is made to persons in the United Kingdom, it is made to the public; and, for this purpose, an offer which is made to any section of the public, whether selected as members or debenture holders of a body corporate, or as clients of the person making the offer, or in any other manner, is to be regarded as made to the public.

Exemptions

7.—(1) For the purposes of these Regulations, an offer of securities shall be deemed not to be an offer to the public in the United Kingdom if, to the extent that the offer is made to persons in the United Kingdom

- (a) the condition specified in any one of the sub-paragraphs of paragraph (2) is satisfied in relation to the offer; or
- (b) paragraph (3) applies in relation to the offer.

(2) The following are the conditions specified in this paragraph

- (a) the securities are offered to persons
 - (i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or
 - (ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses;or are otherwise offered to persons in the context of their trades, professions or occupations;
- (b) the securities are offered to no more than fifty persons;
- (c) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;
- (d) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
- (e) the securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;
- (f) the securities are the securities of a private company and are offered by that company to
 - (i) members or employees of the company;
 - (ii) members of the families of any such members or employees; or
 - (iii) holders of securities issued by the company which fall within paragraph 2 of Schedule 1 to the Act;
- (g) the securities are offered to a government, local authority or public authority, as defined in paragraph 3 of Schedule 1 to the Act;
- (h) the total consideration payable for the securities cannot exceed ecu 40,000 (or an equivalent amount);
- (i) the minimum consideration which may be paid for securities acquired pursuant to the offer is at least ecu 40,000 (or an equivalent amount);
- (j) the securities are denominated in amounts of at least ecu 40,000 (or an equivalent amount);
- (k) the securities are offered in connection with a takeover offer;

- (l) the securities are offered in connection with a merger within the meaning of Council Directive No. [78/855/ECC](#)(**8**);
- (m) the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer;
- (m) the securities are shares, or investments falling within paragraph 4 or 5 of Schedule 1 to the Act relating to shares, in a body corporate and are offered in exchange for shares in the same body corporate, and the offer cannot result in any increase in the issued share capital of the body corporate;
- (o) the securities are issued by a body corporate and offered—
 - (i) by the issuer;
 - (ii) only to qualifying persons; and
 - (iii) on terms that a contract to acquire any such securities may be entered into only by the qualifying person to whom they were offered or, if the terms of the offer so permit, any qualifying person;
- (p) the securities result from the conversion of convertible securities and listing particulars or a prospectus relating to the convertible securities were or was published in the United Kingdom under or by virtue of Part IV of the Act, Part III of the Companies Act 1985 or these Regulations;
- (q) the securities are issued by—
 - (i) a charity within the meaning of section 96(1) of the Charities Act 1993(**9**);
 - (ii) a housing association within the meaning of section 5(1) of the Housing Act 1985(**10**);
 - (iii) an industrial or provident society registered in accordance with section 1(2)(b) of the Industrial and Provident Societies Act 1965(**11**); or
 - (iv) a non-profit making association or body, recognised by the country or territory in which it is established, with objectives similar to those of a body falling within any of paragraphs (i) to (iii);
and the proceeds of the offer will be used for the purposes of the issuer's objectives;
- (r) the securities offered are shares and ownership of the securities entitles the holder—
 - (i) to obtain the benefit of services provided by a building society within the meaning of section 119(1) of the Building Societies Act(**12**), an industrial or provident society registered in accordance with section 1(2) of the Industrial and Provident Societies Act 1965 or a body of a like nature established in a member State; or
 - (ii) to membership of such a body;
- (s) the securities offered are Euro-securities and are not the subject of advertising likely to come to the attention of persons who are not professionally experienced in matters relating to investment;
- (t) the securities are of the same class, and were issued at the same time, as securities in respect of which a prospectus has been published under or by virtue of Part IV of the Act, Part III of the Companies Act 1985 or these Regulations;
- (u) the securities are not transferable.

(8) OJ No. L295, 20.10.78, p. 36.

(9) 1993 c. 10.

(10) 1985 c. 68.

(11) 1965 c. 12.

(12) 1986 c. 53.

(3) This paragraph applies in relation to an offer where the condition specified in one relevant sub-paragraph is satisfied in relation to part, but not the whole, of the offer and, in relation to each other part of the offer, the condition specified in a different relevant sub-paragraph is satisfied.

(4) For the purposes of paragraph (3), “relevant sub-paragraph” means any of sub-paragraphs (a) to (g), (k) to (n), (p), (q) and (t) of paragraph (2).

(5) For the purposes of this regulation, “shares”, except in relation to a takeover offer, means investments falling within paragraph 1 of Schedule 1 to the Act

(6) For the purposes of determining whether the condition specified in sub-paragraph (b) or (h) of paragraph (2) is satisfied in relation to an offer, the offer shall be taken together with any other offer of securities of the same class which was—

- (a) made by the same person;
- (b) open at any time within the period of 12 months ending with the date on which the offer is first made; and
- (c) deemed not to be an offer to the public in the United Kingdom by virtue of that condition being satisfied.

(7) In determining for the purposes of paragraph (2)(d) whether a person is sufficiently knowledgeable to understand the risks involved in accepting an offer of securities, any information supplied by the offeror shall be disregarded, apart from information about—

- (a) the issuer of the securities, or
- (b) if the securities confer the right to acquire other securities, the issuer of those other securities.

(8) For the purposes of paragraph (2)(f)—

- (a) the members of a person’s family are the person’s husband or wife, widow or widower and children (including stepchildren) and their descendants, and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself or herself, or any of those relatives; and
- (b) regulation 3(2)(a) shall not apply.

(9) For the purposes of determining whether the condition mentioned in sub-paragraph (h), (i) or (j) of paragraph (2) is satisfied in relation to an offer, an amount, in relation to an amount denominated in ecu, is an “equivalent amount” if it is an amount of equal value, calculated at the latest practicable date before (but in any event not more than 3 days before) the date on which the offer is first made, denominated wholly or partly in another currency or unit of account.

(10) For the purposes of paragraph (2)(k), “takeover offer” means—

- (a) an offer which is a takeover offer within the meaning of Part XIII A of the Companies Act 1985 (or would be such an offer in that Part of that Act applied in relation to any body corporate); or
- (b) an offer made to all the holders of shares, or of shares of a particular class, in a body corporate to acquire a specified proportion of those shares (“holders” and “shares” being construed in accordance with that Part);

but in determining for the purposes of sub-paragraph (b) whether an offer is made to all the holders of shares, or of shares of any class, the offeror, any associate of his (within the meaning of section 430E of that Act) and any person whose shares the offeror or any such associate has contracted to acquire shall not be regarded as holders of the shares.

(11) For the purposes of paragraph (2)(m), “holders of shares” means the person who, at the close of business on a date specified in the offer and falling within the period of 28 days ending with the date on which the offer is first made, where holders of such shares.

(12) For the purposes of paragraph (2)(o), a person is a “qualifying person”, in relation to an issuer, if he is a bona fide employee or former employee of the issuer or of another body corporate in the same group or the wife, husband, widow, widower or child or stepchild under the age of eighteen of such an employee or former employee.

Form and content of prospectus

8.—(1) Subject to regulation 11 and to paragraphs (2), (4), (5) and (6), a prospectus shall contain the information specified in Parts II to X of Schedule 1 to these Regulations (which shall be construed in accordance with Part I of that Schedule).

(2) Where the requirement to include in a prospectus any information (the “required information”) is inappropriate to the issuer’s sphere of activity or to its legal form or to the securities to which the prospectus relates, the requirement—

- (a) shall have effect as a requirement that the prospectus contain information equivalent to the required information; but
- (b) if there is no such equivalent information, shall not apply.

(3) The information in a prospectus shall be presented in as easily analysable and comprehensible a form as possible.

(4) Where, on the occasion of their admission to dealings on an approved exchange, securities falling within paragraph 1 of Schedule 1 to the Act are offered on a pre-emptive basis to some or all of the existing holders of such securities, a body or person dealing designated for the purposes of this paragraph by the Treasury shall have power to authorise the omission from a prospectus subject to this regulation of specified information provided that up-to-date information equivalent to that which would otherwise be required by this regulation is available as a result of the requirements of that approved exchange.

In this paragraph, “specified information” means information specified in paragraph 41 to 47 of Schedule 1 to these Regulations.

(5) Where a class of securities falling within paragraph 1 of Schedule 1 to the Act has been admitted to dealings on an approved exchange, a body or person designated for the purposes of this paragraph by the Treasury shall have power to authorise the making of an offer without a prospectus, provided that—

- (a) the number or estimated market value or the nominal value or, in the absence of a nominal value, the accounting par value of the securities offered amounts to less than ten per cent of the number or the corresponding value of securities of the same class already admitted to dealings; and
- (b) up-to-date information equivalent to that required by this regulation is available as a result of the requirements of that approved exchange.

(6) Where a person—

- (a) makes an offer to the public in the United Kingdom of securities which he proposes to issue; and
- (b) has, within the 12 months preceding the date on which the offer is first made, published a full prospectus relating to a different class of securities which he has issued, or to an earlier issue of the same class of securities,

he may publish, instead of a full prospectus, a prospectus which contains only the differences which have arisen since the publication of the full prospectus mentioned in sub-paragraph (b) and any supplementary prospectus and which are likely to influence the value of the securities, provided that the prospectus is accompanied by that full prospectus and any supplementary prospectus or contains a reference to it or them; and, for this purpose, a full prospectus is one which contains the information

specified in Parts II to X of Schedule 1 (other than any information whose omission is authorised by or under paragraph (2) or (4) or regulation 11).

General duty of disclosure in prospectus

9.—(1) In addition to the information required to be included in prospectus by virtue of regulation 8 a prospectus shall (subject to these Regulations) contain all such information as investors would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
- (b) the rights attaching to those securities.

(2) The information to be included by virtue of this regulation shall be such information as is mentioned in paragraph (1) which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making enquiries.

(3) In determining what information is required to be included in a prospectus by virtue of this regulation regard shall be had to the nature of the securities and of the issuer of the securities.

(4) For the purposes of this regulation “issuer”, in relation to a certificate or other instrument falling within paragraph 5 of Schedule 1 to the Act, means the person who issued or is to issue the securities to which the certificate or instrument relates.

Supplementary prospectus

10.—(1) Where a prospectus has been registered under this Part of these Regulations in respect of an offer of securities and at any time while an agreement in respect of those securities can be entered into in pursuance of that offer—

- (a) there is a significant change affecting any matter contained in the prospectus whose inclusion was required by regulation 8 or 9; or
- (b) a significant new matter arises the inclusion of information in respect of which would have been so required if it has arisen when the prospectus was prepared; or
- (c) there is a significant inaccuracy in the prospectus,

the offeror shall deliver to the registrar of companies for registration, and publish in accordance with paragraph (3), a supplementary prospectus containing particulars of the change or new matter or, in the case of an inaccuracy, correcting it.

(2) In paragraph (1) “significant” means significant for the purpose of making an informed assessment of the matters mentioned in regulation 9(1)(a) and (b).

(3) Regulation 4(1) shall apply to a supplementary prospectus delivered for registration to the registrar of companies in the same way as it applies to a prospectus except that the obligation to publish the supplementary prospectus shall begin with the time it is delivered for registration to the registrar of companies.

(4) Where the offeror is not aware of the change, new matter or inaccuracy in question he shall not be under any duty to comply with paragraphs (1) and (3) unless he is notified of it by a person responsible for the prospectus; but any person responsible for the prospectus who is aware of such a matter shall be under a duty to give him notice of it.

(5) Where a supplementary prospectus has been registered under this regulation in respect of an offer, the preceding paragraphs of this regulation have effect as if any reference to a prospectus were a reference to the prospectus originally registered and that supplementary prospectus, taken together.

Exceptions

11.—(1) The Treasury or the Secretary of State may authorise the omission from a prospectus or supplementary prospectus of information whose inclusion would otherwise be required by these Regulations if they or he consider that disclosure of that information would be contrary to the public interest.

(2) An offeror may omit from a prospectus or supplementary prospectus information with respect to an issuer whose inclusion would otherwise be required by these Regulations if—

- (a) he is not that issuer, nor acting in pursuance of an agreement with that issuer;
- (b) the information is not available to him because he is not that issuer; and
- (c) he has been unable, despite making such efforts (if any) as are reasonable, to obtain the information.

(3) The competent authority for the purposes of Part IV of the Act (“the competent authority”) may authorise the omission from a prospectus or supplementary prospectus of information whose inclusion would otherwise be required by these Regulations, if—

- (a) the information is of minor importance only, and is not likely to influence assessment of the issuer’s assets and liabilities, financial position, profits and losses and prospects; or
- (b) disclosure of that information would be seriously detrimental to the issuer and its omission would not be likely to mislead investors with regard to facts and circumstances necessary for an informed assessment of the securities.

(4) Paragraph (4) of regulation 9 applies for the purposes of paragraph (3) as it applies for the purposes of that regulation.

(5) The competent authority may make rules providing for the payment of fees to it for the discharge of its functions under paragraph (3).

(6) Section 156 of the Act shall apply to rules made under paragraph (5) as it applies to listing rules.

Advertisements etc. in connection with offer of securities

12. An advertisement, notice, poster or document (other than a prospectus) announcing a public offer of securities for which a prospectus is or will be required under this Part of these Regulations shall not be issued to or caused to be issued to the public in the United Kingdom by the person proposing to make the offer unless it states that a prospectus is or will be published, as the case may be, and gives an address in the United Kingdom from which it can be obtained or will be obtainable.

Persons responsible for prospectus

13.—(1) For the purpose of this Part of these Regulations the persons responsible for a prospectus or supplementary prospectus are—

- (a) the issuer of the securities to which the prospectus or supplementary prospectus relates;
- (b) where the issuer is a body corp[orate, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published;
- (c) where the issuer is a body corporate, each person who has authorised himself to be named, and is named, in the prospectus or supplementary prospectus as a director or as having agreed to become a director of that body either immediately or at a future time;
- (d) each person who accepts, and is stated in the prospectus or supplementary prospectus as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;
- (e) the offeror of the securities, where he is not the issuer;

- (f) where the offeror is a body corporate, but is not the issuer and is not making the offer in association with the issuer, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published; and
- (g) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the prospectus or supplementary prospectus.

(2) A person is not responsible under paragraph (1)(a), (b) or (c) unless the issuer has made or authorised the offer in relation to which the prospectus or supplementary prospectus was published; and a person is not responsible for a prospectus or supplementary prospectus by virtue of paragraph (1)(b) if it is published without his knowledge or consent and on becoming aware of its publication he forthwith gives reasonable public notice that it was published without his knowledge.

(3) Where a person has accepted responsibility for, or authorised, only part of the contents of any prospectus or supplementary prospectus, he is responsible under paragraph (1)(d) or (g) only for that part and only if it is included in (or substantially in) the form and context to which he has agreed.

(4) Nothing in this regulation shall be construed as making a person responsible for any prospectus or supplementary prospectus by reason only of giving advice as to its contents in a professional capacity.

(5) Where by virtue of this regulation the issuer of any shares pays or is liable to pay compensation under regulation 14 for loss suffered in respect of shares for which a person has subscribed no account shall be taken of that liability or payment in determining any question as to the amount paid on subscription of those shares or as to the amount paid up or deemed to be paid up on them.

Compensation for false or misleading prospectus

14.—(1) Subject to regulation 15 the person or persons responsible for a prospectus or supplementary prospectus shall be liable to pay compensation to any person who has acquired the securities to which the prospectus relates and suffered loss in respect of them as a result of any untrue or misleading statement in the prospectus or supplementary prospectus or the omission from it of any matter required to be included by regulation 9 or 10.

(2) Where regulation 8 requires a prospectus to include information as to any particular matter on the basis that the prospectus must include a statement either as to that matter or, if such is the case, that there is no such matter, the omission from the prospectus of the information shall be treated for the purposes of paragraph (1) as a statement that there is no such matter.

(3) Subject to regulation 15, a person who fails to comply with regulation 10 shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of the failure.

(4) This regulation does not affect any liability which any person may incur apart from this regulation.

(5) References in this regulation to the acquisition by any person of securities include references to his contracting to acquire them or an interest in them.

Exemption from liability to pay compensation

15.—(1) A person shall not incur any liability under regulation 14(1) for any loss in respect of securities caused by any such statement or omission as is there mentioned if he satisfies the court that at the time when the prospectus or supplementary prospectus was delivered for registration he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and—

- (a) that he continued in that belief until the time when the securities were acquired; or

- (b) that they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire the securities in questions; or
- (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was forthwith brought to the attention of those persons; or
- (d) that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused, and, if the securities are dealt in on an approved exchange, that he continued in that belief until after the commencement of dealings in the securities on that exchange.

(2) A person shall not incur any liability under regulation 14(1) for any loss in respect of securities caused by a statement purporting to be made by or on the authority of another person as an expert which is, and is stated to be, included in the prospectus or supplementary prospectus with that other person's consent if he satisfies the court that at the time when the prospectus or supplementary prospectus was delivered for registration he believed on reasonable grounds that the other person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and—

- (a) that he continued in that belief until the time when the securities were acquired; or
- (b) that they acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of persons likely to acquire the securities in question; or
- (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was forthwith brought to the attention of those persons; or
- (d) that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused and, if the securities are dealt in on an approved exchange, that he continued in that belief until after the commencement of dealings in the securities on that exchange.

(3) Without prejudice to paragraph (1) and (2), a person shall not incur any liability under regulation 14(1) for any loss in respect of any securities caused by any such statement or omission as is there mentioned if he satisfies the court—

- (a) that before the securities were acquired a correction or, where the statement was such as is mentioned in paragraph (2), the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities in question; or
- (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(4) A person shall not incur any liability under regulation 14(1) for any loss resulting from a statement made by an official person or contained in a public official document which is included in the prospectus or supplementary prospectus if he satisfies the court that the statement is accurately and fairly reproduced.

(5) A person shall not incur any liability under regulation 14(1) or (3) if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge that the statement was false or misleading, of the omitted matter or of the change, new matter or inaccuracy, as the case may be.

(6) A person shall not incur any liability under regulation 14(3) if he satisfies the court the he reasonably believed that the change, new matter or inaccuracy in question was not such as to call for a supplementary prospectus.

(7) In this regulation “expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him; and references to the acquisition of securities include references to contracting to acquire them or an interest in them.

Contraventions

16.—(1) An authorised person who contravenes regulation 4(1) or, where it applies regulation 4(2), or who contravenes regulation 12, or who assists another person to contravene any of those provisions, shall be treated as having contravened rules made under Chapter V of Part I of the Act or, in the case of a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

(2) A person other than an authorised person who contravenes regulation 4(1) or, where it applies, regulation 4(2), or who contravenes regulation 12, or who assists another person to contravene any of those provisions, shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale.

(3) Without prejudice to any liability under regulation 14, a person shall not be regarded as having contravened regulation 4 by reason only of a prospectus not having fully complied with the requirements of these Regulations as to its form or content.

(4) Any contravention to which this regulation applies shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.

(5) In this regulation “authorised person” means a person authorised under Chapter III of Part I of the Act and “recognised professional body” and “recognised self-regulating organisation” have the meanings given in section 207(1) of the Act.

(6) A European institution carrying on home-regulated investment business in the United Kingdom which contravenes regulation 4(1) or, where it applies, 4(2) or which contravenes regulation 12, or which assists another person to contravene any of those provisions, shall be treated for all purposes—

- (a) if it is not a member of a recognised self-regulating organisation, as having contravened rules made under Chapter V of Part 1 of the Act; or
- (b) if it is a member of a recognised self-regulating organisation, as having contravened the rules of that organisation;

and the reference in paragraph (2) to a person other than an authorised person shall be treated as not including a reference to such an institution.

Part III

Amendments to Part IV of the Act etc.

Amendments to the Act and other minor and consequential amendments

17. Schedule 2 to these Regulations shall have effect.

Penalties

18. Where these Regulations amend, extend the application of, or modify the effect of, a provision contained in Part IV of the Act and thereby create a new criminal offence which, but for this regulation, would be punishable to a greater extent than is permitted under paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972(13), the maximum punishment for the offence shall be the maximum permitted under that paragraph at the time the offence was committed, on conviction on indictment or on summary conviction, as the case may be.

Part IV Miscellaneous

Designations

19. For the purposes of Articles 11, 12, 13, 14, 18, 19, 20, 21 and 22 of Council Directive No. 89/298/EEC(14) the Treasury may designate such bodies as they think fit and they shall give notice in such manner as they think appropriate of the designations they have made.

Mutual recognition

20. Schedule 4 to these Regulations shall have effect to make provision for the recognition of prospectuses and listing particulars approved in other member States.

Revocation

21. The Companies Act 1985 (Mutual Recognition of Prospectuses) Regulations 1991(15) and the Companies (Northern Ireland) Order 1986 (Mutual Recognition of Prospectuses) Regulations (Northern Ireland) 1991(16) are hereby revoked.

Registration of documents by the registrar of companies

22. For the purposes of the provisions mentioned in section 735B of the Companies Act 1985(17), regulations 4(2) and 10(1) shall be regarded as provisions of the Companies Acts.

Application of Part X of the Act

23.—(1) Section 187(4) of the Act shall apply to the competent authority in the discharge or purported discharge of its functions under these Regulations as it applies to it in the discharge or purported discharge of its functions under Part IV of the Act.

(2) Section 188 of the Act shall apply to proceedings arising out of any act or omission (or proposed act or omission) of the competent authority in the discharge or purported discharge of any function under regulation 11 as it applies to the proceedings mentioned in that section.

(3) Section 192 of the Act shall apply to a person designated under regulation 19 in respect of any action which he proposes to take or has power to take by virtue of being so designated.

(4) Section 199 of the Act shall apply in relation to an offence under these Regulations as it applies in relation to the offences mentioned in that section.

(13) 1972 c. 68.

(14) OJ No. L124, 5.5.89, p. 8.

(15) S.I. 1991/823. 1987 c. 22.

(16) S.R. (N.I.) 1991 No. 187.

(17) 1985 c. 6: section 735B was inserted by section 127(5) of the Companies Act 1989 (c. 40).

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(5) Subsections (1) and (5) of section 200 of the Act shall apply to applications under these Regulations as they apply to applications under the Act, and to requirements imposed on a person by or under these Regulations as they apply to requirements imposed on a person by or under the Act.

(6) Sections 201(1), 202 and 203 of the Act shall apply to offences under these Regulations as they apply to offences under the Act.

Amendments to regulations made under the Banking Act 1987

24. Schedule 5 to these Regulations shall have effect to amend regulations made under the Banking Act 1987(**18**).

14th June 1995

Derek Conway
Timothy Wood
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE 1

Regulation 8

Form and Content of Prospectus

Part 1

Interpretation

1. In this Schedule, except where the context otherwise requires—
 - “annual accounts” has the same meaning as in Part VII of the Companies Act 1985;
 - “control” means the ability, in practice, to determine the actions of the issuer; and “joint control” means control exercised by two or more persons who have an agreement or understanding (whether formal or informal) which may lead to their adopting a common policy in respect of the issuer;
 - “debentures” means securities falling within paragraph 2 of Schedule 1 to the Act;
 - “financial year” has the same meaning as in Part VII of the Companies Act 1985;
 - “group accounts” has the same meaning as in Part VII of the Companies Act 1985;
 - “the last three years”, in relation to an undertaking whose accounts are required to be dealt with in a prospectus, means three completed financial years which immediately precede the date on which the offer is first made and which cover a continuous period of at least 35 months, disregarding a financial year which ends less than three months before the date on which the offer is first made and for which accounts have not been prepared by that date;
 - “parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 1985;
 - “State of affairs” means the state of affairs of an undertaking, in relation to its balance sheet, at the end of a financial year;
 - “subsidiary” and “holding company” have the same meaning as in sections 736 and 736A of the Companies Act 1985; and
 - “undertaking” has the same meaning as in Part VII of the Companies Act 1985.

PART II

GENERAL REQUIREMENTS

2. The name of the issuer and the address of its registered office.
3. If different, the name and address of the person offering the securities.
4. The names and functions of the directors of the issuer.
5. The date of publication of the prospectus.
6. A statement that a copy of the prospectus has been delivered for registration to the registrar of companies in accordance with regulation 4(2), indicating to which registrar of companies it has been delivered.
7. A statement that the prospectus has been drawn up in accordance with these Regulations.
8. The following words, “If you are in any doubt about the contents of this document you should consult a person authorised under the Financial Services Act 1986 who specialises in advising on the acquisition of shares and other securities”, or words to the like effect.

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PART III

THE PERSONS RESPONSIBLE FOR THE PROSPECTUS AND ADVISERS

9. The names, addresses (home or business) and functions of those persons responsible (which in this Part of this Schedule has the same meaning as in regulation 13) for the prospectus or any part of the prospectus, specifying such part.

10.—(1) A declaration by the directors of the issuer (or, if the offeror is not the issuer, by the directors of the offeror) that to the best of their knowledge the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect the import of such information.

(2) Without prejudice to paragraph 45 of this Schedule, a statement by any person who accepts responsibility for the prospectus, or any part of it, that he does so.

PART IV

THE SECURITIES TO WHICH THE PROSPECTUS RELATES AND THE OFFER

11. A description of the securities being offered, including the class to which they belong and a description of the rights attaching to them including (where applicable)—

- (a) if the securities are shares, rights as regards—
 - (i) voting;
 - (ii) dividends;
 - (iii) return of capital on the winding up of the issuer;
 - (iv) redemption;and a summary of the consents necessary for the variation of any of those rights;
- (b) if the securities are debentures, rights as regards—
 - (i) interest payable;
 - (ii) repayment of principal;
- (c) if the securities are convertible securities—
 - (i) the terms and dates on which the holder of the convertible securities is entitled to acquire the related underlying securities;
 - (ii) the procedures for exercising the entitlement to the underlying securities; and
 - (iii) such information relating to the underlying securities as would have been required under paragraphs (a) or (b) if the securities being offered had been the underlying securities.

12. The date(s) (if any) on which entitlement to dividends or interest arises.

13. Particulars of tax on income from the securities withheld at source, including tax credits.

14. The procedure for the exercise of any right of preemption attaching to the securities.

15. Any restrictions on the free transferability of the securities being offered.

16.—(1) A statement as to whether—

- (a) the securities being offered have been admitted to dealings on a recognised investment exchange; or

- (b) an application for such admission has been made.
- (2) Where no such application for dealings has been made, or such an application has been made and refused, a statement as to whether or not there are, or are intended to be, any other arrangements for there to be dealings in the securities and, if there are, a brief description of such arrangements.
- 17. The purpose for which the securities are being issued.
- 18. The number of securities being issued.
- 19. The number of securities being offered.
- 20. The total proceeds which it is expected will be raised by the offer and the expected net proceeds, after deduction of the expenses, of the offer.
- 21. Where the prospectus relates to shares which are offered for subscription, particulars as to—
 - (a) the minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of those shares in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following—
 - (i) the purchase price of any property purchased, or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the issuer and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the issuer;
 - (iii) the repayment of any money borrowed by the issuer in respect of any of the foregoing matters;
 - (iv) working capital; and
 - (b) the amounts to be provided in respect of the matters mentioned otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
- 22. The names of any persons underwriting or guaranteeing the offer.
- 23. The amount or the estimated amount of the expenses of the offer and by whom they are payable, including (except in so far as information is required to be included in the prospectus by section 97(3) of the Companies Act 1985) a statement as to any commission payable by the issuer to any person in consideration of his agreeing to subscribe for securities to which the prospectus relates or of his procuring or agreeing to procure subscriptions for such securities.
- 24. The names and addresses of the paying agents (if any).
- 25. The period during which the offer of the securities is open.
- 26. The price at which the securities are offered or, if appropriate, the procedure, method and timetable for fixing the price.
- 27. The arrangements for payment for the securities being offered and the arrangements and timetable for their delivery.
- 28. The arrangements during the period prior to the delivery of the securities being offered relating to the moneys received from applicants including the arrangements for the return of moneys to applicants where their applications are not accepted in whole or in part and the timetable for the return of such moneys.

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PART V

GENERAL INFORMATION ABOUT THE ISSUER AND ITS CAPITAL

29. The date and place of incorporation of the issuer. In the case of an issuer not incorporated in the United Kingdom, the address of its principal place of business in the United Kingdom (if any).

30. The place of registration of the issuer and the number with which it is registered.

31. The legal form of the issuer, the legislation under which it was formed and (if different) the legislation now applicable to it.

32. A summary of the provisions in the issuer's memorandum of association determining its objects.

33. If the liability of the members of the issuer is limited, a statement of that fact.

34. The amount of the issuer's authorised share capital and any limit on the duration of the authorisation to issue such share capital.

35. The amount of the issuer's issued share capital.

36. The number and particulars of and listed any unlisted securities issued by the issuer not representing share capital.

37. The number of shares of each class making up each of the authorised and issued share capital, the nominal value of such shares and, in the case of the issued share capital, the amount paid up on the shares.

38. The amount of any outstanding listed and unlisted convertible securities issued by the issuer, the conditions and procedures for their conversion and the number of shares which would be issued as a result of their conversion.

39. If the issuer is a member of a group, a brief description of the group and of the issuer's position in it, stating, where the issuer is a subsidiary, the name of its holding company.

40. Insofar the offeror has the information, an indication of the persons, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer and particulars of the proportion of the issuer's voting capital held by such persons.

PART VI

The Issuer's Principal Activities

41. A description of the issuer's principal activities and of any exceptional factors which have influenced its activities.

42. A statement of any dependence of the issuer on patents or other intellectual property rights, licences or particular contracts, where any of these are of fundamental importance to the issuer's business.

43. Information regarding investments in progress where they are significant.

44. Information on any legal or arbitration proceedings, active, pending or threatened against, or being brought by, the issuer or any member of its group which are having or may have a significant effect on the issuer's financial position.

PART VII

The Issuer's Assets and Liabilities; Financial Position and Profits and Losses

45.—(1) If the issuer is a company to which Part VII of the Companies Act 1985 applies otherwise than by virtue of section 700 of that Act

- (a) the issuer's annual accounts for the last three years together with—
 - (i) a statement by the directors of the issuer that the accounts have been prepared in accordance with the law, and that they accept responsibility for them, or a statement why they are unable to make such a statement;
 - (ii) the names and addresses of the auditors of the accounts;
 - (iii) a copy of the auditors' reports on the accounts, within the meaning of section 235 of the Companies Act 1985; and
 - (iv) a statement by the auditors that they consent to the inclusion of their reports in the prospectus and accept responsibility for them, and have not become aware, since the date of any report, of any matter affecting the validity of that report at that date; or a statement why they are unable to make such a statement; or
- (b) a report by a person qualified to act as an auditor with respect to the state of affairs and profit or loss shown by the issuer's annual accounts for the last three years together with—
 - (i) the name and address of the person responsible for the report;
 - (ii) if different, the name and address of the person who audited the accounts on which the report is based; and
 - (iii) a statement by the person responsible for the report that in his opinion the report gives a true and fair view of the state of affairs and profit or loss of the issuer and its subsidiary undertakings, and that he consents to the inclusion of his report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.

(2) If the issuer is not a company to which Part VII of the Companies Act 1985 applies (or is a company to which that Part of that Act applies by virtue of section 700 of that Act)

- (a) the issuer's accounts (and, if it is a parent undertaking, its subsidiary undertakings' accounts) for the last three years, prepared in accordance with the applicable law, together with—
 - (i) the name and address of the person responsible for the accounts;
 - (ii) a statement by the person responsible for the accounts that they have been properly prepared in accordance with the applicable law, and that he accepts responsibility for them, or a statement why he is unable to make such a statement;
 - (iii) the names and addresses of the auditors of the accounts and their reports; and
 - (iv) a statement by the auditors that they consent to the inclusion of their reports in the prospectus and accept responsibility for them, and have not become aware, since the date of any report, of any matter affecting the validity of that report at that date; or a statement why they are unable to make such a statement; or
- (b) a report by a person qualified to act as an auditor with respect to the state of affairs and profit or loss shown by the issuer's accounts (and, if the issuer is a parent undertaking, by its subsidiary undertakings' accounts) for the last three years, such report to be drawn up in accordance with the applicable law, or as if the provisions of the Companies Act 1985 relating to annual accounts applied to the issuer, together with
 - (i) the name and address of the person responsible for the report;

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- (ii) if different, the name and address of the person who audited the accounts on which the report is based; and
- (iii) a statement by the person responsible for the report that in his opinion the report gives a true and fair view of the state of affairs and profit or loss of the issuer and its subsidiary undertakings and that he consents to the inclusion of his report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.

(3) If, in accordance with the law applicable to it, the accounts of an issuer falling within sub-paragraph (2) consist only of consolidated accounts with respect to itself and its subsidiary undertakings, the prospectus is not required by virtue of sub-paragraph (2) to include separate accounts for each undertaking, or to include a report which deals with the accounts of each undertaking separately.

(4) If, in the case of an issuer falling within sub-paragraph (1) or (2), the prospectus would, but for this sub-paragraph, include both separate accounts for the issuer and its subsidiary undertakings and consolidated accounts, either the separate accounts or the consolidated accounts may be omitted from the prospectus if their inclusion would not provide any significant additional information.

(5) If an issuer falling within sub-paragraph (2) is not required by the law applicable to it to have its accounts audited—

- (a) if the accounts have not been audited—
 - (i) the prospectus shall contain a statement to that effect; and
 - (ii) paragraph (a)(iii) and (iv) or, as the case may be, paragraph (b)(ii) of sub-paragraph (2) shall not apply to the issuer; and
- (b) if the accounts have nonetheless been audited, the prospectus shall contain a statement to that effect.

(6) Sub-paragraphs (7) and (8) shall apply in so far as the issuer has not been in existence for the whole of the last three years.

(7) Subject to sub-paragraph (8)—

- (a) the requirement in sub-paragraphs (1)(a) and (2)(a) that the prospectus contain accounts for the last three years shall be construed as a requirement that the prospectus contain the accounts which the undertaking concerned was required (by its constitution or by the law under which it is established) to prepare for financial years during its existence, disregarding a financial year which ends less than three months before the date on which the offer is first made and for which accounts have not been prepared by that date; and
- (b) the requirement in sub-paragraphs (1)(b) and (2)(b) that the prospectus contain a report with respect to the state of affairs and profit or loss for the last three years shall be construed as a requirement that the prospectus contain a report with respect to the accounts which the undertaking concerned was required (by its constitution or by the law under which it is established) to prepare for financial years during its existence, disregarding a financial year which ends less than three months before the date on which the offer is first made and for which accounts have not been prepared by that date.

(8) If an undertaking has not been required (by its constitution or by the law under which it is established) to prepare any accounts for financial years, the requirement in sub-paragraphs (1) and (2) that the prospectus contain accounts for, or a report with respect to, the last three years shall be construed as a requirement that the prospectus contain a report by a person qualified to act as an auditor which includes

- (a) details of the profit or loss of the undertaking in respect of the period beginning with the date of its formation and ending on the latest practicable date before (but not in any event

more than three months before) the date on which the offer is first made, and of its state of affairs at that latest practicable date; and

- (b) a statement by the person responsible for the report that in his opinion it gives a true and fair view of the state of affairs and profit or loss of the undertaking and that he consents to the inclusion of his report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.

(9) If the issuer is a parent undertaking, the requirements of sub-paragraph (1) or, as the case may be, sub-paragraph (2), shall apply to each subsidiary undertaking in respect of any part of the last three years for which information is not otherwise required by those sub-paragraphs.

(10) Where more than nine months have elapsed at the date on which the offer is first made since the end of the last financial year in respect of which accounts or a report are required to be included in the prospectus by this paragraph, there shall also be included in the prospectus—

- (a) interim accounts of the undertaking concerned (which need not be audited but which must otherwise be prepared to the standard applicable to accounts required for each financial year) covering the period beginning at the end of the last financial year in respect of which accounts or a report are required to be included in the prospectus by this paragraph, and ending on the latest practicable date before (but not in any event more than three months before) the date on which the offer is first made, together with the name and address of the person responsible for the interim accounts and a statement by him that the interim accounts have been properly prepared in accordance with the law applicable to the undertaking, and that he consents the inclusion of the accounts and statement in the prospectus and accepts responsibility for them; or a statement why he is unable to make such a statement; or
- (b) a report by a person qualified to act as an auditor covering the same period with respect to the state of affairs and profit or loss of the undertaking concerned, prepared in accordance with the law applicable to the undertaking, together with the name and address of the person responsible for preparing the report, and a statement by him that he consents to the inclusion of the report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.

(11) If any interim accounts of the issuer have been published since the end of the last financial year of the issuer in respect of which accounts or a report are required to be included in the prospectus by this paragraph, other than interim accounts included in a prospectus in accordance with sub-paragraph (10), they shall be included in the prospectus, together with

- (a) an explanation of the purpose for which the accounts were prepared;
- (b) a reference to the legislation in accordance with which they were prepared; and
- (c) the name and address of the person responsible for them, and a statement from him that he consents to the inclusion of the accounts in the prospectus and accepts responsibility for them.

PART VIII

The issuer's administration, management and supervision

46. A concise description of the directors' existing or proposed service contracts with the issuer or any subsidiary of the issuer, excluding contracts expiring, or determinable by the employing company without payment of compensation within one year, or an appropriate negative statement.

47.—(1) The aggregate remuneration paid and benefits in kind granted to the directors of the issuer during the last completed financial year of the issuer, together with an estimate of the aggregate

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amount payable and benefits in kind to be granted to the directors, and proposed directors, for the current financial year under the arrangements in force at the date on which the offer is first made.

(2) The interests of each director of the issuer in the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement.

PART IX

Recent developments in the issuer's business and prospects

48. The significant recent trends concerning the development of the issuer's business since the end of the last completed financial year of the issuer.

49. Information on the issuer's prospects for at least the current financial year of the issuer.

PART X

Convertible securities and guaranteed debentures

50. Where the prospectuses relates to convertible securities, and the issuer of the related underlying securities is not the same as the issuer of the convertible securities, the information specified in this Schedule must be given in respect of the issuer of the convertible securities, and the information specified in paragraph 2 and Parts V, VI, VII, VIII and IX of this Schedule must be given in respect of the issuer of the underlying securities.

51. Where the prospectus relates to debentures which are guaranteed by one or more persons, the name and address and the information specified in Parts V, VI, VII, VIII and IX of this Schedule must also be given in respect of any guarantor who is not an individual.

SCHEDULE 2

Regulation 17

Amendments to the Financial Services Act 1986 and minor and consequential amendments and repeals

PART I

Amendments to part IV of the Financial Services Act 1986

1.—(1) Section 142 of the Act shall be amended as follows.

(2) In subsection (7), immediately before the definition of "issuer" there shall be inserted—

““approved exchange” means, in relation to dealings in securities, a recognised investment exchange approved by the Treasury for the purposes of the Public Offers of Securities Regulations 1995 either generally or in relation to such dealings;”.

(3) After that subsection, there shall be inserted—

“(7A) For the purposes of this Part of this Act—”

(a) a person offers securities if, as principal—

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- (i) he makes an offer which, if accepted, would give rise to a contract for their issue or sale (which for this purpose includes any disposal for valuable consideration) by him or by another person with whom he has made arrangements for their issue or sale; or
 - (ii) he invites a person to make such an offer,
- but not otherwise; and, except where the context otherwise requires, “offer” and “offeror” shall be construed accordingly; and
- (b) whether a person offers securities to the public in the United Kingdom shall be determined in accordance with Schedule 11A to this Act.
- 2.—(1) In section 144 of the Act, for subsection (2) there shall be substituted—
- “(2) Listing rules shall require as a condition of the admission to the Official List of any securities for which application for admission has been made and which are to be offered to the public in the United Kingdom for the first time before admission—
- (a) the submission to, and approval by, the authority of a prospectus in such form and containing such information as may be specified in the rules; and
 - (b) the publication of that prospectus.
- (2A) Listing rules may require as a condition of the admission to the Official List of any other securities—
- (a) the submission to, and approval by, the authority of a document (in this Act referred to as “listing particulars”) in such forms and containing such information as may be specified in the rules; and
 - (b) the publication of that document;
- or, in such cases as may be specified by the rules, the publication of a document other than listing particulars or a prospectus.
- (2B) Subsections (2) and (2A) have effect without prejudice to the generality of the power of the competent authority to make listing rules for the purposes of this section.”.
- (2) Schedule 3 to these Regulations shall have effect to insert Schedule 11A into the Act.
 - (3) After section 154 of the Act there shall be inserted—

“Application of Part IV to prospectuses.

- 154A.** Sections 146 to 152 and 154 above shall apply in relation to a prospectus required by listing rules in accordance with section 144(2) above as they apply in relation to listing particulars, but as if—
- (a) any reference to listing particulars were a reference to a prospectus and any reference to supplementary listing particulars were a reference to a supplementary prospectus; and
 - (b) notwithstanding section 142(7) above, any reference in section 152 above (other than in subsection (1)(b) of that section) to the issuer of securities included a reference to the person offering or proposing to offer them.”.
- (4) After section 156 of the Act there shall be inserted—

“Approval of prospectus where no application for listing.

- 156A.**—(1) Listing rules may also provide for a prospectus to be submitted to and approved by the competent authority where—
- (a) securities are to be offered to the public in the United Kingdom for the first time;

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- (b) no application for listing of the securities has been made under this Part of this Act; and
 - (c) the prospectus is submitted by or with the consent of the issuer of the securities.
- (2) Listing rules made under subsection (1) above may make provision—
- (a) as to the information to be contained in, and the form of, a prospectus submitted under any such rules; and
 - (b) subject to the provisions of the Public Offers of Securities Regulations 1995, as to the timing and manner of publication of such a prospectus.
- (3) Sections 146 to 152 and 154 above shall apply in relation to such a prospectus as they apply in relation to listing particulars but as if—
- (a) any reference to listing particulars were a reference to a prospectus and any reference to supplementary listing particulars were a reference to a supplementary prospectus;
 - (b) in section 146(1) above—
 - (i) the words “as a condition of the admission of any securities to the Official List” were omitted; and
 - (ii) for the words “section 144 above” there were substituted “section 156A(1) below”;
 - (c) in section 147(1) above, for the words “under section 144 above and before the commencement of dealings in the securities following their admission to the Official List” there were substituted “under section 156A(1) below and before the end of the period during which the offer to which the prospectus relates remains open”;
 - (d) in subsections (1)(d) and (2)(d) of section 151 above—
 - (i) the words “that he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and” were omitted; and
 - (ii) the words “and, if the securities are dealt in on an approved exchange, that he continued in that belief until after the commencement of dealings in the securities on that exchange” were added at the end;
 - (e) notwithstanding section 142(7) above, any reference in section 152 above (other than in subsection (1)(b) of that section) to the issuer of securities included a reference to the person offering or proposing to offer them; and
 - (f) in section 154(1) above, for the words “Where listing particulars are or are to be published in connection with an application for the listing of any securities” there were substituted “Where a prospectus is or is to be published in connection with an application for approval, then, until the end of the period during which the offer to which the prospectus relates remains open,”.
- (4) Listing rules made under this section may require the payment of fees to the competent authority in respect of a prospectus submitted for approval under the rules.

Publication of prospectus.

156B.—(1) Where listing rules made under section 144(2) above require the publication of a prospectus, it shall not be lawful, before the time of publication of the prospectus, to offer the securities in question to the public in the United Kingdom.

(2) An authorised person who contravenes subsection (1) above shall be treated as contravening rules made under Chapter V of Part I of this Act or, in the case of a person who is

an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

(3) A person, other than an authorised person, who contravenes subsection (1) above shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale.

(4) Without prejudice to any liability under section 150 above, a person shall not be regarded as contravening subsection (1) above by reason only of a prospectus not having fully complied with the requirements of listing rules as to its form or content.

(5) Any contravention of subsection (1) above shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.”

3. Subsection (3) of section 156B of the Act shall not apply to a European institution carrying on home-regulated investment business in the United Kingdom which contravenes subsection (1) of that section, but it shall be treated for all purposes—

(a) if it is not a member of a recognised self-regulating organisation, as having contravened rules made under Chapter V of Part I of the Act; or

(b) if it is a member of a recognised self-regulating organisation, as having contravened the rules of that organisation

Part II

CONSEQUENTIAL AMENDMENTS AND REPEALS

4. Part V of the Act is hereby repealed.

5. The following provisions of the Act are hereby repealed—

(a) in section 48(5), the words “and rules under that paragraph shall have effect subject to the provisions of Part V of this Act.”;

(b) in section 58(1) (d)(ii), the words “or by an approved exchange under Part V of this Act”;

(c) section 58(2);

(d) section 192(3);

(e) in Schedule 16, paragraph 16.

6. In section 58 of the Act—

(a) in subsection (1)(d)(ii), after the words “supplementary listing particulars” there shall be inserted “, a prospectus approved in accordance with listing rules made under section 144(2) or 156A(1) below, a supplementary prospectus approved in accordance with listing rules made for the purposes of section 147(1) below as applied by section 154A or 156A(3) below”and

(b) in subsection (6), for “Subsections (1)(c) and (2) above do” there shall be substituted “Subsection (1)(c) above does”.

7. In section 199(1) of the Act, for “133 or 171(2) or (3)” there shall be substituted “or 133”.

8. In section 207(1) of the Act, in the definition of “listing particulars”, for “144(2)” there shall be substituted “144(2A)”.

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9. Paragraph 8 of Schedule 15 to the Act is hereby repealed.
10. Sections 198 and 199 of the Companies Act 1989 are hereby repealed.
11. In regulation 3 of the Control of Misleading Advertisements Regulations 1988⁽¹⁹⁾—
- (a) In paragraph (1)(b), the words from “except where” to the end of the paragraph; and
 - (b) in paragraph (2), the words ““approved exchange”,”;
- shall be deleted.
12. In Schedule 9 to the Banking Coordination (Second Council Directive) Regulations 1992⁽²⁰⁾,

SCHEDULE 3

Schedule 2, paragraph 3(2)

OFFERS OF SECURITIES TO THE PUBLIC IN THE UNITED KINGDOM

The following is the Schedule to be inserted into the Act as Schedule 11A

“SCHEDULE 11A

OFFERS OF SECURITIES TO THE PUBLIC IN THE UNITED KINGDOM

1. A person offers securities to the public in the United Kingdom if—
- (a) to the extent that the offer is made to persons in the United Kingdom, it is made to the public; and
 - (b) paragraph 2 below does not apply in relation to the offer;
- and, for this purpose, an offer which is made to any section of the public, whether selected as members or debenture holders of a body corporate, or as clients of the person making the offer, or in any other manner, is to be regarded as made to the public.
2. This paragraph applies in relation to an offer of securities where, to the extent that the offer is made to persons in the United Kingdom—
- (a) the condition specified in any one of the paragraphs of sub-paragraph (1) of paragraph 3 below is satisfied in relation to the offer; or
 - (b) paragraph 4 below applies in relation to the offer.
- 3.—(1) The following are the conditions specified in this sub-paragraph—
- (a) the securities are offered to persons—
 - (i) whose ordinary activities involve them in acquiring, holding managing or disposing of investments (as principal or agent) for the purposes of their businesses; or
 - (ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses;
 or are otherwise offered to persons in the context of their trades, professions or occupations;
 - (b) the securities are offered to no more than fifty persons;
 - (c) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest

⁽¹⁹⁾ S.I. 1988/915.

⁽²⁰⁾ S.I. 1992/3218.

- with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;
- (d) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
 - (e) the securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;
 - (f) the securities are offered to a government, local authority or public authority, as defined in paragraph 3 of Schedule 1 to this Act;
 - (g) the total consideration payable for the securities cannot exceed ecu 40,000 (or an equivalent amount);
 - (h) the minimum consideration which may be paid for securities acquired pursuant to the offer is at least ecu 40,000 (or an equivalent amount);
 - (i) the securities are denominated in amounts of at least ecu 40,000 (or an equivalent amount);
 - (j) the securities are offered in connection with a takeover offer;
 - (k) the securities are offered in connection with a merger within the meaning of Council Directive No. [78/855/EEC](#);
 - (l) the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer;
 - (m) the securities are shares, or investments falling within paragraph 4 or 5 of Schedule 1 to this Act relating to shares, in a body corporate and are offered in exchange for shares in the same body corporate, and the offer cannot result in any increase in the issued share capital of the body corporate;
 - (n) the securities are issued by a body corporate and offered—
 - (i) by the issuer;
 - (ii) only to qualifying persons; and
 - (iii) on terms that a contract to acquire any such securities may be entered into only by the qualifying person to whom they were offered or, if the terms of the offer so permit, any qualifying person;
 - (o) the securities result from the conversion of convertible securities and listing particulars or a prospectus relating to the convertible securities were or was published in the United Kingdom under or by virtue of Part IV of this Act, Part III of the Companies Act 1985 or the Public Offers of Securities Regulations 1995;
 - (p) the securities are issued by—
 - (i) a charity within the meaning of section 96(1) of the Charities Act 1993⁽²¹⁾;
 - (ii) a housing association within the meaning of section 5(1) of the Housing Act 1985⁽²²⁾;
 - (iii) an industrial or provident society registered in accordance with section 1(2)(b) of the Industrial and Provident Societies Act 1965⁽²³⁾; or
 - (iv) a non-profit making association or body, recognised by the country or territory in which it is established, with objectives similar to those of a body falling within any of sub-paragraphs (i) to (iii) above;

(21) 1993 c. 10.

(22) 1985 c. 68.

(23) 1965 c. 12.

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- and the proceeds of the offer will be used for the purposes of the issuer's objectives;
- (q) the securities offered are shares which are issued by, or ownership of which entitles the holder to membership of or to obtain the benefit of services provided by,—
- (i) a building society incorporated under the law of, or of any part of, the United Kingdom;
 - (ii) any body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies or credit unions; or
 - (iii) a body of a similar nature established in a member State;
- (r) the securities offered are Euro-securities and are not the subject of advertising likely to come to the attention of persons who are not professionally experienced in matters relating to investment;
- (s) the securities are of the same class, and were issued at the same time, as securities in respect of which a prospectus has been published under or by virtue of Part IV of this Act, Part III of the Companies Act 1985 or the Public Offers of Securities Regulations 1995;
- (t) the securities are investments falling within paragraph 2 of schedule 1 to this Act with a maturity of less than one year from their date of issue;
- (u) the securities are investments falling within paragraph 3 of Schedule 1 to this Act;
- (v) the securities are not transferable.
- (2) For the purposes of this paragraph
- “convertible securities” means
- (a) securities falling within paragraph 2 of Schedule 1 to this Act which can be converted into, or exchanged for, or which confer rights to acquire, securities; or
 - (b) securities falling within paragraph 4 or 5 of that Schedule (as applied for the purposes of section 142(2) of this Act);
- and “conversion” in relation to convertible securities means their conversion into or exchange for, or the exercise of rights conferred by them to acquire, other securities;
- “credit institution” means a credit institution as defined in Article 1 of Council Directive No. [77/780/EEC](#)(**24**);
- “ecu” means the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC(**25**) or any Council regulation replacing the same, in either case as amended from time to time;
- “Euro-securities” means investments which
- (a) are to be underwritten and distributed by a syndicate at least two of the members of which have their registered offices in different countries or territories;
 - (b) are to be offered on a significant scale in one or more countries or territories other than the country or territory on which the issuer has its registered office; and
 - (c) may be acquired pursuant to the offer only through a credit institution or other financial institution;
- “financial institution” means a financial institution as defined in Article 1 of Council Directive No. [89/646/EEC](#)(**26**); and

(24) OJ No. L322. 17.12.77, p. 30.

(25) OJ No. L350. 31.12.94, p. 27.

(26) OJ No. L386. 31.12.89, p. 1. amending Council Directive [77/780/EEC](#) (OJ No. L322. 17.12.77. p. 30).

“shares”, except in relation to a takeover offer, means investments which are securities by virtue of falling within paragraph 1 of Schedule 1 to this Act (as applied for the purposes of section 142(3) of this Act).

(3) For the purposes of determining whether the condition specified in paragraph (b) of (g) of sub-paragraph (1) above is satisfied in relation to an offer, the offer shall be taken together with any other offer of the same securities which was

- (a) made by the same person;
- (b) open at any time within the period of 12 months ending with the date on which the offer is first made; and
- (c) not an offer to the public in the United Kingdom by virtue of that condition being satisfied.

(4) In determining for the purposes of paragraph (d) of sub-paragraph (1) above whether a person is sufficiently knowledgeable to understand the risks involved in accepting an offer of securities, any information supplied by the person making the offer shall be disregarded, apart from information about

- (a) the issuer of the securities; or
- (b) if the securities confer the right to acquire other securities, the issuer of those other securities.

(5) For the purposes of determining whether the condition specified in paragraph (g), (h) or (i) of sub-paragraph (1) above is satisfied in relation to an offer, an amount, in relation to an amount denominated in ecu, is an “equivalent amount” if it is an amount of equal value, calculated at the latest practicable date before (but in any event not more than 3 days before) the date on which the offer is first made, denominated wholly or partly in another currency or unit of account.

(6) For the purposes of paragraph (j) of sub-paragraph (1) above, “takeover offer” means

- (a) an offer which is a takeover offer within the meaning of Part XIII A of the Companies Act 1985 (or would be such an offer if that Part of that Act applied in relation to any body corporate); or
- (b) an offer made to all the holders of shares, or of shares of a particular class, in a body corporate to acquire a specified proportion of those shares (“holders” and “shares” being construed in accordance with that Part);

but in determining for the purposes of paragraph (b) above whether an offer is made to all the holders of shares, or of shares of any class, the offeror, any associate of his (within the meaning of section 430E of that Act) and any person whose shares the offeror or any such associate has contracted to acquire shall not be regarded as holders of the shares.

(7) For the purposes of paragraph (1) of sub-paragraph (1) above, “holders of shares” means the persons who, at the close of business on a date specified in the offer and falling within the period of 28 days ending with the date on which the offer is first made, were the holders of such shares.

(8) For the purposes of paragraph (n) of sub-paragraph (1) above

- (a) a person is a “qualifying person”, in relation to an issuer, if he is a bona fide employee or former employee of the issuer or of another body corporate in the same group or the wife, husband, widow, widower or child or stepchild under the age of eighteen of such an employee or former employee; and
- (b) the definition of “issuer” in section 142(7) applies with the omission of the words from “except that” to the end of the definition.

4.—(1) This paragraph applies in relation to an offer where the condition specified in one relevant paragraph is satisfied in relation to part, but not the whole, of the offer and, in relation to each other part of the offer, the condition specified in a different relevant paragraph is satisfied.

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(2) For the purposes of this paragraph, “relevant paragraph” means any of paragraphs (a) to (f), (j) to (m), (o), (p) and (s) of paragraph 3(1) above.”

SCHEDULE 4

Regulation 20

MUTUAL RECOGNITION OF PROSPECTUSES AND LISTING PARTICULARS

PART 1

RECOGNITION FOR THE PURPOSES OF PART IV OF THE FINANCIAL SERVICES ACT 1986 OF PROSPECTUSES AND LISTING PARTICULARS APPROVED IN OTHER MEMBER STATES

1. In this Part of this Schedule—

- (a) the term “competent authority” includes a body designated by a member State pursuant to Article 12 of Council Directive No. [89/298/EEC](#);
- (b) “the UK authority” means the competent authority for the purposes of Part IV of the Act.
- (c) “European document” means—
 - (i) listing particulars which have been approved by the competent authority in another member State and which Article 24a of Council Directive No. [80/390/EEC](#)(**27**) requires or paragraph 5 of that article permits to be recognised as listing particulars;
 - (ii) a prospectus which has been approved by the competent authority in another member State and which Article 24b of Council Directive No. [80/390/EEC](#)(**28**) requires or which paragraph 2 of that article, in referring to paragraph 5 of article 24a of that Directive, permits to be recognised as listing particulars; or
 - (iii) a prospectus which has been approved by the competent authority in another member State, which Article 21 of Council Directive No. [89/298/EEC](#) requires or which paragraph 4 of that article permits to be recognised and which relates to securities which are the subject of an application for listing in the United Kingdom and which are to be offered in the United Kingdom prior to admission to listing in the United Kingdom by means of the prospectus;

including in each case any supplement to listing particulars or a prospectus which, before the completion of the preparation of the recognised document for submission to the UK authority pursuant to an application for listing, has been approved pursuant to Article 23 of Council Directive No. [80/390/EEC](#) or Article 18 of Council Directive No. [89/298/EEC](#) by the competent authorities which approved the listing particulars or prospectus.

Where the European document submitted to the UK authority is a translation into English of the document approved by the competent authorities in another member State then, unless the context otherwise requires, the document as translated shall be regarded as the European document rather than the document as approved.

2. In this Part of this Schedule, “recognised European document” means a document consisting of a European document submitted to the UK authority pursuant to an application for listing under

(27) OJ No. L100. 17.4.80, p. 1. Article 24a was inserted in Council Directive No. [80/390/EEC](#) by Council Directive No. [87/345/EEC](#) (OJ No. L185. 4.7.87, p. 81).

(28) Article 24b was inserted in Council Directive [80/390/EEC](#) by Council Directive [87/345/EEC](#) and was subsequently amended by Council Directive [90/211/EEC](#) (OJ No. L112, 3.5.90, p. 24).

section 143 of the Act and, if information is required to be added to it in accordance with listing rules, including that information.

3. Subject to paragraph 4, Part IV of the Act shall apply to a recognised European document as it applies—

- (a) in relation to listing particulars, within the meaning of section 144(2) of the Act (in a case where the securities to which it relates will not be offered in the United Kingdom prior to admission to listing in the United Kingdom); or
- (b) in relation to a prospectus to which section 144 of the Act applies (in a case where the recognised European document is a prospectus and the securities to which it relates are to be offered in the United Kingdom prior to admission to listing in the United Kingdom).

4. Part IV of the Act shall apply to a recognised European document subject to the following modifications—

- (a) nothing in Part IV shall require the approval by the UK authority of a recognised European document which has been approved as described in paragraph 1(c);
- (b) in sections 146, 147(1)(a) and 150(2) of the Act, any reference to information specified or required by listing rules or required by the competent authority or to matter whose inclusion was required by listing rules or by the competent authority shall apply as if it were a reference to information required by or to matter whose inclusion was required by the legislation relating to the contents of prospectuses and listing particulars, or by competent authorities, of the member State where the European document forming part of that recognised European document was approved;
- (c) nothing in section 147 of the Act shall require the approval by the UK authority of supplementary listing particulars or a supplementary prospectus which is, or is a translation into English of, a supplement which has been approved pursuant to Article 23 of Council Directive No. [80/390/EEC](#) or Article 18 of Council Directive No. [89/298/EEC](#) by the competent authority which approved the listing particulars or prospectus to which the supplement relates.

5. Subject to paragraph 1 and 3, references in Part IV of the Act to supplementary listing particulars shall be taken to include references to supplementary prospectuses.

6. This Part of this Schedule shall not apply to listing particulars or a prospectus approved in another member State prior to the coming into force of these Regulations.

PART II

RECOGNITION FOR THE PURPOSES OF PART II OF THESE REGULATIONS OF PROSPECTUSES APPROVED IN OTHER MEMBER STATES

7. In this Part of this Schedule “recognised prospectus” means a prospectus which has been approved in accordance with Article 20 of Council Directive No. [89/298/EEC](#) in another member State and satisfies the requirements of paragraphs (a) to (c) of paragraph 8(1); and where the prospectus has been translated into English, the English version shall be the recognised prospectus.

8.—(1) Where a prospectus has been approved in accordance with Article 20 of Council Directive No. [89/298/EEC](#) in another member State it shall, subject to sub-paragraph (2), be deemed for the purposes of regulation 4(1) to comply with regulations 8 and 9 of these Regulations provided that—

- (a) where the prospectus as approved in the other member State was written in a language other than English, the prospectus has been translated into English and the translation has been certified to be a correct translation in the manner prescribed in regulation 6

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- of the Companies (Forms) Regulations 1985(29) or the corresponding Northern Ireland provision;
- (b) the offer of securities to which the prospectus relates is made in the United Kingdom simultaneously with the making of the offer in the member State where the prospectus was approved or within 3 months after the making of that offer;
 - (c) there is added to the information contained in the prospectus as approved in the other member State such of the following information as is not included in the prospectus as so approved—
 - (i) a summary of the tax treatment relevant to United Kingdom resident holders of the securities;
 - (ii) the names and addresses of the paying agents for the securities in the United Kingdom (if any);
 - (iii) a statement of how notice of meetings and other notices from the issuer of the securities will be given to United Kingdom resident holders of the securities; and
 - (d) where a partial exemption or partial derogation has been granted in the other member State pursuant to Council Directive No. [89/298/EEC](#)—
 - (i) the partial exemption or partial derogation in question is of a type for which a corresponding partial exemption or partial derogation is made in these Regulations; and
 - (ii) the circumstances that justify the partial exemption or partial derogation also exist in the United Kingdom.

(2) Where, prior to the delivery for registration to the registrar of companies of a prospectus which has been approved in another member State, a supplement to the prospectus has been approved pursuant to Article 23 of Council Directive No. [80/390/EEC](#) or Article 18 of Council Directive No. [89/298/EEC](#) in the member State where the prospectus was approved, the references in subparagraph (1) and in paragraph 7 to a prospectus shall be taken to be references to the prospectus taken together with the supplement.

9. Subject to paragraph 8(2), Part II of these Regulations shall apply in relation to a recognised prospectus as it applies in relation to a prospectus to which the said Part II would apply apart from this paragraph except that in regulations 9 (1), 10(1)(a) and 14(2) of these Regulations the references to information or any matter required to be included in a prospectus by these Regulations shall be taken to be references to information or any matter required to be included by virtue of the legislation relating to the contents of prospectuses of the member State where the recognised prospectus was approved and by virtue of paragraph 8(1)(c).

PART III

Recognition for the purposes of the companies act 1985 of prospectuses approved in other member states

10. In this Part of this Schedule, “recognised prospectus” has the same meaning as in Part II of this Schedule.

11. The provisions of the Companies Act 1985, other than—

- (a) section 83; and
- (b) in section 84, the words “This is without prejudice to section 83.”,

(29) S.I. [1985/854](#).

shall apply to a recognised prospectus.

12. A recognised prospectus shall be deemed to comply with sections 97(3) and 693(1)(a) and (d) of the Companies Act 1985.

SCHEDULE 5

Regulation 24

AMENDMENTS TO REGULATIONS MADE UNDER THE BANKING ACT 1987

1.—(1) The Banking Act 1987 (Advertisements) Regulations 1988⁽³⁰⁾ shall be amended as follows.

(2) In regulation 2(4)(a), for the words “to which section 56 of the Companies Act 1985 applies would apply if not excluded by paragraph (a) or (b) of subsection (5) of that section” there shall be substituted—

“a prospectus to which regulation 8 of the Public Offers of Securities Regulations 1995 applies, or would apply but for regulation 7 of those regulations where—

- (i) the prospectus is issued to existing members or debenture holders of a company; and
- (ii) the prospectus relates to shares in or debentures of the company,

whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons”.

(3) In regulation 2(4)(b), of the words “a prospectus to which section 72 of that Act applies or apply if not excluded by paragraph (a) or (b) of subsection (6) of that section” there shall be substituted—

“a prospectus to which regulation 8 of the Public Offers of Securities Regulations 1995 applies, or would apply but for regulation 7 of those regulations where—

- (i) the prospectus is issued to existing members or debenture holders of a company; and
- (ii) the prospectus relates to shares in or debentures of the company,

whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons”.

(4) In regulation 2(4)(c), for the words from “together with” to the end there shall be substituted—

“together with a prospectus to which regulation 8 of the public Offers of Securities Regulations 1995 applies, or would apply but for regulation 7 of those regulations where—

- (i) the prospectus is issued to existing members or debenture holders of a company; and
- (ii) the prospectus relates to shares in or debentures of the company,

whether an applicant for shares were debentures will or will not have the right to renounce in favour of other persons.”

2. In regulation 13(d)(iv) of the Banking Act 1987 (Exempt Transactions) Regulations 1988⁽³¹⁾, for the words “section 56 or 72 of the Companies Act 1985 or the corresponding Northern Ireland legislation” there shall be substituted “regulation 8 of the Public Offers of Securities Regulations 1995”.

⁽³⁰⁾ S.I. 1988/645.

⁽³¹⁾ S.I. 1988/646, amended by S.I. 1990/20.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (which will replace Part III of the Companies Act 1985 (c. 6) (capital issues) for almost all purposes) provide for a person offering transferable securities to the public in certain circumstances to prepare and publish a prospectus according to requirements set out in the Regulations. The Regulations also amend Part IV of the Financial Services Act 1986 (c. 60) so that a prospectus may, in certain circumstances, be prepared, scrutinised and approved, in accordance with listing rules. Part V of the Financial Services Act 1986 (offers of unlisted securities), which has not been brought into force, is repealed.

The Regulations, which come into force on 19th June 1995, give effect to Council Directive No. 89/298/EEC on the co-ordination of the requirements for the drawing-up, scrutiny and distribution of a prospectus when transferable securities are to be offered to the public (OJ no. L124, 5.5.89, p. 8). They also give effect, in relation to the mutual recognition of prospectuses and listing particulars, to certain provisions of Council Directive No. 80/390/EEC (OJ No. L100, 17.4.80, p. 1) which is amended by Council Directives 87/345/EEC (OJ No. L185, 4.7.87, p. 81), 90/211/EEC (OJ No. L112, 3.5.90, p. 24) and 94/18/EC (OJ No. L135, 31.5.94, p. 1).

Part I of the Regulations makes provision for the citation and commencement of the Regulations and contains interpretation provisions.

Part II of the Regulations makes provision for a prospectus to be prepared and published, without prior scrutiny and approval, where transferable securities which are not admitted to official listing, nor the subject of an application for official listing, are offered to the public for the first time. A prospectus must contain the information necessary for investors to make an informed assessment of the issuer's position and prospectus, and the rights attached to the securities, and must contain certain specified information (regulations 8 and 9; Schedule 1). A prospectus must be registered with the registrar of companies, and published, before an offer to the public is made. By regulation 7, certain sorts of offers of securities are deemed not to be offers to the public. Regulation 11 provides for information to be omitted from a prospectus in certain circumstances. Regulations 13 to 15 impose civil liability on persons responsible for a false or misleading prospectus. By regulation 16, contraventions of the requirement to publish a prospectus (and the requirement in regulation 12 to refer in advertisements to the availability of a prospectus) are subject to criminal or regulatory sanctions.

Part III of the Regulations gives effect to Schedule 2, which makes amendments to the Financial Services Act 1986 and other minor and consequential amendments. It also provides that where the Regulations create new criminal offences the maximum penalties shall not exceed those permitted under the European Communities Act 1972 (c. 68).

Part IV of the Regulations gives effect to Schedule 4 (mutual recognition of prospectuses and listing particulars) and deals with other miscellaneous matters.

Schedule 1 to the Regulations specifies the information with a prospectus prepared under Part II must contain.

Schedule 2 to the Regulations makes amendments to Part IV of the Financial Services Act 1986. The amended provisions of the Act allow listing rules to be made so that a prospectus, rather than listing particulars, must be produced where an application for admission to the Official List has been made, and the securities in question are to be offered to the public before admission (section 144).

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They also allow listing rules to be made so that a prospectus may be produced where there is no application for listing (section 156A). Schedule 2 also gives effect to Schedule 3.

Schedule 3 to the Regulations inserts Schedule 11A into the Act. Schedule 11A defines what is an offer to the public for the purposes of the amended provisions in Part IV of the Act. Certain sorts of offers (with some differences, those listed in regulation 7) are not offers to the public.

Schedule 4 to the Regulations deals with the mutual recognition of prospectuses and listing particulars approved in other member States for the purposes of Part IV of the Financial Services Act 1986, the Regulations themselves, and the Companies Act 1985.

Schedule 5 to the Regulations deals with the amendment of regulations made under the Banking Act 1987.