

CHAPTER 16.

An Act to provide for regulating the business of dealing in securities; to restrict the registration of societies under the Industrial and Provident Societies Act, 1893, and confer on the registrar of building societies further powers in relation to such societies; to make general provision for preventing fraud in connection with dealings in investments; and to provide for purposes connected with the matters aforesaid.

[28th April 1939.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Provisions for regulating the business of dealing in securities.

Licensing of dealers in securities.

1.—(1) Subject to the provisions of the next following section, no person shall, on or after the appointed day,—

(*a*) carry on or purport to carry on the business of dealing in securities except under the authority of a principal's licence, that is to say, a licence under this Act authorising him to carry on the business of dealing in securities, or

(*b*) in the capacity of a servant or agent of any person carrying on or purporting to carry on that business, deal or purport to deal in securities except under the authority of a representative's licence, that is to say, a licence under this Act authorising him to deal in securities as a servant or agent of any holder of a principal's licence for the time being in force.

(2) Any person who contravenes this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine or, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(3) Proceedings for an offence under this section shall not, in England, be instituted except by, or with the consent of, the Board of Trade or the Director of Public Prosecutions:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Saving for certain transactions.

2.—(1) The restrictions imposed by section one of this Act in relation to dealing in securities shall not apply to the doing of anything by, or on behalf of,—

(*a*) a member of any recognised stock exchange or recognised association of dealers in securities, or

(*b*) the Bank of England, any statutory corporation or municipal corporation, any exempted dealer or any industrial and provident society or building society, or

(*c*) any person acting in the capacity of manager or trustee under an authorised unit trust scheme.

(2) For the purpose of determining whether or not a person has contravened any of the restrictions imposed

by section one of this Act, no account shall be taken of his having done any of the following things (whether as a principal or as an agent), that is to say,—

(*a*) effecting transactions with, or through the agency of,—

(i) such a person as is mentioned in paragraph (*a*), paragraph (*b*) or paragraph (*c*) of the preceding subsection, or a person acting on behalf of such a person as is so mentioned, or

(ii) the holder of a licence,

(*b*) issuing any prospectus to which section thirty-five or section three hundred and fifty-four of the Companies Act, 1929, applies, 19 & 20 Geo. 5. c. 23.

(*c*) issuing any document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—

(i) would, if the corporation were a registered company, be a prospectus to which section thirty-five of the Companies Act, 1929, applies, and

(ii) contains all the matters which, by virtue of section three hundred and fifty-four of the said Act, it would have to contain if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company, and

(*d*) issuing any form of application for shares in, or debentures of, a corporation together with—

(i) a prospectus which complies with the requirements of section thirty-five or Part XII of the Companies Act, 1929, or

(ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters mentioned in sub-paragraph (ii) of paragraph (*c*) of this subsection,

or of his having, as a principal, acquired, subscribed for or underwritten securities, or effected transactions with a person whose business involves the acquisition

and disposal, or the holding, of securities (whether as a principal or as an agent).

Nothing in this subsection shall be construed as authorising any person to hold himself out as carrying on the business of dealing in securities.

Applications for, and grant and extent of, licences.

3.—(1) Subject to the following provisions of this Act, the Board of Trade—

(*a*) upon an application in that behalf made by any person in the prescribed manner, and on payment of the prescribed fee, shall grant to that person a principal's licence, and

(*b*) upon an application made by any person in the prescribed manner, and on payment of the prescribed fee, shall grant to that person a representative's licence.

(2) A licence shall, unless in the meantime it is revoked, be valid for the period of one year beginning with the day specified in the licence as the day on which it takes effect, and no longer.

(3) A principal's licence shall specify the name of the person thereby authorised to carry on the business of dealing in securities, and shall not authorise him to carry on that business under any name other than that specified in the licence as his name :

Provided that, if the Board of Trade think fit, such a licence may, at the request of the applicant for the licence, be framed so as to authorise the holder thereof to carry on the said business, either alone or jointly with any other person being the holder of a principal's licence, under such name or style as the applicant may specify in his application.

Deposits or guarantees required in connection with applications for principal's licences.

4.—(1) Subject to the provisions of this section, the Board of Trade shall not grant a principal's licence unless the sum of five hundred pounds has been, and remains, deposited by the applicant for the licence with the Accountant General of the Supreme Court of Judicature.

(2) Where any sum has been deposited under this section, then—

(*a*) in the event of the depositor becoming bankrupt, the amount of the deposit shall be paid to the trustee in bankruptcy; or

(*b*) if, in a case where the depositor is a corporation, the corporation is ordered to be wound up by, or under the supervision of, the court, the amount of the deposit shall be repaid to the corporation;

and the Board of Trade may by regulations determine the circumstances in which, apart from the preceding provisions of this subsection, a sum deposited under this section may be withdrawn; but, save as aforesaid, no person shall be entitled to withdraw or transfer any deposit made under this section.

(3) The Board of Trade may make such regulations as appear to them to be necessary with respect to the investment of sums deposited under this section, the deposit of securities in lieu of money, the payment to the depositor of the interest or dividends from time to time accruing due on any securities in which a deposit under this section is for the time being invested, or on any securities deposited under this section in lieu of money, and the realisation of such securities as aforesaid in specified circumstances.

(4) Upon any application for a principal's licence the Board of Trade may dispense with the necessity of making a deposit under this section in relation to the application—

(*a*) if there is given to the Board by a person approved by them an undertaking in the prescribed form that, in consideration of the Board granting such a licence upon that application, the person giving the undertaking will, upon the occurrence of the following event at any time before a further principal's licence is granted to the holder of the licence referred to in the undertaking, that is to say, the holder becoming bankrupt or, in a case where the holder is a corporation, the corporation being ordered to be wound up by, or under the supervision of, the court, pay the sum of five hundred pounds to the trustee in bankruptcy or to the corporation, as the case may be; or

(*b*) if the Board are satisfied that the applicant has at all times since the beginning of the year nineteen hundred and thirty-nine been carrying on in Great Britain the business of dealing in securities, and that it would cause him undue hardship to make a deposit under this section.

(5) In the event in which, by virtue of an undertaking given under the last preceding subsection, any sum becomes payable to a trustee in bankruptcy or to a corporation, the trustee or the corporation, as the case may be, shall have the power and duty to recover that sum from the person by whom it is payable; but if, in a case where any sum is paid in pursuance of such an undertaking, it is found upon the administration in bankruptcy or the winding-up that the assets of the bankrupt or the corporation exceed the amount required to meet his or its debts and liabilities (including the costs and expenses of the administration or winding-up), the amount of the excess or the amount of the sum so paid, whichever is the less, shall be repaid by the trustee or corporation to, or to the personal representative of, the person by whom the undertaking was given.

Refusal and revocation of licences.

5. Subject to the provisions of this section, the Board of Trade may refuse to grant an application for a licence or, where a licence has been granted, may revoke the licence, if—

(1) the applicant or the holder of the licence has not, on the occasion of the application or, as the case may be, at any prescribed time during the currency of the licence, furnished to the Board such information relating to him, and to any circumstances likely to affect his method of conducting business, as may be prescribed, being information verified in such manner, whether by statutory declaration or otherwise, as the Board may require, or

(2) it appears to the Board that—

(*a*) by reason of the applicant or the holder of the licence, or any person employed by, or associated with, the applicant or holder for the purposes of his business,—

(i) having been convicted within His Majesty's dominions of an offence his conviction for which necessarily involved a finding that he acted fraudulently or dishonestly, or

(ii) having been convicted of an offence under this Act, or

(iii) having committed a breach of any rules made by the Board under this Act

for regulating the conduct of business by holders of licences, or

(*b*) by reason of any other circumstances whatsoever which either are likely to lead to the improper conduct of business by, or reflect discredit upon the method of conducting business of, the applicant or holder or any person so employed by or associated with him as aforesaid,

the applicant or holder is not, or, as the case may be, is no longer, a fit and proper person to hold a licence;

and the Board may also revoke a principal's licence at any time, if the holder of the licence is not carrying on in Great Britain the business of dealing in securities.

References to tribunal of inquiry.

6.—(1) Where the Board of Trade propose, in pursuance of paragraph (2) of the last preceding section, either to refuse to grant an application for a licence or to revoke a licence, the Board—

(*a*) shall serve on the applicant or the holder of the licence, as the case may be, a written notice of their intention, specifying the particular matter upon the consideration of which their decision would be based, and inviting him to notify in writing to the Board, within fourteen days from the date of the service of the notice, whether he desires his case to be referred to the tribunal of inquiry constituted under this section, and

(*b*) if he so notifies the Board that he desires his case to be so referred, shall refer the case to the said tribunal and direct the tribunal to investigate the case and report thereon to the Board, shall not make a final decision in the matter until they have received and considered the report of the tribunal, and shall not either refuse to grant the application or revoke the licence if the said report contains a recommendation by the tribunal that the licence should be granted or remain in force, as the case may be.

(2) For the purposes of this section, there shall be a tribunal of inquiry (hereinafter referred to as "the

tribunal ") consisting of a chairman, and one other person appointed by the Lord Chancellor, being members of the legal profession, and one person appointed by the Treasury, being a person who appears to the Treasury to be experienced in matters of finance or accountancy and not being a person in His Majesty's service.

A person appointed to the tribunal shall be appointed to be a member thereof for a specified period not being less than three years, subject to such conditions with respect to the vacation of his office as may be imposed before the time of his appointment; and a person ceasing to hold office as a member of the tribunal shall be eligible for re-appointment thereto.

(3) The Board of Trade may pay to the members of the tribunal such remuneration as the Board, with the approval of the Treasury, may determine; and such expenses of the tribunal as the Board and the Treasury may approve shall be defrayed by the Board.

(4) Any investigation under this section shall be so conducted as to afford a reasonable opportunity for representations to be made to the tribunal by or on behalf of the person whose case is the subject of the investigation.

(5) For the purpose of any such investigation, the tribunal may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any documents in his custody or under his control which the tribunal considers it necessary for the purposes of the investigation to examine, and may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined:

Provided that no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him.

(6) Every person who refuses or wilfully neglects to attend in obedience to a summons issued under this section, or to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any document which he may be required to produce for the purpose of such an investigation as

aforesaid, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(7) Subject to the preceding provisions of this section, the Board of Trade may make rules for regulating the procedure on any such investigation as aforesaid.

Rules of Board of Trade with respect to conduct of business of licensed dealers.

7.—(1) The Board of Trade may make rules for regulating the conduct of business by holders of licences, and in particular, but without prejudice to the generality of the preceding provisions of this subsection, such rules may make provision for all or any of the following matters, that is to say :—

(*a*) for determining the class of persons in relation to whom, and the manner and circumstances in which, any holder of a licence may deal in securities;

(*b*) for prescribing forms of contracts which may be used in making contracts under the authority of a licence, and directing that where any contract is made under the authority of a licence otherwise than in the appropriate form prescribed by the rules, the holder of the licence shall, for the purposes of the preceding provisions of this Act relating to the refusal and revocation of licences, be deemed to have committed a breach of the rules;

(*c*) for prescribing the books, accounts and other documents which must be kept by the holder of a principal's licence in relation to any dealing in securities under the authority of such a licence;

(*d*) for requiring the holder of a principal's licence to produce, for inspection by, or by an agent of, the person with whom he has made any agreement by way of a dealing in securities under the authority of such a licence as aforesaid, such contract notes and vouchers as may be prescribed by the rules, and to furnish to that person, on demand and on payment of the prescribed fee, copies of entries in books kept by the holder which relate to the transaction;

but no such rules shall be made so as to come into operation before the appointed day.

(2) A person shall not be guilty of an offence by reason only of a breach of rules made under this section.

(3) Whenever the Board of Trade propose to make any rules under this section, they shall cause to be published, in such manner as they think best adapted for informing persons affected, notice of the intention of the Board to make the rules, specifying the place where a draft of the rules may be inspected and copies thereof obtained, and the price at which such copies will be supplied, and the time within which written objections and representations with respect to the draft rules may be made to the Board; and the Board shall, before making the rules, consider any such objections and representations made to them within the said time, and may make the rules with or without modification of the terms of the draft.

Information to be furnished to Board of Trade by holders of licences.

8.—(1) The holder of any principal's licence shall forthwith notify in writing to the Board of Trade any change which, while the licence is in force, may occur in the address in Great Britain at which he carries on the business of dealing in securities, and, upon ceasing to carry on that business in Great Britain, shall forthwith notify that fact in writing to the Board.

(2) If, at any time while a principal's licence granted to a corporation is in force, any person becomes a director of the corporation, the corporation shall forthwith notify in writing to the Board of Trade the name and address of that person and also his nationality or the fact that he has no nationality.

(3) If, at any time while a representative's licence is in force, the holder of the licence leaves or enters the service of, or becomes or ceases to be an agent of, any person, he shall forthwith notify the name and address of that person in writing to the Board of Trade.

(4) If any person fails to comply with any of the provisions of this section, he shall be liable on summary conviction to a fine not exceeding fifty pounds.

Publication of names of holders of principals' licences.

9. The Board of Trade shall cause to be published, at such times and in such manner as they think proper, the names and addresses of all holders of principals' licences for the time being in force, and also—

(*a*) in relation to any holder of a principal's licence who is not a corporation, his nationality or the fact that he has no nationality, or

(*b*) in relation to any holder of a principal's licence who is a corporation, the country under the law of which the corporation is incorporated,

so however that the said information shall be published not less often than once a year.

Provisions as to industrial and provident societies and building societies.

Provisions as to industrial and provident societies. 56 & 57 Vict. c. 39.

10.—(1) A society shall not be registered under the Industrial and Provident Societies Act, 1893, unless it is shown to the satisfaction of the registrar—

(*a*) that the society is a bona fide co-operative society, or

(*b*) that, in view of the fact that the business of the society is being, or is intended to be, conducted—

(i) mainly for the purpose of improving the conditions of living, or otherwise promoting the social well-being, of members of the working classes, or

(ii) otherwise for the benefit of the community,

there are special reasons why the society should be registered under the said Act rather than as a company under the Companies Act, 1929.

(2) The powers of the registrar under subsection (1) of section nine of the Industrial and Provident Societies Act, 1893, to cancel, with the approval of the Treasury, the registry of a society shall include power so to cancel the registry of a society if at any time it appears to him that neither of the conditions specified in paragraphs (*a*) and (*b*) of the preceding subsection is fulfilled in the case of that society:

Provided that—

(*a*) the preceding provisions of this subsection shall not authorise the cancelling of the registry of any society registered under the said Act before the twenty-sixth day of July nineteen hundred and thirty-eight, if, neither in the period beginning with that day and ending with the passing of this Act nor since

the passing of this Act, has any invitation to subscribe for, or to acquire or offer to acquire securities, or to lend or deposit money been made by or on behalf of the society, and

(*b*) before deciding to cancel under this subsection the registry of any society, the registrar shall consider any representations with respect to the proposed cancellation made to him by the society within the period which, by virtue of subsection (3) of section nine of the Industrial and Provident Societies Act, 1893, must elapse between the giving to the society of the notice required by that subsection and the cancelling of the registry, and, if the society so requests, afford it an opportunity of being heard by him within that period.

(3) Where the registrar gives notice under subsection (3) of section nine of the Industrial and Provident Societies Act, 1893, of his intention to cancel the registry of a society in the exercise of his powers under this section, then, if it appears to him at any time after the expiration of one month from the date of the giving of the notice that there have not been taken the steps which, by that time, could reasonably have been taken for the purpose—

(*a*) of converting the society into a company under the Companies Act, 1929, or amalgamating the society with, or transferring its engagements to, such a company, in accordance with section fifty-four of the said Act of 1893, or

(*b*) of dissolving the society in one of the ways mentioned in section fifty-eight of the said Act of 1893,

he may give such directions as he thinks fit for securing that the affairs of the society are wound up before the cancelling of the registry takes effect; and any person who contravenes or fails to comply with any such directions shall be liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(4) Section seven, and subsection (4) of section nine, of the Industrial and Provident Societies Act, 1893, (which relate to appeals from a refusal to register a

society under that Act and from the cancelling of the registry of a society under that Act) shall not apply in any case where the registry of a society is refused or cancelled by virtue of this section.

(5) If, with respect to any industrial and provident society registered under the Industrial and Provident Societies Act, 1893, before the twenty-sixth day of July, nineteen hundred and thirty-eight, it appears to the registrar—

(*a*) that neither of the conditions specified in paragraphs (*a*) and (*b*) of subsection (1) of this section is fulfilled in the case of that society, and

(*b*) that it would be in the interests of persons who have invested or deposited money with the society or any other person that the society should be wound up,

the registrar may present to the court a petition for the winding up of the society.

(6) The registrar may at any time, by notice in writing served on an industrial and provident society or on any person who is or has been an officer of such a society, require that society or person to produce to the registrar such books, accounts and other documents relating to the business of the society, and to furnish to him such other information relating to that business, as he considers necessary for the exercise of any of the powers which he has by virtue of subsections (2), (3), and (5) of this section; and any such notice may contain a requirement that any information to be furnished in accordance with the notice shall be verified by a statutory declaration.

If any society or other person fails to comply with the requirements of a notice under this subsection, the society or person shall be liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(7) The registrar may, if he considers it just, direct that all or any of the expenses incurred by him in exercising his powers under the last preceding subsection in relation to any society shall, either wholly or to such extent as he may determine, be defrayed out of the funds of the society or by the officers or former officers thereof

or any of them; and any sum which any society or other person is required by such a direction to pay shall be a debt due to the registrar from that society or person.

(8) Where, within the period of a year beginning with the date of the passing of this Act, a society registered under the Industrial and Provident Societies Act, 1893, before the twenty-sixth day of July nineteen hundred and thirty-eight, and certified by the registrar to be a society in the case of which neither of the conditions specified in paragraphs (*a*) and (*b*) of subsection (1) of this section is fulfilled, converts itself in accordance with section fifty-four of that Act into a company under the Companies Act, 1929, or amalgamates with, or transfers its engagements to, any such company in accordance with the said section—

(*a*) the amount which is to form the nominal share capital of the company or, as the case may be, the amount of any increase made in the amount of the nominal share capital of the company by reason of the amalgamation or transfer shall, for the purpose of the charge to stamp duty under section one hundred and twelve of the Stamp Act, 1891, be treated as being reduced by an amount equal to the amount which, immediately before the said twenty-sixth day of July, formed the paid-up share capital of the society;

54 & 55 Vict. c. 39.

(*b*) no stamp duty shall be payable on any conveyance, assignment, or other instrument of transfer, of any of the property of the society, being an instrument executed in pursuance of the conversion, amalgamation or transfer, as the case may be; and

(*c*) the fees which, by virtue of section three hundred and thirteen of the Companies Act, 1929, become payable on the registration of the company or, as the case may be, payable by the company in connection with the amalgamation or transfer, shall be deemed to have been paid.

(9) In this section the expression "co-operative society" does not include a society which carries on, or intends to carry on, business with the object of making profits mainly for the payment of interest, dividends or

bonuses on money invested or deposited with, or lent to, the society or any other person; and the expressions "the registrar" and "officer" have the meanings respectively assigned to those expressions by section seventy-nine of the Industrial and Provident Societies Act, 1893.

Provisions as to building societies.

11.—(1) If, with respect to any building society, the registrar considers it expedient so to do in the interests of persons who have invested or deposited or may invest or deposit money with the society, he may by an order made with the approval of the Treasury direct that, unless and until the order is revoked, no invitation to subscribe for, or to acquire or offer to acquire, securities, or to lend or deposit money shall be made by or on behalf of the society; and if any invitation is made in contravention of such an order, the person by whom the invitation is so made shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine or, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine:

Provided that, before deciding to make an order under this subsection with respect to any society, the registrar shall serve on the society a written notice stating his intention to make the order, and shall consider any representations with respect to the proposed order made to him by the society within the period of one month from the date of the service of the notice, and, if the society so requests, afford it an opportunity of being heard by him within that period.

(2) Any order under the preceding subsection may be revoked by a subsequent order of the registrar made with the approval of the Treasury.

(3) The registrar may, at any time, by notice in writing served on a building society or on any person who is or has been an officer of such a society, require that society or person to produce to the registrar such books, accounts, deeds and other documents relating to the business of the society, and to furnish to him such other information relating to that business, as he considers necessary for the exercise of the powers which he has by

virtue of subsections (1) and (2) of this section; and any such notice may contain a requirement that any information to be furnished in accordance with the notice shall be verified by a statutory declaration.

If any society or other person fails to comply with the requirements of a notice under this subsection, the society or person shall be liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(4) The registrar may, if he considers it just, direct that all or any of the expenses incurred by him under the last preceding subsection in relation to any society shall, either wholly or to such extent as he may determine, be defrayed out of the funds of the society, or by the officers or former officers thereof or any of them; and any sum which any society or other person is required by such a direction to pay shall be a debt due to the registrar from that society or person.

(5) In this section the expression "the registrar" means the registrar of building societies for the purposes of the Building Societies Acts, 1874 to 1894.

General provisions for the prevention of fraud.

Penalty for fraudulently inducing persons to invest money.

12.—(1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—

(*a*) to enter into or offer to enter into—

(i) any agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting securities or lending or depositing money to or with any industrial and provident society or building society, or

(ii) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities, or

(*b*) to acquire or offer to acquire any right or interest under any arrangements the purpose or effect, or pretended purpose or effect, of which is to provide facilities for the participation by persons in profits or income alleged to arise or to be likely to arise from the acquisition, holding, management or disposal of any property other than securities, or

(*c*) to enter into or offer to enter into an agreement the purpose or pretended purpose of which is to secure a profit to any of the parties by reference to fluctuations in the value of any property other than securities,

shall be guilty of an offence, and liable to penal servitude for a term not exceeding seven years.

(2) Any person guilty of conspiracy to commit an offence under the preceding subsection shall be punishable as if he had committed such an offence.

Restriction on distribution of circulars relating to investments.

13.—(1) Subject to the provisions of this section, no person shall, on or after the appointed day,—

(*a*) distribute or cause to be distributed any documents which, to his knowledge, are circulars containing—

(i) any invitation to persons to do any of the acts mentioned in paragraphs (*a*) to (*c*) of subsection (1) of the last preceding section, or

(ii) any information calculated to lead directly or indirectly to the doing of any of those acts by the recipient of the information, or

(*b*) have in his possession for the purpose of distribution any documents which, to his knowledge, are such circulars as aforesaid, being documents of such a nature as to show that the object or principal object of distributing them would be to communicate such an invitation or such information as aforesaid.

(2) The preceding subsection shall not apply—

(*a*) in relation to any distribution of a prospectus to which section thirty-five or section three hundred and fifty-four of the Companies Act,

1929, applies, or in relation to any distribution of a document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—

(i) would, if the corporation were a registered company, be a prospectus to which the said section thirty-five applies, and

(ii) contains all the matters which, by virtue of the said section three hundred and fifty-four, it would have to contain if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company, or

(*b*) in relation to any issue of a form of application for shares in, or debentures of, a corporation, together with—

(i) a prospectus which complies with the requirements of section thirty-five or Part XII of the Companies Act, 1929, or

(ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters mentioned in sub-paragraph (ii) of paragraph (*a*) of this subsection,

or in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or

(*c*) in relation to any distribution of documents which is required or authorised by or under any Act other than this Act or by or under any enactment of the Parliament of Northern Ireland,

and shall not apply in relation to any distribution of documents which is permitted by the Board of Trade.

(3) This section shall not prohibit the distribution or possession of any document by reason only—

(*a*) that it contains an invitation or information—

(i) made or given with respect to any securities by or on behalf of a member of

any recognised stock exchange or recognised association of dealers in securities, or by or on behalf of the holder of a principal's licence, or

(ii) made or given with respect to any securities by or on behalf of the Bank of England or any exempted dealer, or

(iii) made or given by or on behalf of a corporation to holders of securities of, or to persons employed by, or to creditors of, that corporation or any other corporation which, in relation to the first mentioned corporation, is a subsidiary company as defined by section one hundred and twenty-seven of the Companies Act, 1929, with respect to securities of the first mentioned corporation or of any such other corporation as aforesaid, or

(iv) made or given by or on behalf of the manager under an authorised unit trust scheme with respect to any securities created in pursuance of that scheme, or

(v) made or given by or on behalf of the Government of any part of His Majesty's dominions or the Government of any foreign state, or by or on behalf of any statutory corporation or municipal corporation, with respect to securities of that Government or corporation, or

(vi) made or given by or on behalf of any industrial and provident society or building society with respect to shares of the society, or loans or deposits which may be made to or with the society, or

(vii) made or given to beneficiaries under a trust by or on behalf of a person acting in the capacity of a trustee of that trust, or

(viii) made or given with respect to any securities in connection only with a sale or proposed sale of those securities by auction, or

(*b*) that it contains an invitation or information which a person whose ordinary business or part

of whose ordinary business it is to buy and sell any property other than securities (whether as a principal or as an agent) may make or give in the course of the business of buying and selling such property:

Provided that nothing in paragraph (*a*) of this subsection shall authorise the doing of anything in respect of securities created in pursuance of any unit trust scheme which is not an authorised unit trust scheme; and nothing in paragraph (*b*) of this subsection shall authorise any person to do anything in pursuance of, or for the purpose of, any arrangements the purpose or effect, or pretended purpose or effect, of which is to provide facilities for the participation by persons in profits or income alleged to arise or to be likely to arise from the acquisition, holding, management or disposal of any property other than securities.

(4) Documents shall not, for the purposes of this section, be deemed not to be circulars by reason only that they are in the form of a newspaper, journal, magazine or other periodical publication; but a person shall not be taken to contravene this section by reason only that he distributes, or causes to be distributed, to purchasers thereof, or has in his possession for the purpose of distribution to purchasers thereof, copies of any newspaper, journal, magazine or other periodical publication.

(5) A person shall not be taken to contravene this section by reason only that he distributes documents to persons whose business involves the acquisition and disposal, or the holding, of securities (whether as principal or as agent), or causes documents to be distributed to such persons, or has documents in his possession for the purpose of distribution to such persons.

(6) Any person who contravenes this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine or, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(7) Proceedings for an offence under this section shall not, in England, be instituted except by, or with

the consent of, the Board of Trade or the Director of Public Prosecutions:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

(8) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that, at any such premises as may be specified in the information, a person has any documents in his possession in contravention of this section, the justice may grant a warrant under his hand empowering any constable to enter the premises, if necessary by force, at any time or times within one month from the date of the warrant, and to search for, and seize and remove, any documents found therein which he has reasonable ground for believing to be in the possession of a person in contravention of this section.

(9) Any document seized under this section may be retained for a period of one month or, if within that period there are commenced any proceedings for an offence under this section to which the document is relevant, until the conclusion of those proceedings.

(10) Where any person is convicted of an offence under this section, the court dealing with the case may make an order authorising the destruction, or the disposal in any other specified manner, of any documents produced to the court which are shown to its satisfaction to be documents in respect of which the offence was committed:

Provided that an order under this subsection shall not authorise the destruction of a document, or the disposal of a document in any other manner, until the conclusion of the proceedings in the matter of which the order is made.

(11) Subject to the provisions of the last two preceding subsections, the Police (Property) Act, 1897, (which makes provision with respect to the disposal of property in the possession of the police) shall apply to property which has come into the possession of the police in consequence

60 & 61 Vict. c. 30.

of a seizure under this section, as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act.

Exemptions.

Stock exchanges and associations of dealers in securities.

14.—(1) The Board of Trade may by order declare any body of persons carrying on in Great Britain the business of dealing in securities to be a recognised stock exchange or recognised association of dealers in securities for the purposes of this Act.

(2) Any order under this section may be varied or revoked by a subsequent order of the Board of Trade; but an order by virtue of which any body ceases to be a recognised stock exchange or a recognised association of dealers in securities shall not take effect until the expiration of the period of three months beginning with the day on which the order is made.

(3) It shall be the duty of every recognised stock exchange or recognised association of dealers in securities to furnish to the Board of Trade, so often as may be prescribed (which shall be not less often than once a year) a list showing with respect to each person who, at the date on which the list is furnished, is a member of the stock exchange or of the association, as the case may be, his name and business address and the style under which he carries on business, and, if the member is a corporation, the name of each of the directors thereof; and as soon as may be after receiving any list furnished to them under this subsection, the Board shall cause the list to be published in such manner as they think proper.

(4) It shall be the duty of every recognised stock exchange or recognised association of dealers in securities whenever required by the Board so to do to furnish to the Board, with respect to any specified member of the stock exchange or association, as the case may be, a list of the persons who are for the time being authorised by that member to deal in securities on his behalf.

Exemption of certain dealers.

15.—(1) The Board of Trade may by order declare any person to be an exempted dealer for the purposes of

this Act, subject to the following conditions being fulfilled so long as the order is in force, that is to say :—

(*a*) the main business of that person must consist of one or more of the following activities :—

(i) carrying on some business other than the business of dealing in securities, and

(ii) dealing in securities in one or more of the ways mentioned in the next following subsection; and

(*b*) the greater part of any business of dealing in securities done by him in Great Britain otherwise than in one of the ways referred to in sub-paragraph (ii) of paragraph (*a*) of this subsection must be effected with, or through the agency of, one or more of the following persons, that is to say :—

(i) a member of any recognised stock exchange or recognised association of dealers in securities,

(ii) the Bank of England, a statutory corporation, a municipal corporation or an exempted dealer,

(iii) a person acting in the capacity of manager or trustee under an authorised unit trust scheme,

(iv) a person acting on behalf of such a person as is mentioned in sub-paragraph (i), sub-paragraph (ii) or sub-paragraph (iii) of this paragraph, and

(v) the holder of a licence,

or effected, with the consent of the Board of Trade, through the agency of a member of a stock exchange outside Great Britain.

(2) The ways of dealing in securities referred to in sub-paragraph (ii) of paragraph (*a*) of the preceding subsection are as follows, that is to say :—

(*a*) issuing any document which is, or is to be deemed to be, a prospectus within the meaning of the Companies Act, 1929;

(*b*) making or offering to make with any person an agreement for, or with a view to, the underwriting of securities;

(*c*) making any invitation to persons to subscribe for securities, or to purchase securities on the first sale thereof;

(*d*) making any invitation to persons to subscribe for, or purchase, securities of the Government of any part of His Majesty's dominions or the Government of any foreign state, or securities of any statutory corporation or municipal corporation;

(*e*) effecting any transaction with a person whose business involves the acquisition and disposal, or the holding of securities, being a transaction with that person as a principal:

Provided that a person shall not, by reason only of his having made such an invitation as is mentioned in paragraph (*c*) of this subsection, be taken to have dealt in securities in one of the ways referred to in sub-paragraph (ii) of paragraph (*a*) of the preceding subsection, if permission to deal in such securities as were the subject of the invitation has not been granted by the Stock Exchange, London, within the period of three months beginning with the date on which the invitation was made, or within such longer period (if any) beginning with that date as the Board of Trade think fit.

(3) If, with respect to any exempted dealer, the Board of Trade consider that the order declaring him to be an exempted dealer ought to be revoked on either of the following grounds, that is to say,—

(*a*) that the conditions subject to which the order was made have not been fulfilled in his case, and

(*b*) that the circumstances relevant to the making of the order have materially changed since the making thereof,

the Board may serve on the exempted dealer a written notice that they are considering the revocation of the order on that ground, specifying particulars of the non-fulfilment of the said conditions or of the change of the said circumstances, as the case may be, and inviting the exempted dealer to make to the Board, within the period of one month from the date of the service of the notice, any representations which he desires to make with respect to the proposed revocation of the order; and the Board may revoke the order after the expiration of the said

period, but, before deciding whether or not to revoke the order, shall take into consideration any representations so made by the exempted dealer and, if he so requests, afford him an opportunity of being heard by the Board within that period.

(4) The Board of Trade shall cause to be published, at such times and in such manner as they think proper, the names and addresses of all persons who are for the time being exempted dealers so, however, that the said information shall be published not less often than once a year.

Authorised unit trust schemes.

16.—(1) The Board of Trade may by order declare to be an authorised unit trust scheme for the purposes of this Act any unit trust scheme in relation to which the Board are satisfied that the following conditions are fulfilled, that is to say :—

(*a*) that each of the persons who are respectively the manager and the trustee under the scheme is a corporation incorporated under the law of some part of the United Kingdom, and having a place of business in Great Britain at which notices and other documents are received on behalf of the corporation, and

(*b*) that the scheme is such that the effective control over the affairs of the corporation which is the manager under the scheme is and will be exercised independently of the corporation which is the trustee under the scheme, and

(*c*) that the scheme is such as to secure that any trust created in pursuance of the scheme is expressed in a deed providing, to the satisfaction of the Board, for the matters specified in the Schedule to this Act, and

(*d*) as respects the corporation being the trustee, either—

(i) that the corporation has a capital (in stock or shares) for the time being issued of not less than five hundred thousand pounds, of which an amount of not less than two hundred and fifty thousand pounds has been paid up, and that the assets of the corporation are sufficient to meet its liabilities (including liabilities in respect of the repayment of its capital), or

(ii) that more than four-fifths of the said capital of the corporation is held by another corporation being a corporation in relation to which the conditions as to capital and assets specified in sub-paragraph (i) of this paragraph are fulfilled:

Provided that, if with respect to any trust the Board of Trade are satisfied that, by reason of the special circumstances of the trust, the fulfilment in relation thereto of the condition specified in paragraph (*c*) of this subsection is impracticable, the Board may dispense with the fulfilment of that condition in relation to that trust so far as it appears to them that they can properly do so without prejudicing the interests of the beneficiaries.

(2) If, with respect to any authorised unit trust scheme, the Board of Trade consider that the order declaring the scheme to be an authorised unit trust scheme ought to be revoked on either of the following grounds, that is to say—

(*a*) that the conditions specified in paragraphs (*a*) to (*d*) of the preceding subsection are no longer fulfilled in the case of that scheme, or

(*b*) that the circumstances relevant to the making of an order have materially changed since the making thereof,

the Board may serve on the manager under the scheme and on the trustee under the scheme a written notice that they are considering the revocation of the order on that ground, specifying the respect in which the said conditions are no longer fulfilled or the said circumstances have changed, as the case may be, and inviting the manager and the trustee to make to the Board, within the period of one month from the date of the service of the notice, any representations which they desire to make with respect to the proposed revocation of the order; and the Board may revoke the order after the expiration of the said period, but, before deciding whether or not to revoke the order, shall take into consideration any representations so made by the manager or trustee and, if he so requests, afford him an opportunity of being heard by the Board within that period.

(3) The terms of any trust created before the commencement of this Act in pursuance of a unit trust

scheme may, notwithstanding anything in any deed, be varied or supplemented by a deed made between the trustee and the manager under the scheme, and containing such provisions as may be certified by the Board of Trade to be necessary for the purpose of securing that the condition mentioned in paragraph (*c*) of subsection (1) of this section is fulfilled in relation to that scheme.

(4) The Board of Trade shall, not less often than once a year, cause particulars of every unit trust scheme which is for the time being an authorised unit trust scheme, to be published in such manner as they think proper.

Supplementary Provisions.

False statements.

17. Any person who, in furnishing any information for any of the purposes of this Act or rules or regulations made thereunder, makes any statement which, to his knowledge, is false in a material particular, shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred pounds or to both such imprisonment and such fine or, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

Offences committed by corporations.

18. Where any offence under this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Venue in summary proceedings.

19. Any proceedings which, by virtue of this Act, may be taken against a person under the Summary Jurisdiction Acts may be taken before the court having jurisdiction in the place where that person is for the time being.

Regulations.

20. The Board of Trade may make regulations for prescribing anything which by this Act is required or authorised to be prescribed.

Laying of rules and regulations before Parliament.

21.—(1) Any rules or regulations made under this Act by the Board of Trade shall be laid before Parliament as soon as may be after they are made.

(2) If either House of Parliament, within the period of forty days beginning with the day on which any such rules or regulations as aforesaid have been laid before that House, resolves that the rules or regulations shall cease to have effect, the rules or regulations shall thereupon become void, without prejudice, however, to the validity of anything previously done thereunder or to the making of new rules or regulations.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days.

Service of notices.

22. Any notice to be served under this Act on any person may be served by post, and a letter containing the notice shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in Great Britain.

Exercise of powers of Board of Trade.

23. Anything required or authorised by or under this Act to be done by, to or before the Board of Trade may be done by, to or before the President of the Board, any secretary, under-secretary or assistant secretary of the Board, or any person authorised in that behalf by the President.

Payment of expenses and appropriation of fees.

24. The expenses incurred for the purposes of this Act by the Board of Trade shall be defrayed out of moneys provided by Parliament; and all fees received by the Board by virtue of this Act shall be paid into the Exchequer.

Repeal of 19 & 20 Geo. 5. c. 23. s. 356.

25. On the appointed day section three hundred and fifty-six of the Companies Act, 1929, shall cease to have effect.

Interpretation.

26.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"the appointed day" means such day as the Board of Trade may by order appoint;

"authorised unit trust scheme" means any unit trust scheme declared by an order of the Board of Trade for the time being in force to be an authorised unit trust scheme for the purposes of this Act;

"building society" means a society incorporated under the Building Societies Acts, 1874 to 1894, or such an unincorporated society as is mentioned in section seven of the Building Societies Act, 1874; 37 & 38 Vict. c. 42.

"corporation" means any body corporate, incorporated whether in Great Britain or elsewhere;

"the court" means, in relation to any industrial and provident society, the court having jurisdiction to wind up the society;

"dealing in securities" means doing any of the following things (whether as a principal or as an agent), that is to say, making or offering to make with any person, or inducing or attempting to induce any person to enter into or offer to enter into—

(*a*) any agreement for, or with a view to acquiring, disposing of, subscribing for or underwriting securities or lending or depositing money to or with any industrial and provident society or building society, or

(*b*) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

and "deal in securities" shall be construed accordingly;

"debentures" means any debentures, debenture stock or bonds of a corporation, whether constituting a charge on the assets of the corporation or not;

"exempted dealer" means any person declared by an order of the Board of Trade for the time being in force to be an exempted dealer for the purposes of this Act;

"industrial and provident society" means a society registered under the Industrial and Provident Societies Act, 1893;

"licence" means a licence under this Act;

"municipal corporation" means the Corporation of the City of London, the council of a metropolitan borough or the body corporate constituted by the incorporation of the inhabitants of a borough;

"prescribed" means prescribed by regulations of the Board of Trade;

"principal's licence" means a licence authorising the holder thereof to carry on the business of dealing in securities;

"prospectus" has the same meaning as in the Companies Act, 1929;

"recognised association of dealers in securities" means a body of persons declared by an order of the Board of Trade for the time being in force to be a recognised association of dealers in securities for the purposes of this Act;

"recognised stock exchange" means the Stock Exchange, London, or a body of persons declared by an order of the Board of Trade for the time being in force to be a recognised stock exchange for the purposes of this Act;

"registered company" means a company formed and registered under the Companies Act, 1929, the Companies (Consolidation) Act, 1908, the Companies Act, 1862, or the Joint Stock Companies Acts as defined by section three hundred and eighty of the Companies Act, 1929, but does not include a company registered under any of the said enactments in Northern Ireland or in Eire;

8 Edw. 7. c. 69. 25 & 26 Vict. c. 89.

"representative's licence" means a licence authorising the holder thereof to deal in securities as a servant or agent of any holder of a principal's licence for the time being in force;

"securities" means—

(*a*) shares or debentures, or rights or interests (described whether as units or otherwise) in any shares or debentures, or

(*b*) securities of the Government of any part of His Majesty's dominions or the Government of any foreign state, or

(*c*) rights (whether actual or contingent) in respect of money lent to, or deposited with, any industrial and provident society or building society,

and includes rights or interests (described whether as units or otherwise) which may be acquired under any unit trust scheme under which all property for the time being subject to any trust created in pursuance of the scheme consists of such securities as are mentioned in paragraph (*a*), paragraph (*b*) or paragraph (*c*) of this definition;

"shares" means shares in the share capital of a corporation or stock of a corporation, or shares in such an unincorporated building society as is mentioned in section seven of the Building Societies Act, 1874;

"statutory corporation" means—

(*a*) a corporation incorporated by an Act of the Parliament of the United Kingdom or the Parliament of Northern Ireland, or

(*b*) any other corporation, being a corporation to which functions in respect of the carrying on of an undertaking are entrusted by such an Act or by an order made under, or confirmed by, such an Act;

but, save as is provided in paragraph (*b*) of this definition, does not include any company within the meaning of the Companies Act, 1929, or of any corresponding enactment of the Parliament of Northern Ireland; and

"unit trust scheme" means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.

(2) Any reference in this Act to the holder of a licence shall, in relation to a principal's licence, be construed as a reference to the person named in the licence as being thereby authorised to carry on the business of dealing in securities, and, in relation to a representative's licence, be construed as a reference to the person named

in the licence as being thereby authorised to deal in securities as a servant or agent of any holder of a principal's licence.

(3) Any reference in this Act to a manager under a unit trust scheme or to a trustee under such a scheme shall be construed as a reference to the person in whom are vested the powers of management relating to property for the time being subject to any trust created in pursuance of the scheme or, as the case may be, to the person in whom such property is or may be vested in accordance with the terms of the trust.

(4) Any reference in this Act to a servant of, or to a person employed by, any person shall, in relation to a corporation, be construed as including a reference to any director or officer of the corporation; and any reference in this Act to leaving or entering the service of a person shall be construed accordingly.

(5) For the purposes of this Act, a person shall be deemed to be a director of a corporation if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the corporation or any of them act:

Provided that a person shall not, by reason only that the directors of a corporation act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

Application to Scotland.

27. This Act shall apply to Scotland subject to the following modifications:—

(1) section six shall have effect, in its application to any investigation held in Scotland, as if for any reference to a summons there were substituted a reference to an order;

(2) subsection (8) of section thirteen shall have effect as if for any reference to a justice of the peace there were substituted a reference to the sheriff, and subsection (11) of the said section shall not apply;

(3) the expression "municipal corporation" means the town council of a burgh.

Short title and extent.

28.—(1) This Act may be cited as the Prevention of Fraud (Investments) Act, 1939.

(2) This Act shall not extend to Northern Ireland.

SCHEDULE.

Section 16.

MATTERS FOR WHICH TRUST DEEDS PURSUANT TO UNIT TRUST SCHEMES MUST PROVIDE.

1. For determining the manner in which the sale price of units and the yield therefrom are to be respectively calculated.

2. For regulating the mode of execution and the issue of unit certificates, and, in particular, for securing that no unit certificate shall be executed or issued in respect of rights or interests in any property until steps have been taken, to the satisfaction of the trustee, to secure that the property will be vested in him.

3. For securing that any advertisement, circular or other document containing any statement with respect to the sale price of units or the yield therefrom, or containing any invitation to buy units, shall not be issued by or on behalf of the manager until the trustee has had a reasonable opportunity of considering the terms of the document, and shall not be so issued if, within a reasonable time after the document first comes under his consideration, he notifies his disapproval of the terms thereof in writing to the manager.

4. For the establishment of a fund to be applied in defraying the expenses of the administration of the trust and for regulating the application of that fund.

5. For the audit, and the circulation to holders of units, of accounts relating to the trust (including accounts of the manager in relation to the trust and statements of his remuneration in connection therewith).

6. For requiring the manager (subject to any provisions as to appeal contained in the deed) to retire from the trust if the trustee certifies that it is in the interest of the beneficiaries under the trust that he should do so.

In this Schedule the expression "units" means securities (described whether as units or otherwise) which may be created in pursuance of the unit trust scheme, and the expression "unit certificates" means certificates of the acquisition of such securities.

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FOR
SIR WILLIAM RICHARD CODLING, C.B., C.V.O., C.B.E., the King's Printer of Acts of Parliament