

Order made by the Treasury, laid before Parliament under section 2(3) of the Financial Services Act 1986, for approval by resolution of each House of Parliament within twenty eight days of the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

1995 No. 3271

FINANCIAL SERVICES

The Financial Services Act 1986 (Investment Services) (Extension of Scope of Act) Order 1995

<i>Made</i>	- - - -	<i>18th December 1995</i>
<i>Laid before Parliament</i>		<i>18th December 1995</i>
<i>Coming into force</i>	- -	<i>1st January 1996</i>

The Treasury, in exercise of the powers conferred on them by sections 2 and 205A(1) of the Financial Services Act 1986(2) and of all other powers enabling them in that behalf, hereby make the following Order:—

Citation and commencement

1. This Order may be cited as the Financial Services Act 1986 (Investment Services) Extension of Scope of Act) Order 1995 and shall come into force on 1st January 1996.

Interpretation

2. — In this Order—

“the Act” means the Financial Services Act 1986;

“core investment service” means a service listed in Section A of the Annex to the Investment Services Directive, the text of which is set out in Part I of Schedule 1 to this Order together with the text of Section B of that Annex which is relevant to the interpretation of Section A;

“investment firm” has the meaning given in paragraph (2) below;

(1) section 205A of the Financial Services Act 1986 was inserted by section 206 of the Companies Act 1989 (c. 40).
(2) 1986 c. 60. Various functions of the Secretary of State under the Financial Services Act 1986, including the functions under section 2 of that Act, have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

“the Investment Services Directive” means the Council Directive on investment services in the securities field (No.93/22/EEC)(3); and

“listed service” means a service listed in Section A or C of the Annex to the Investment Services Directive.

(2) In this Order references to an investment firm are references to any person, other than one within paragraph (3) below, whose regular occupation or business is the provision of any one or more core investment services to third parties on a professional basis.

(3) The persons within this paragraph are persons to whom the Investment Services Directive does not apply by virtue of the provisions of Article 2(2) of that Directive, the text of which is set out in Schedule 2 to this Order.

Shares in industrial and provident societies

3. Paragraph 1 of Schedule 1 to the Act shall have effect as if transferable shares in a body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies fell within that paragraph.

Bills of exchange

4. Paragraph 2 of Schedule 1 to the Act shall have effect as if bills of exchange accepted by a banker fell within that paragraph.

Amendment of Part II of Schedule 1 to the Act for certain purposes

5. For the purposes of the provisions of sections 47A and 48 of the Act, Part II of Schedule 1 to the Act shall have effect as if amongst the activities falling within that Part of that Schedule were those listed services falling within Section C of the Annex to the Investment Services Directive; and for these purposes none of the exclusions in Part III of that Schedule shall have effect.

Amendment of Part III of Schedule 1 to the Act

6.—(1) Nothing in paragraphs 17 to 19 and 21 of Schedule 1 to the Act shall have the effect that the provision of any core investment service to third parties on a professional basis is excluded from the activities which fall within the paragraphs in Part II of Schedule 1 to the Act.

(2) Paragraph 23 of Schedule 1 to the Act shall have effect as if it precluded a permission being granted to any person who is an investment firm.

Transitional provisions

7. The prohibitions in section 3 of the Act shall not, until 1st January 1997, extend to any person who is, by virtue only of any provision of this Order, carrying on, or purporting to carry on, investment business in the United Kingdom.

(3) OJ No. L 141, 10.5.93, p. 27.

18th December 1995

Derek Conway
Simon Burns
Two of the Lords Commissioners of Her
Majesty's Treasury

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SCHEDULE 1

Article 2(1).

ANNEX TO THE INVESTMENT SERVICES DIRECTIVE

“ANNEX
SECTION A

Services

- (a) Reception and transmission, on behalf of investors, of orders in relation to one or more instruments listed in section B.
- (b) Execution of such orders other than for own account.
2. Dealing in any of the instruments listed in Section B for own account.
3. Managing portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the instruments listed in section B.
4. Underwriting in respect of issues of any of the instruments listed in section B and/or the placing of such issues.

SECTION B

Instruments

- (a) Transferable securities.
- (b) Units in collective investment undertakings.
2. Money-market instruments.
3. Financial-futures contracts, including equivalent cash-settled instruments.
4. Forward interest-rate agreements (FRAs).
5. Interest-rate, currency and equity swaps.
6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

SECTION C

Non-core services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.
2. Safe custody services.
3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.
4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.

5. Services related to underwriting.
6. Investment advice concerning one or more of the instruments listed in Section B.
7. Foreign-exchange service where these are connected with the provision of investment services.”

SCHEDULE 2

Article 2(3).

ARTICLE 2.2 OF THE INVESTMENT SERVICES DIRECTIVE

“This Directive shall not apply to:

- (a) insurance undertakings as defined in article 1 of Directive [73/239/EEC](#)(4) or Article 1 of Directive [79/267/EEC](#)(5) or undertakings carrying on the reinsurance and retrocession activities referred to in Directive [64/225/EEC](#)(6);
- (b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
- (d) firms that provide investment services consisting exclusively in the administration of employee-participation schemes;
- (e) firms that provide investment services that consist in providing both the services referred to in (b) and those referred to in (d);
- (f) the central banks of Member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;
- (g) firms
 - which may not hold clients' funds or securities and which for that reason may not at any time place themselves in debit with their clients, and
 - which may not provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings, and
 - which in the course of providing that service may transmit orders only to
 - (i) investment firms authorized in accordance with this Directive;
 - (ii) credit institutions authorised in accordance with Directives [77/780/EEC](#)(7) and [89/646/EEC](#)(8);
 - (iii) branches of investment firms or of credit institutions which are authorized in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive [89/646/EEC](#) or in Directive [93/6/EEC](#)(9);

(4) OJ No. L 228, 16.8.1973, p. 3. Directive last amended by Directive [90/619/EEC](#) (OJ No. L 330, 29.11.1990, p. 50).

(5) OJ No. L 63, 13.3.1979, p. 1. Directive last amended by Directive [90/618/EEC](#) (OJ No. L 330, 29.11.1990, p. 44).

(6) OJ No. 56, 4.4.1964, p. 878/64.

(7) OJ No. L 322, 17.12.1977, p. 30. Directive last amended by Directive [89/646/EEC](#) (OJ No. L 386, 30.12.1989, p. 1).

(8) OJ No. L 386, 30.12.1989, p. 1.

(9) OJ No. L 141, 15.3.1993, p. 1.

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- (iv) collective investment undertakings authorized under the law of a Member State to market units to the public and to the managers of such undertakings;
- (v) investment companies with fixed capital, as defined in article 15(4) of Directive 79/91/EEC⁽¹⁰⁾, the securities of which are listed or dealt in on a regulated market in a Member State;
 - the activities of which are governed at national level by rules or by a code of ethics;
- (h) collective investment undertakings whether coordinated at Community level or not and the depositaries and managers of such undertakings;
- (i) persons whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment services only for such producers and professional users to the extent necessary for their main business;
- (j) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts entered into by such firms must be assumed by clearing members of the same markets;
- (k) associations set up by Danish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (l) “agenti di cambio” whose activities and functions are governed by Italian Royal Decree No 222 of 7 March 1925 and subsequent provisions amending it, and who are authorized to carry on their activities under Article 19 of Italian Law No 1 of 2 January 1991.”

EXPLANATORY NOTE

(This note is not part of the Order)

The Order makes amendments to the scope of the Financial Services Act 1986 (“the Act”) required to give effect to Council Directive No. 93/22/EEC on investment services in the securities field (OJ No. L 141, 10.5.93, p. 27). In so far as other legislative provision is needed to implement the provisions of the directive, this is contained in the Act, in an Order to be made under section 46 of the Act and in Regulations to be made under section 2(2) of the European Communities Act 1972. The Order comes into force on 1 January 1996.

The scope of the Act is determined by section 1 of the Act. Section 2 confers power on the Treasury to make orders extending or restricting the scope of the Act for the purposes of all or any of its provisions. The exercise of this power is among the functions transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I.1992/1315).

Section 1 of the Act defines “investments” by reference to the instruments falling within Part I of Schedule 1. Articles 3 and 4 of the Order add certain instruments to the investments falling within Part I of that Schedule (certain shares in industrial and provident societies and certain bills of exchange).

⁽¹⁰⁾ OJ No. L 26, 30.1.1977, p. 1. Directive last amended by the Act of Accession of Spain and Portugal.

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Article 5 of the Order extends, for the purposes of sections 47A and 48 of the Act, the activities that are to constitute the carrying on of investment business. As required by article 11 of the directive, statements of principle and rules can now be made under those two sections in respect of all services covered by the directive.

Section 1 of the Act defines “investment business” by reference to activities which fall within Part II of Schedule 1 to the Act and which are not excluded by Part III of that Schedule. Article 6 of the Order amends the meaning of “investment business” to cover the provision of all investment services to which the directive applies.