

## **INVESTMENT ENTITIES (LISTING RULES AND CONDUCT OF BUSINESS) INSTRUMENT 2003**

### **Powers exercised**

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):

- (1) section 74 (The official list);
- (2) section 75 (Applications for listing);
- (3) section 79 (Listing particulars and other documents);
- (4) section 80 (General duty of disclosure in listing particulars);
- (5) section 84 (Prospectuses)
- (6) section 96 (Obligations of issuers of listed securities);
- (7) section 138 (General rule-making power);
- (8) section 145 (Financial promotion rules);
- (9) section 147(1) (Control of information rules); and
- (10) section 149 (Evidential provisions).

B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### **Commencement**

C. This instrument comes into force as follows:

- (1) the Listing Rules in Annex A, Part 1 come into force on 1 April 2005;
- (2) the Conduct of Business Miscellaneous Transitional Rule in Annex B and the amendments to the Conduct of Business sourcebook in Annex C come into force on 1 January 2004;
- (3) the remainder of this instrument comes into force on 1 November 2003.

### **Amendments to the Listing Rules**

D. The Listing Rules are amended in accordance with Annex A, Parts 1 and 2 to this instrument.

### **Amendments to the Conduct of Business sourcebook**

E. The Conduct of Business Transitional Rules are amended in accordance with Annex B to this instrument.

F. The Conduct of Business sourcebook is amended in accordance with Annex C to this instrument.

**Amendments to the Glossary**

G. The Glossary is amended in accordance with Annex D to this instrument.

**Citation**

H. This instrument may be cited as the Investment Entities (Listing Rules and Conduct of Business) Instrument 2003.

By order of the Board  
18 September 2003

## Annex A

### Amendments to Listing Rules

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Part 1

#### Amendments coming into force on 1 April 2005

#### CHAPTER 21 INVESTMENT ENTITIES

...

#### Investment companies and investment trusts

Conditions for listing - investment companies other than investment trusts

21.9 An investment company (other than an investment trust) must comply with the conditions for listing, as set out in chapter 3, with the following modifications and additional conditions:

...

- (d) the board of directors (or equivalent body) of the investment company must be able to demonstrate that it will act independently of any investment managers of the investment company; in any event a majority must not be directors ~~or employees of or professional advisers to the~~ of other investment companies managed by any such investment managers or by any other company in the same group as any such the investment managers or be directors, employees, partners or other officers of or professional advisers to any such investment manager or any other company in the same group as any such investment manager;
- (e) ~~Paragraph deleted – August 1995~~ in any event, no more than one director, partner, other officer or employee of or professional adviser to each such investment manager or any other company in the same group as any such investment manager may be a director of the investment company; any such director shall be subject to annual re election by shareholders;
- (ee) the Chairman of the Board of the investment company must be free of conflicts of interest and independent of any investment managers of the investment company and any other company in the same group as any such investment manager and, in any event, he must not be a director of any other investment company managed by any of the same investment managers or any other company in the same group as any such investment manager or a director, employee, partner or other officer of or professional adviser to any such investment manager or any other company in the same group as any such investment manager;

...

**Part 2**  
**Amendments coming into force on 1 November 2003**

CHAPTER 21  
INVESTMENT ENTITIES

...

Investment companies and investment trusts

Conditions for listing - investment companies other than investment trusts

21.9 An investment company (other than an investment trust) must comply with the conditions for listing, as set out in chapter 3, with the following modifications and additional conditions:

...

- (j) except to the extent that the UK Listing Authority agrees, the distribution as dividend of surpluses arising from the realisation of investments must be prohibited and a provision to this effect must be contained in the issuer's memorandum or articles of association; ~~and~~
- (k) paragraphs 3.18 to 3.21 (shares in public hands) do not apply to open-ended investment companies; and
- (l) not more than 10%, in aggregate, of the value of the gross assets of the issuer at the time of admission may be invested in other listed investment companies (including listed investment trusts) except that this restriction shall not apply to investments in investment companies or trusts which themselves have stated investment policies to invest no more than 15% of their gross assets in other listed investment companies (including listed investment trusts).

Conditions for listing - investment trusts

21.10 An investment trust must comply with the conditions for listing set out in chapter 3 as amended by paragraph 21.9(a) to ~~(ee d)~~ and (l). In addition, an investment trust must comply with the requirements laid down for investment trusts in section 842 of the Income and Corporation Taxes Act 1988.

...

Listing particulars or equivalent offering document

21.13 An investment company (including an investment trust) must comply with the requirements relating to listing particulars or equivalent offering documents set out in chapter 5 as modified by this chapter and in the case of overseas companies by chapter 17. Listing particulars or equivalent offering documents must contain:

- (a) a detailed description of the investment policies to be followed;
- (aa) in a prominent position and in clear language:
  - (i) a description of the risks involved in investing in investment companies;
  - (ii) a description of risks that are specific to those securities to be listed, the company or its investment policy;
  - (iii) without prejudice to the generality of the foregoing, a statement of the extent to which the company proposes to borrow money to achieve its investment objectives, together with an explanation of the risks to the value of the company's securities associated with any such borrowing; and
  - (iv) in so far as the company proposes to invest in other companies or funds which themselves invest in a portfolio of investments and those companies or funds borrow or propose to borrow money to achieve their investment objectives, a description of the risks to the value of the company's securities associated with any such borrowing;

...

...

21.14 A newly formed investment company (including an investment trust) must include in its listing particulars or equivalent offering document:

- (a) ~~in the absence of an accountants' report, a statement by the directors of the date upon which the company was incorporated and registered and that the company has not traded and no accounts have been made up; and.~~
- (b) ~~a statement that its principal investment policies there set out will, in the absence of unforeseen circumstances, be adhered to for at least three years following listing, and that any material change in the policies within that period may only be made with shareholder approval.~~

...

#### Continuing obligations

21.20 An investment company (other than an investment trust) must continue to comply with paragraph 21.9(g) and (h). An investment company (including an investment trust) must continue to comply with paragraph 21.9(d), (e), (ee) and (l) and must comply with the applicable continuing obligations set out in the listing rules, modified by paragraphs 21.22 to 21.25 and, in the case of overseas companies, by chapter 17, save that:

- (d) in the case of an open-ended investment company which is an unrecognised scheme, any provision of this paragraph 21.20 requiring

such a company to publish information or a document to the public will be modified to require the sending of such information or document only to the UK Listing Authority and to other recipients permitted under the Act;

(dd) in addition to the requirements of Chapter 12 (financial information) the issuer (including an investment trust) must include in its annual report and accounts;

(i) a statement in a prominent position, as to whether in the opinion of the the Directors the continuing appointment of the investment manager on the terms agreed is in the interests of shareholders as a whole, together with a statement of the reasons for this view; and

(ii) a summary of the principal contents of any agreements between the investment company and each of the investment managers, including but not limited to any provisions relating to compensation payable in the event of termination of the agreement;

...

(i) in the case of an investment company (including an investment trust) with no executive directors:

(i) paragraph 12.43A(a) does not apply in respect of Combined Code principles B.1 to B.3;

(ii) paragraph 12.43A(b) does not apply in respect of Combined Code provisions B.1.1 to B.1.10, B.2.1 to B.2.6 and B.3.1 to B.3.5; and

(iii) paragraph 12.43A(c) does not apply; ~~and~~

(j) for an investment company (including an investment trust), dealings by directors and purchases by the company of its own securities during a close period which would otherwise be prohibited under the provisions of the Model Code, may be permitted if the UK Listing Authority is satisfied that all price sensitive information which the directors and the company may have in periods leading up to an announcement of results has previously been notified to a Regulatory Information Service. The UK Listing Authority must be consulted at an early stage-;

(k) any material change to the investment policies of an investment company (including an investment trust) may only be made with shareholders' approval; and

(l) an investment company (including an investment trust) must notify to a Regulatory Information Service;

- (i) within two business days of the end of each calendar month, a list of all investments in other listed investment companies (including listed investment trusts), as at the last business day of that month, which themselves do not have stated investment policies to invest no more than 15% of their gross assets in other listed investment companies (including listed investment trusts): and
- (ii) within two business days of the end of each quarter, a list of all investments with a value greater than 5% of the companies gross assets and at least the 10 largest investments as at the last business day of that quarter.

## Annex B

### Amendments to the Conduct of Business Miscellaneous Transitional Rules

After Miscellaneous Transitional Rule 10, insert the following new Transitional Rule.

| Risk warnings for listed securities involving gearing |                   |   |                                                                                                                                                                                                                                                                                                                                                                                                                     |                |                   |
|-------------------------------------------------------|-------------------|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------|
| 11                                                    | COB 5.4.4E<br>(6) | R | A <i>firm</i> , which acts as a discretionary <i>investment manager</i> for a <i>private customer</i> on 1 January 2004 will not contravene this <i>evidential provision</i> if it provides the relevant risk warning to those <i>customers</i> no later than when it provides a statement in accordance with COB 8.2.4R provided that this is done no later than 9 months after this <i>rule</i> comes into force. | 1 January 2004 | 30 September 2004 |



## Annex C

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

3.8.9 G ...

(6) If the *financial promotion* relates to *securities*, or to an *investment trust savings scheme* for dealing in *securities*, in respect of which the conditions in (a), (b) and (c) are satisfied, then the *firm* should ensure that the risks associated with the relevant investment approaches in (b) are properly explained. The conditions are that:

(a) The *securities* are

(i) listed in the *United Kingdom* under chapter 21 of the *listing rules* (Investment entities); or

(ii) issued by an *investment trust* and listed in an *EEA State* other than the *United Kingdom*;

(b) the *issuer* of the *securities* in (a):

(i) uses or proposes to use *gearing* as an investment strategy; or

(ii) invests or proposes to invest in *securities* that satisfy the conditions in (a) and the *issuer* of such *securities* uses or proposes to use *gearing* as an investment strategy; and

(c) the *securities* are likely to be subject to fluctuations in value which are significant compared with the likely fluctuations in value of the underlying investments.

...

Examples of applications which could meet COB 3.9.15R

3.9.17 G ...

(14) ...  $\frac{1}{2}$

(15) (for a *security* or an *investment trust savings scheme* which satisfies the conditions specified in COB 3.8.9G(6)): 'This investment may be subject to sudden and large falls in value and you could get back nothing at all'.

...

4.2.15 E Table Content of terms of business provided to a customer: general requirements

...

(16) ...

- (f) a security or an investment trust savings scheme which satisfies the conditions specified in COB 3.8.9G(6);

...

5.4.4 E ... COB5.4.6E to COB5.4.11E as appropriate

(5) ;

- (6) a security or an investment trust savings scheme which satisfies the conditions specified in COB 3.8.9G(6) (see COB 5.4.11E).

...

Risk warnings in respect of listed securities where gearing is involved

5.4.11 E In relation to a transaction in a security or an investment trust savings scheme for dealing in securities which satisfies the conditions specified in COB 3.8.9G(6) a firm should provide to the private customer a notice to warn the private customer that the strategy which the issuer of securities uses or proposes to use may result in:

- (1) movements in the price of the securities being more volatile than the movements in the price of underlying investments;
- (2) the investment being subject to sudden and large falls in value; and
- (3) the private customer getting back nothing at all if there is a sufficiently large fall in value in the investment.

...

6.5.14 G ...

(15) ;

- (16) for a security or an investment trust savings scheme which satisfies the conditions specified in COB 3.8.9G(6), the fact that the investment may be subject to sudden and large falls in value and that the private customer may get back nothing at all if the fall in value is sufficiently large;

...

## Annex D

### Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

- gearing* (in *COB*) a strategy, with a view to enhancing the return for, or the value of, a *security* without increasing the amount invested by the holders of the *security*, involving one or more of the following:
- (a) borrowing money;
  - (b) investing in one or more instruments, such as (but not limited to) *warrants* or *derivatives*, for which a relatively small movement in the value or price of the underlying rights or assets to which the instrument relates, whether favourable or adverse, results in a larger movement in the value or price of the instrument; and
  - (c) structuring the rights of holders of a *security* so that a relatively small movement in the price or value of the underlying rights or assets, whether favourable or adverse, results in a larger movement in the price or value of the *security*.