

SCHEDULE 1

Article 4

PART I

Controlled Activities

Accepting deposits

1. Accepting deposits is a controlled activity if—

- (a) money received by way of deposit is lent to others; or
- (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit,

and the person accepting the deposit holds himself out as accepting deposits on a day to day basis.

Effecting or carrying out contracts of insurance

2.—(1) Effecting a contract of insurance as principal is a controlled activity.

(2) Carrying out a contract of insurance as principal is a controlled activity.

(3) There is excluded from sub-paragraph (1) or (2) the effecting or carrying out of a contract of insurance of the kind described in article 12 of the Regulated Activities Order by a person who does not otherwise carry on an activity falling within those sub-paragraphs.

Dealing in securities and contractually based investments

3.—(1) Buying, selling, subscribing for or underwriting securities or contractually based investments (other than investments of the kind specified by paragraph 25, or paragraph 27 so far as relevant to that paragraph) as principal or agent is a controlled activity.

(2) A person does not carry on the activity in sub-paragraph (1) by accepting an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.

(3) The reference in sub-paragraph (2) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Arranging deals in investments

4.—(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

- (a) a security;
- (b) a contractually based investment; or
- (c) an investment of the kind specified by paragraph 24, or paragraph 27 so far as relevant to that paragraph,

is a controlled activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within sub-paragraph (1)(a), (b) or (c) (whether as principal or agent) is a controlled activity.

(3) A person does not carry on an activity falling within paragraph (2) merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

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Managing investments

5. Managing assets belonging to another person, in circumstances involving the exercise of discretion, is a controlled activity if—

- (a) the assets consist of or include any investment which is a security or a contractually based investment; or
- (b) the arrangements for their management are such that the assets may consist of or include such investments, and either the assets have at any time since 29th April 1988 done so, or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.

Safeguarding and administering investments

6.—(1) The activity consisting of both—

- (a) the safeguarding of assets belonging to another; and
- (b) the administration of those assets,

or arranging for one or more other persons to carry on that activity, is a controlled activity if either the condition in paragraph (a) or (b) of sub-paragraph (2) is met.

(2) The condition is that—

- (a) the assets consist of or include any investment which is a security or a contractually based investment; or
- (b) the arrangements for their safeguarding and administration are such that the assets may consist of or include investments of the kind mentioned in sub-paragraph (a) and either the assets have at any time since 1st June 1997 done so, or the arrangements have at any time (whether before or after that date) been held out as ones under which such investments would be safeguarded and administered.

(3) For the purposes of this article—

- (a) it is immaterial that title to the assets safeguarded and administered is held in uncertificated form;
- (b) it is immaterial that the assets safeguarded and administered may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

(4) For the purposes of this article, the following activities do not constitute the administration of assets—

- (a) providing information as to the number of units or the value of any assets safeguarded;
- (b) converting currency;
- (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

Advising on investments

7. Advising a person is a controlled activity if the advice is—

- (a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
- (b) advice on the merits of his doing any of the following (whether as principal or agent)—

- (i) buying, selling, subscribing for or underwriting a particular investment which is a security or a contractually based investment; or
- (ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

Advising on syndicate participation at Lloyd's

8. Advising a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate is a controlled activity.

Providing funeral plan contracts

- 9.**—(1) Entering as provider into a qualifying funeral plan contract is a controlled activity.
- (2) A “qualifying funeral plan contract” is a contract under which—
- (a) a person (“the customer”) makes one or more payments to another person (“the provider”);
 - (b) the provider undertakes to provide, or to secure that another person provides, a funeral in the United Kingdom for the customer (or some other person who is living at the date when the contract is entered into) on his death; and
 - (c) the provider is a person who carries on the regulated activity specified in article 59 of the Regulated Activities Order.

Providing qualifying credit

- 10.**—(1) Providing qualifying credit is a controlled activity.
- (2) “Qualifying credit” is a credit provided pursuant to an agreement under which—
- (a) the lender is a person who carries on the regulated activity specified in article 61 of the Regulated Activities Order; and
 - (b) the obligation of the borrower to repay is secured (in whole or in part) on land.
- (3) “Credit” includes a cash loan and any other form of financial accommodation.

Arranging qualifying credit etc.

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

Advising on qualifying credit etc.

- 10B.**—(1) Advising a person is a controlled activity if the advice is—
- (a) given to the person in his capacity as a borrower or potential borrower; and
 - (b) advice on the merits of his doing any of the following—
 - (i) entering into an agreement for the provision of qualifying credit, or

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- (ii) varying the terms of a regulated mortgage contract entered into by him after the coming into force of article 61 of the Regulated Activities Order in such a way as to vary his obligations under that contract.

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

Agreeing to carry on specified kinds of activity

11. Agreeing to carry on any controlled activity falling within any of paragraphs 3 to 10B above is a controlled activity.

PART II

Controlled Investments

12. A deposit.

13. Rights under a contract of insurance.

14.—(1) Shares or stock in the share capital of—

- (a) any body corporate (wherever incorporated);
- (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom.

(2) Sub-paragraph (1) includes—

- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986⁽¹⁾;
- (b) any transferable shares in a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body.

(3) But subject to sub-paragraph (2) there are excluded from sub-paragraph (1) shares or stock in the share capital of—

- (a) an open-ended investment company;
- (b) a building society incorporated under the law of, or any part of, the United Kingdom;
- (c) any body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions;
- (d) any body constituted under the law of an EEA State for purposes equivalent to those of a body falling within paragraph (b) or (c).

Instruments creating or acknowledging indebtedness

15.—(1) Subject to sub-paragraph (2), such of the following as do not fall within paragraph 16—

- (a) debentures;
- (b) debenture stock;
- (c) loan stock;
- (d) bonds;

(1) 1986 c. 53.

- (e) certificates of deposit;
- (f) any other instrument creating or acknowledging a present or future indebtedness.

(2) If and to the extent that they would otherwise fall within sub-paragraph (1), there are excluded from that sub-paragraph—

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
- (c) a banknote, a statement showing a balance on a current, deposit or saving account, a lease or other disposition of property, a heritable security; and
- (d) a contract of insurance.

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

Government and public securities

16.—(1) Subject to sub-paragraph (2), loan stock, bonds and other instruments—

- (a) creating or acknowledging indebtedness; and
- (b) issued by or on behalf of a government, local authority (whether in the United Kingdom or elsewhere) or international organisation.

(2) There are excluded from sub-paragraph (1)—

- (a) so far as applicable, the instruments mentioned in paragraph 15(2)(a) to (d);
- (b) any instrument creating or acknowledging indebtedness in respect of—
 - (i) money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank;
 - (ii) money raised under the National Loans Act 1968(2) under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972(3).

Instruments giving entitlements to investments

17.—(1) Warrants and other instruments entitling the holder to subscribe for any investment falling within paragraph 14, 15 or 16.

(2) It is immaterial whether the investment to which the entitlement relates is in existence or identifiable.

(3) An investment falling within this paragraph shall not be regarded as falling within paragraph 21, 22 or 23.

Certificates representing certain securities

18.—(1) Subject to sub-paragraph (2), certificates or other instruments which confer contractual or property rights (other than rights consisting of an investment of the kind specified by paragraph 21)—

(2) 1968 c. 13.

(3) 1972 c. 65.

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- (a) in respect of any investment of the kind specified by any of paragraphs 14 to 17 being an investment held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
 - (b) the transfer of which may be effected without the consent of that person.
- (2) There is excluded from sub-paragraph (1) any instrument which confers rights in respect of two or more investments issued by different persons, or in respect of two or more different investments of the kind specified by paragraph 16 and issued by the same person.

Units in a collective investment scheme

19. Units in a collective investment scheme.

Rights under a stakeholder pension scheme

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

Options

21. Options to acquire or dispose of—
- (a) a security or contractually based investment (other than one of a kind specified in this paragraph);
 - (b) currency of the United Kingdom or of any other country or territory;
 - (c) palladium, platinum, gold or silver; or
 - (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of sub-paragraph (a), (b) or (c).

Futures

22.—(1) Subject to sub-paragraph (2), rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.

(2) There are excluded from sub-paragraph (1) rights under any contract which is made for commercial and not investment purposes.

(3) For the purposes of sub-paragraph (2), in considering whether a contract is to be regarded as made for investment purposes or for commercial purposes, the indicators set out in article 84 of the Regulated Activities Order shall be applied in the same way as they are applied for the purposes of that article.

Contracts for differences etc.

- 23.—(1) Subject to sub-paragraph (2), rights under—
- (a) a contract for differences; or
 - (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
 - (i) the value or price of property of any description;
 - (ii) an index or other factor designated for that purpose in the contract.
- (2) There are excluded from sub-paragraph (1)—

- (a) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates;
- (b) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor;
- (c) rights under any contract under which—
 - (i) money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank; or
 - (ii) money is raised under the National Loans Act 1968 under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972;
- (d) rights under a qualifying contract of insurance.

Lloyd’s syndicate capacity and syndicate membership

- 24.—(1) The underwriting capacity of a Lloyd’s syndicate.
- (2) A person’s membership (or prospective membership) of a Lloyd’s syndicate.

Funeral plan contracts

- 25. Rights under a qualifying funeral plan contract.

Agreements for qualifying credit

- 26. Rights under an agreement for qualifying credit.

Rights to or interests in investments

27.—(1) Subject to sub-paragraphs (2) and (3), any right to or interest in anything which is specified by any other provision of this Part of this Schedule (other than paragraph 26).

(2) Sub-paragraph (1) does not apply to interests under the trusts of an occupational pension scheme.

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

(3) Sub-paragraph (1) does not apply to anything which falls within any other provision of this Part of this Schedule.

Interpretation

28. In this Schedule—

“buying” includes acquiring for valuable consideration;

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

“contractually based investment” means—

- (a) rights under a qualifying contract of insurance;
- (b) any investment of the kind specified by any of paragraphs 21, 22, 23 and 25;
- (c) any investment of the kind specified by paragraph 27 so far as relevant to an investment falling within (a) or (b);

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“occupational pension scheme” has the meaning given by section 1 of the Pensions Schemes Act 1993⁽⁴⁾;

“property” includes currency of the United Kingdom or any other country or territory;

“qualifying funeral plan contract” has the meaning given by paragraph 9;

“security” means a controlled investment falling within any of paragraphs 14 to 20 or, so far as relevant to any such investment, paragraph 27;

“selling”, in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes “disposing” includes—

- (a) in the case of an investment consisting of rights under a contract—
 - (i) surrendering, assigning or converting those rights; or
 - (ii) assuming the corresponding liabilities under the contract;
- (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and
- (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

“syndicate” has the meaning given in the Regulated Activities Order.

(4) The definition of occupational pension scheme in section 1 has been amended by the Pensions Schemes Act 2004 (c. 35), section 239.