STATUTORY RULES OF NORTHERN IRELAND

2004 No. 263

COMPANIES

Companies (Membership of Holding Company) (Dealers in Securities) Regulations (Northern Ireland) 2004

Made - - - -	*14th June 2004*
Coming into operation	*2nd August 2004*

The Department of Enterprise, Trade and Investment, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the acquisition by a body corporate of shares in its holding company, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Membership of Holding Company) (Dealers in Securities) Regulations (Northern Ireland) 2004 and shall come into operation on 2nd August 2004.

(2) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendment of Article 33 of the Companies (Northern Ireland) Order 1986

2. In Article 33 of the Companies (Northern Ireland) Order 1986 (membership of holding company)(**4**), for paragraphs (3) and (3A) there shall be substituted the following –

"(3) The prohibition does not apply where shares in the holding company are held by the subsidiary in the ordinary course of its business as an intermediary.

For this purpose a person is an intermediary if that person –

(a) carries on a bona fide business of dealing in securities;

(**1**) S.I.1997/1742
(**2**) 1972 c. 68; as amended by the European Economic Area Act 1993 (c. 51)
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1986/1032 (N.I. 6); Article 33 was substituted by Article 64(1) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), and amended by S.I. 2001/3649

(b) is a member of an EEA exchange (and satisfies any requirements for recognition as a dealer in securities laid down by that exchange) or is otherwise approved or supervised as a dealer in securities under the laws of an EEA State; and

(c) does not carry on an excluded business.

(3A) The excluded businesses are the following –

(a) any business which consists wholly or mainly in the making or managing of investments;

(b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business;

(c) any business which consists in insurance business;

(d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;

(e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.

(3B) For the purposes of paragraphs (3) and (3A) –

(a) the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988(**5**);

(b) "collective investment scheme" has the meaning given in section 235 of the Financial Services and Markets Act 2000(**6**);

(c) "EEA exchange" means a market which appears on the list drawn up by an EEA State pursuant to Article 16 of Council Directive 93/22/EEC on investment services in the securities field(**7**);

(d) "insurance business" means business which consists of the effecting or carrying out of contracts of insurance;

(e) "securities" includes –

(i) options,

(ii) futures, and

(iii) contracts for differences,

and rights or interests in those investments;

(f) "trustee" and "the operator" shall, in relation to a collective investment scheme, be construed in accordance with section 237(2) of the Financial Services and Markets Act 2000.

(3C) Paragraph (3B) must be read with –

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

(3D) Where –

(**5**) 1988 c. 1; section 839 was amended by section 74 of, and paragraph 20 of Part II of Schedule 17 to, the Finance Act 1995 (c. 4), and modified by S.I. 1988/745

(**6**) 2000 c. 8

(**7**) O.J. No. L141, 11.6.93, p. 27