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COMPANIES (AMENDMENT) ACT, 1999

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Stabilisation Rules

[No. 8] *Companies (Amendment) Act, 1999.* [1999.]

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COMPANIES (AMENDMENT) ACT, 1999

AN ACT TO AMEND AND EXTEND PARTS IV AND V OF THE COMPANIES ACT, 1990, TO PERMIT STABILISING ACTIVITY IN RELATION TO THE ISSUE OR SALE OF SECURITIES AND TO PROVIDE FOR CONNECTED MATTERS. [19th May, 1999]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“the Act of 1990” means the Companies Act, 1990;

“closing date” has the meaning assigned by the Stabilisation Rules;

“the Principal Act” means the Companies Act, 1963;

“stabilising period” has, in relation to anything done in the State pursuant to the Stabilisation Rules, the meaning assigned by the Stabilisation Rules and, in relation to anything done in a jurisdiction outside the State for the purpose of stabilising or maintaining the market price of securities, means the period beginning on—

- (a) in the case of an issue or offer for sale of securities (not being an issue of debentures or other debt securities), the date on which the earliest public announcement of such issue or offer is made which states the issue price or the offer price, as the case may be, for those securities, or
- (b) in the case of an issue of debentures or other debt securities, the date on which the earliest public announcement of such issue is made, whether or not that announcement states the issue price,

and ending on the expiration of—

- (i) the day which is 30 days after the closing date, or
- (ii) the day which a manager appointed by the issuer or, as the case may be, the offeror to conduct stabilising activity shall have notified a stock exchange on which stabilising activity was being conducted as the day on which it determined that it would take no further action to stabilise or maintain the market price of the securities concerned,

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whichever first occurs;

“Stabilisation Rules” means the rules referred to by that name which are set out in the *Schedule*.

(2) In this Act—

- (a) a reference to a Part, section or Schedule is a reference to a Part or section of, or a Schedule to, this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph, subparagraph, clause or subclause is a reference to the subsection, paragraph, subparagraph, clause or subclause of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any enactment is a reference to that enactment as amended, extended or adapted by or under any subsequent enactment including this Act.

Restriction of section 108 of Act of 1990.

2.—Section 108 of the Act of 1990 shall not be regarded as having been contravened by reason of—

- (a) anything done in the State for the purpose of stabilising or maintaining the market price of securities if it is done in conformity with the Stabilisation Rules, or
- (b) any action taken during the stabilising period by a person in any jurisdiction other than the State for the purpose of stabilising or maintaining the market price of securities, but only if the action taken is, in all material respects, permitted by or is otherwise in accordance with all relevant requirements applicable to such actions in the jurisdiction where such action is effected, including, if those securities are also listed on a stock exchange in that jurisdiction, the rules or other regulatory requirements governing that stock exchange.

Disclosure of interests in relevant share capital.

3.—(1) The acquisition or disposal of interests in relevant share capital by a person during the stabilising period concerned, which—

- (a) is done for the purpose of stabilising or maintaining the market price of securities, and
- (b) is so done either in conformity with the Stabilisation Rules or is an acquisition or disposal to which *section 2(b)* relates,

shall be disregarded during the stabilising period for the purposes of sections 67 to 79 of the Act of 1990.

(2) Any interest in relevant share capital which—

- (a) was acquired by a person during the stabilising period for the purpose of stabilising or maintaining the market price of securities,
- (b) was so acquired in accordance with this Act, and

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(c) continues to be held by such person at the end of the stabilising period, S.3

shall be treated, for the purposes of sections 67 to 79 of the Act of 1990, as having been acquired by such person on the first day following the end of the stabilising period that is not a Saturday, Sunday or public holiday.

(3) Notwithstanding *subsection (1)*, subsection (4) of section 91 of the Act of 1990 shall operate to determine the interests which are to be notified to the Irish Stock Exchange Limited, and the manner in which they are to be so notified, under subsection (2) of that section.

(4) In this section “relevant share capital” has the meaning assigned by section 67(2) of the Act of 1990.

4.—Section 110 of the Act of 1990 is hereby amended by the insertion of the following after subsection (2):

Amendment of section 110 of Act of 1990.

“(2A) A person shall be regarded as having entered in good faith into a transaction to which subsection (2)(b) relates, if such person enters in good faith into—

- (a) negotiations with a view to entering an agreement to which paragraph (b) or (c) would relate, or
- (b) an agreement to underwrite securities, or
- (c) an agreement, in advance of dealing facilities being provided by a recognised stock exchange for securities, to acquire or subscribe for a specified number of those securities, or
- (d) a transaction in accordance with such person’s obligations under an agreement to which paragraph (b) or (c) relates.”.

5.—(1) Where, in any respect, any difficulty arises in the operation of any provision of the Stabilisation Rules, the Minister for Enterprise, Trade and Employment may by regulations amend the Stabilisation Rules to do anything which appears to him or her to be necessary or expedient for removing that difficulty, and any such regulations may modify any provision of the Stabilisation Rules or add thereto so far as may be necessary or expedient for carrying the *Schedule* into effect.

Removal of difficulties.

(2) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

6.—The Companies Act, 1990 (Insider Dealing) Regulations, 1991 (S.I. No. 151 of 1991), and the Companies Act, 1990 (Insider Dealing) Regulations, 1992 (S.I. No. 131 of 1992), are hereby revoked.

Revocations.

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Short title,
collective citation,
construction and
commencement.

7.—(1) This Act may be cited as the Companies (Amendment) Act, 1999.

(2) This Act and the Companies Acts, 1963 to 1990, may be cited together as the Companies Acts, 1963 to 1999, and shall be construed together as one.

(3) This Act shall come into operation on such day or days as may be appointed by order or orders made by the Minister for Enterprise, Trade and Employment, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act.

Section 1(1).

SCHEDULE

Stabilisation Rules

Definitions.

1. In these Rules—

“associated securities” means securities—

- (a) which are in all respects uniform with the relevant securities,
or
- (b) for which the relevant securities may be exchanged or into which they may be converted, or
- (c) which the holders of the relevant securities have, by virtue of their holdings of those securities, rights to acquire or to subscribe for, or
- (d) which are depository receipts which represent or confer property rights in respect of relevant securities or securities to which *paragraph (a), (b), (c) or (f)* relates or which represent or confer a contractual right (other than an option) to acquire such securities otherwise than by subscription; or
- (e) which represent or confer any right, option or obligation in respect of an index relating to relevant securities or to securities to which *paragraph (a), (b), (c) or (d)* relates,
or
- (f) which represent or confer a right to acquire a particular amount of relevant securities or of any securities to which *paragraph (a), (b), (c), (d) or (e)* relates at a future date at a particular price (“associated call options”) or which otherwise represent or confer any right, option or obligation in respect of such securities;

“closing date” means—

- (a) in the case of an issue of securities, the date on which the issuer of the securities receives the proceeds of the issue or, where the issuer receives those proceeds in instalments, the date on which it receives the first instalment; and
- (b) in the case of an offer for sale of securities, the date on which the offeror or, as the case may be, the offerors receive the proceeds of the offer for sale, or where the

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offeror or, as the case may be, the offerors receive those proceeds in instalments, the date on which the offeror or, where there is more than one offeror, one or more of the offerors receives the first instalment; Sch.

“introductory period” means the period starting at the time of the first public announcement from which it could reasonably be deducted that the issue was intended to take place in some form and at some time, and ending with the beginning of the stabilising period;

“issue”, except in the definitions of “closing date” and “stabilising period” and in *Rule 2*, includes offer for sale and “issued” shall be construed accordingly;

“issue price” means the specified price at which the relevant securities are issued without deducting any selling concession or commission;

“issuer”, except in the definition of “closing date”, includes offeror;

“manager” means the person instructed by the issuer of the securities to manage the issue;

“public announcement” means any communication made by or on behalf of the issuer or the manager, being a communication made in circumstances in which it is likely that members of the public will become aware of the communication;

“recognised stock exchange” has the meaning assigned by section 107 of the Companies Act, 1990;

“the Register” has the meaning assigned by *Rule 5(1)(d)*;

“relevant day” means—

(a) the 30th day after the closing date or,

(b) where before the 30th day after the closing date the stabilising manager has determined that he or she would take no further action to stabilise or maintain the market price of the relevant securities and has notified the Irish Stock Exchange Limited accordingly pursuant to *Rule 8*; the day he or she so determined;

“relevant securities” has the meaning given by *Rule 2*;

“securities” has the meaning assigned by section 107 of the Companies Act, 1990;

“stabilising action” means a purchase of, or agreement to purchase or offer to purchase relevant securities or associated securities permitted to be made by *Rule 3*;

“stabilising manager” means the person who is manager or, if there be more than one manager, such one of the managers as shall have been agreed between them to be the one to conduct stabilising action in the State in relation to the issue of the relevant securities;

“stabilising period” means the period beginning with the date on which the earliest public announcement of the issue or offer for sale which states the issue price or offer price, as the case may be, is made and ending with the relevant day, save that, in relation to an issue of relevant securities which are debentures or other debt securities, the

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stabilising period means the period beginning with the date on which the earliest public announcement of the issue is made (whether or not that announcement states the issue price) and ending with the relevant day;

“takeover offer” means an offer made generally to holders of shares in a company to acquire those shares or a specified proportion of them, or to holders of a particular class of those shares to acquire the shares of that class or a specified proportion of them.

Application.

2. These Rules apply to—

- (a) an issue of securities for cash,
- (b) an offer of securities for cash for which securities dealing facilities are not already provided by a recognised stock exchange, and
- (c) an offer of securities for cash for which securities dealing facilities are already provided by a recognised stock exchange, if the total cost of the securities which are the subject of the offer is at least £15,000,000 (or the equivalent in the currency or unit of account in which the price of the securities is stated),

and which is made other than in connection with a takeover offer and at a specified price and which securities may be dealt in on a recognised stock exchange without a formal application, or in respect of which application has been made to a recognised stock exchange for the securities to be dealt in on that exchange, and such securities are in these Rules referred to as “relevant securities”.

Permitted stabilising action.

3. (1) Subject to *paragraph (2)* and *Rules 6* and *7*, the stabilising manager may during the stabilising period do any or all of the following, with a view to stabilising or maintaining the market price of the relevant securities:

- (a) purchase, agree to purchase or offer to purchase any of the relevant securities, and
- (b) purchase, agree to purchase or offer to purchase any associated securities.

(2) A stabilising manager may effect a stabilising action pursuant to *paragraph (1)* only if the stabilising manager reasonably believes that the conditions specified in *Rule 5* have been fulfilled.

(3) A stabilising manager who effects a stabilising action pursuant to *paragraph (1)* shall comply with *Rule 9*.

Permitted action ancillary to stabilising action.

4. (1) Subject to *paragraph (2)* and *Rule 6*, the stabilising manager may—

- (a) with a view to effecting stabilising actions, either or both—
 - (i) make allocations of a greater number of relevant securities than will be issued, and

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(ii) sell, offer to sell, or agree to sell a greater number of relevant securities or associated securities than the stabilising manager has available for sale, Sch.

(b) sell, offer to sell, or agree to sell relevant securities or associated securities in order to close out or liquidate any position established by stabilising actions whether or not those actions were in accordance with *Rule 3*, and

(c) purchase, offer to purchase or agree to purchase relevant securities or associated securities in order to close out or liquidate any position established pursuant to *clause (i)* or *(ii)* of *subparagraph (a)*.

(2) A stabilising manager may act pursuant to *paragraph (1)* only if he or she reasonably believes that the conditions specified in *Rule 5* have been fulfilled.

(3) A stabilising manager who acts pursuant to *paragraph (1)* shall comply with *Rule 9*.

(4) A transaction of the type described in *paragraph (1)(c)* may be effected without regard to the requirements as to purchasing price limits set out in *Rule 7*.

Preliminary steps before stabilising action, etc.

5. (1) The following are the conditions which have, in the reasonable belief of the stabilising manager, to have been fulfilled before any stabilising action or action pursuant to *Rule 4(1)* may be taken in accordance with these Rules:

(a) from the beginning of the introductory period—

(i) any electronic screen-based statement, including any screen facility provided by the stabilising manager through which persons are informed of the sale or purchase price of securities, or

(ii) any announcement intended for publication in any newspaper and any other announcement of a public nature, or

(iii) any invitation telex or equivalent document;

which refers to the issue concerned and is made or published by or on behalf of the issuer or the stabilising manager shall during the introductory period, include a reference to the future prospectus or to the prospectus or include the word “Stabilisation”,

(b) from the beginning of the introductory period, any preliminary offering circular, preliminary offering prospectus, final offering circular or final offering prospectus relating to the issue of the securities concerned shall include the following statement or a statement to the like effect:

“In connection with this issue [name of stabilising manager] may over-allot or effect transactions which stabilise or maintain the market price of [description of relevant securities and of any associated securities] at a level which might not otherwise prevail. Such stabilising, if commenced, may be discontinued at any time”,

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and references in these Rules to a “disclosure statement” shall be to such statement or such statement to like effect,

(c) if there are associated securities in existence the market price of which was, at the time the issue price of the relevant securities was determined, at a level higher than it otherwise would have been because of any act performed by, or any course of conduct engaged in by, any person which the stabilising manager knows or ought reasonably to know created a false or misleading impression in the market in or the price or value of that security which may induce, or may have induced, another person—

(i) to enter into, or refrain from entering into any bargain or other transaction relative to such security, or

(ii) to exercise or refrain from exercising any rights conferred by that security,

the stabilising manager is satisfied that the issue price of the relevant securities is no higher than it would have been had that act not been performed or that course of conduct not been engaged in,

and

(d) the stabilising manager has established a register (in these Rules referred to as “the Register”) to record in relation to each transaction effected in the relevant securities or associated securities the matters required to be recorded by *Rule 9*.

(2) (a) Any disclosure required by *paragraph (1)(a)* to be included in a document or communication, or any disclosure statement required by *paragraph (1)(b)* to be included in a circular or prospectus, shall be set out prominently and in a legible form in the document or communication concerned.

(b) The disclosure statement may be adapted or omitted to comply with the requirements of any other jurisdiction in which transactions to stabilise or maintain the market price of securities may be conducted in connection with the issue and so as not to require any person duly appointed to conduct stabilising activity in respect of a jurisdiction other than the State to commit any breach of any legal rule or requirement in respect of any communication or announcement made or advertisement or document issued in that jurisdiction.

(3) (a) Except where provided for by *subparagraphs (a) and (b) of paragraph (1)*, this Rule shall not apply to any communication, advertisement or document.

(b) Without prejudice to the generality of *subparagraph (a)*, a disclosure or a disclosure statement need not be set out in any—

(i) allotment telex or similar document,

(ii) pricing telex or similar document,

(iii) contract note, or

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- (iv) short form or image advertisement, including any newspaper, radio or television advertisement designed to generate interest in the issue of the securities concerned and any marketing brochure as long as it does not constitute a preliminary offering circular or preliminary offering prospectus. Sch.

Restriction on stabilising action in associated securities.

6. No stabilising action shall be taken in any associated securities of those relevant securities which are debentures or other debt securities and which associated securities are associated securities because—

- (a) the relevant securities may be exchanged for or converted into the associated securities, or
- (b) the holders of the relevant securities have a right to subscribe for or to acquire the associated securities,

unless the terms on which the relevant securities may be exchanged for or converted into the associated securities, or the rights of holders of the relevant securities to subscribe for or to acquire the associated securities, have been finally settled and been made the subject of a public announcement.

Limits on prices.

7. (1) No stabilising action shall be effected by the stabilising manager at a price higher than any relevant price determined in accordance with this Rule.

(2) The limits on prices at which stabilising action may be effected shall be as follows:

- (a) in the case of relevant securities and associated securities which are in all respects uniform with the relevant securities (not being debentures or other debt securities)—
- (i) for the initial stabilising action, the issue price,
- (ii) for subsequent actions—
- (I) where there has been a deal at a price above the price at which the initial stabilising action took place (the “initial stabilising price”) on the relevant exchange which has not been done by or on the instructions of the stabilising manager, the issue price, or the price at which that deal was done, whichever is the lower, or
- (II) where there has been no deal of the type described in *subclause (I)*, the issue price, or the initial stabilising price, whichever is the lower,
- (b) in the case of associated securities (not being debentures or other debt securities, associated securities which are in all respects uniform with the relevant securities, or associated call options)—
- (i) for the initial stabilising action, the market bid price of the associated securities at the beginning of the stabilising period,

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(ii) for subsequent actions—

(I) where there has been a deal at a price above the price at which the initial stabilising action took place (the “initial stabilising price”) on the relevant exchange which has not been done by or on the instructions of the stabilising manager, the market bid price in *clause (i)* or the price at which that deal in the associated securities was done, whichever is the lower, or

(II) where there has been no deal of the type described in *subclause (I)*, the market bid price as in *clause (i)*, or the initial stabilising price for the associated securities, whichever is the lower,

and

(c) in the case of associated call options—

(i) for the initial stabilising action, the market price of the associated call option at the beginning of the stabilising period,

(ii) for subsequent actions—

(I) where there has been a deal at a price above the price at which the initial stabilising action took place (the “initial stabilising price”) on the relevant exchange which has not been done by or on the instructions of the stabilising manager, the market price in *clause (i)* or the price at which that deal in the associated call option was done, whichever is the lower, or

(II) where there has been no deal of the type described in *subclause (I)*, the market price as in *clause (i)*, or the initial stabilising price for the associated call option, whichever is the lower.

(3) (a) In this Rule “relevant exchange” means the stock exchange which the stabilising manager reasonably believes to be the principal stock exchange on which those securities, or as the case may be, options, are dealt in at the time of the transaction.

(b) For the purposes of this Rule—

(i) where the price of any relevant securities or associated securities on the relevant exchange is in a currency other than the currency of the price of the securities to be stabilised, stabilising actions may be made at a price that reflects any movement in the relevant rate of exchange, but this shall not permit stabilising action under *paragraph (2)(a)* at a price above the equivalent, in the other currency, of the issue price in the currency on the relevant exchange,

(ii) any convertible bond which is both a debenture or other debt security and an associated call option shall be treated as a debenture only,

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- (iii) where no market bid price is quoted in respect of the associated security concerned at the beginning of the stabilising period, the relevant price shall be the closing quotation price in respect of such securities on the previous business day as published in the relevant stock exchange list. Sch.

Notification of termination of stabilising action.

8. Where the stabilising manager determines, before the 30th day after the closing date that he or she will take no further action to stabilise or maintain the market price of the relevant securities, he or she shall notify the Irish Stock Exchange Limited without delay of that determination and the Irish Stock Exchange Limited shall publish that information in such form as it sees fit.

Recording of stabilisation transactions.

9. (1) The stabilising manager shall record in the Register the matters specified in *subparagraph (2)* in relation to transactions effected pursuant to *Rules 3 and 4* and that record shall be made before the opening of business on the day that is not a Saturday, Sunday or public holiday which next follows the day the transaction was effected and a copy of that record shall be communicated to the Irish Stock Exchange Limited before the end of that day.

(2) The following matters shall be recorded in the Register:

- (a) the names of the persons to whom the relevant securities were allocated or issued and, in relation to each person, the amount allocated or issued to him or her;
- (b) the description of the security which is the subject of the transaction;
- (c) the price (excluding any commission payable) of each security which is the subject of the transaction;
- (d) the number of securities which are the subject of the transaction;
- (e) the date and time of the transaction; and
- (f) the identity of the counterparty to the transaction.

(3) A stabilising manager who offers or effects a stabilising action at a price determined in accordance with *subparagraph (a)(ii)(I)*, *(b)(ii)(I)* or *(c)(ii)(I)* of *Rule 7(2)* shall record in the Register details of the transaction which affects the maximum price of the stabilising action.