



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART III

#### AUTHORISATION AND EXEMPTION

##### *Exemption*

#### **[<sup>F1</sup>39A Certain tied agents operating outside United Kingdom**

- (1) This section applies to an authorised person whose relevant office is in the United Kingdom if—
  - (a) he is a party to a contract with a person (other than an authorised person) who is established—
    - (i) in the United Kingdom, or
    - (ii) in an EEA State which does not permit investment firms authorised by the competent authority of the State to appoint tied agents; and
  - (b) the contract is a relevant contract.
- (2) A contract is a “relevant contract” if it satisfies conditions A to C.
- (3) Condition A is that the contract permits or requires the person mentioned in subsection (1)(a) (the “agent”) to carry on investment services business.
- (4) Condition B is that either—
  - (a) it is a condition of the contract that such business may only be carried on by the agent in an EEA State other than the United Kingdom; or
  - (b) in a case not falling within paragraph (a), the [<sup>F2</sup>FCA] is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.
- (5) Condition C is that the business is of a description that, if carried on in the United Kingdom, would be prescribed for the purposes of section 39(1)(a)(i).
- (6) An authorised person to whom this section applies who—

*Status: Point in time view as at 03/01/2018. This version of this provision has been superseded.*

*Changes to legislation: Financial Services and Markets Act 2000, Section 39A is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) enters into or continues to perform a relevant contract with an agent which does not comply with the applicable requirements,
  - (b) enters into or continues to perform a relevant contract without accepting or having accepted responsibility in writing for the agent's activities in carrying on investment services business,
  - [<sup>F3</sup>(c) enters into a relevant contract with an agent who is not entered on—
    - (i) the record maintained by the FCA by virtue of section 347(1)(ha), or
    - (ii) the register of tied agents of another EEA State maintained pursuant to Article 29 of the markets in financial instruments directive,]
  - (d) continues to perform a relevant contract with an agent when he knows or ought to know that the agent is not entered on that record [<sup>F4</sup>or register,],
- is to be taken for the purposes of this Act to have contravened a requirement imposed on him by or under this Act.
- (7) The “applicable requirements” are the requirements prescribed for the purposes of subsection (1)(a)(ii) of section 39 which have effect in the case of a person to whom subsection (1A) of that section applies.
- (8) A person carries on “investment services business” if—
- (a) his business includes providing services or carrying on activities of the kind mentioned in [<sup>F5</sup>Article 4.1.29] of the markets in financial instruments directive, and
  - (b) as a result of providing such services or carrying on such activities he is a tied agent.
- (9) In this section—
- “competent authority” has the meaning given in [<sup>F6</sup>Article 4.1.26] of the markets in financial instruments directive;
  - “relevant office” means—
    - (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and
    - (b) in relation to a person other than a body corporate, the person's head office.]

#### Textual Amendments

- F1** S. 39A inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), **Sch. 5 para. 3**
- F2** Word in s. 39A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 6** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F3** S. 39A(6)(c) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 3(2)(a)** (with reg. 7)
- F4** Words in s. 39A(6)(d) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 3(2)(b)** (with reg. 7)
- F5** Words in s. 39A(8)(a) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services](#)

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and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), **Sch. 2 para. 3(3)** (with reg. 7)

- F6** Words in s. 39A(9) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), **Sch. 2 para. 3(4)** (with reg. 7)

**Status:**

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