STATUTORY INSTRUMENTS

2001 No. 544

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

Approved by both Houses of Parliament

Made - - - -	*26th February 2001*
Laid before Parliament	*27th February 2001*
Coming into force in accordance with article 2	

The Treasury, in exercise of the powers conferred on them by sections 22(1) and (5), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000[M1], hereby make the following Order:

Marginal Citations
M1 2000 c. 8.

PART I

GENERAL

Citation

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day on which section 19 of the Act comes into force.

(2) This Order comes into force—

(a) for the purposes of articles 59, 60 and 87 (funeral plan contracts) on 1st January 2002; and

(b) for the purposes of articles 61 to 63, 88, 90 and 91 (regulated mortgage contracts) **[**[F1]on such a day as the Treasury may specify**]**.

[[F2](3) Any day specified under paragraph (2)(b) must be caused to be notified in the London, Edinburgh and Belfast Gazettes published not later than one week before that day.**]**

Textual Amendments

F1 Words in art. 2(2)(b) substituted (30.8.2002) by The Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002 (S.I. 2002/1777), arts. 1, **2(2)**

F2 Art. 2(3) inserted (30.8.2002) by The Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002 (S.I. 2002/1777), arts. 1, **2(3)**

Interpretation

3.—(1) In this Order—

"the Act" means the Financial Services and Markets Act 2000;

"annuities on human life" does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons;

"buying" includes acquiring for valuable consideration;

"close relative" in relation to a person means—

(a) his spouse **[**[F3]or civil partner**]**;

(b) his children and step children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and

(c) the spouse **[**[F3]or civil partner**]** of any person within sub-paragraph (b);

[[F4]"the Commission Regulation" means Commission Regulation 1287/2006 of 10 August 2006;**]**

"contract of general insurance" means any contract falling within Part I of Schedule 1;

"contract of insurance" means any contract of insurance which is a contract of long-term insurance or a contract of general insurance, and includes—

(a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are—

  (i) effected or carried out by a person not carrying on a banking business;

  (ii) not effected merely incidentally to some other business carried on by the person effecting them; and

  (iii) effected in return for the payment of one or more premiums;

(b) tontines;

(c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who—

  (i) does not carry on a banking business; and

  (ii) otherwise carries on a regulated activity of the kind specified by article 10(1) or (2);

(d) contracts to pay annuities on human life;

(e) contracts of a kind referred to in article 1(2)(e) of the first life insurance directive (collective insurance etc.); and

(f) contracts of a kind referred to in article 1(3) of the first life insurance directive (social insurance);

but does not include a funeral plan contract (or a contract which would be a funeral plan contract but for the exclusion in article 60);

"contract of long-term insurance" means any contract falling within Part II of Schedule 1;

"contractually based investment" means—

(a) rights under a qualifying contract of insurance;

(b) any investment of the kind specified by any of articles 83, 84, 85 and 87; or

(c) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (b);

[[F4]"credit institution" means—

(a) a credit institution authorised under the banking consolidation directive other than an institution to which Article 2.1 of the markets in financial instruments directive (the text of which is set out in Schedule 3) applies, or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive (other than an institution to which Article 2.1 of the markets in financial instruments directive would apply) if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;**]**

"deposit" has the meaning given by article 5;

[[F5]"electronic money" means monetary value, as represented by a claim on the issuer, which is—

(a) stored on an electronic device;

(b) issued on receipt of funds; and

(c) accepted as a means of payment by persons other than the issuer;**]**

[[F4]"financial instrument" means any instrument listed in Section C of Annex I to the markets in financial instruments directive (the text of which is set out in Part 1 of Schedule 2) read with Chapter VI of the Commission Regulation (the text of which is set out in Part 2 of Schedule 2);**]**

"funeral plan contract" has the meaning given by article 59;

[[F4]"home Member State", in relation to an investment firm, has the meaning given by Article 4.1.20 of the markets in financial instruments directive, and in relation to a credit institution, has the meaning given by Article 4.7 of the banking consolidation directive;**]**

[[F6]"home purchase provider" has the meaning given by article 63F(3);**]**

[[F6]"home purchaser" has the meaning given by article 63F(3);**]**

"instrument" includes any record whether or not in the form of a document;

[[F4]"investment firm" means a person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis but does not include—

(a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of that directive (the text of which is set out in Schedule 3);

(b) a person whose home Member State is an EEA State other than the United Kingdom and to whom, by reason of the fact that the State has given effect to Article 3 of that directive, that directive does not apply by virtue of that Article;

(c) a person who does not have a home Member State and to whom (if he had his registered office in an EEA State, or, being a person other than a body corporate or a body corporate not having a registered office, if he had his head office in an EEA State) the markets in financial instruments directive would not apply by virtue of Article 2 of that directive;**]**

[[F4]"investment services and activities" means—

(a) any service provided to third parties listed in Section A of Annex I to the markets in financial instruments directive (the text of which is set out in Part 3 of Schedule 2) read with Article 52 of Commission Directive 2006/73/EC of 10 August 2006 (the text of which is set out in Part 4 of Schedule 2), or

(b) any activity listed in Section A of Annex I to that directive,

relating to any financial instrument;**]**

"joint enterprise" means an enterprise into which two or more persons ("the participators") enter for commercial purposes related to a business or businesses (other than the business of engaging in a regulated activity) carried on by them; and, where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the enterprise;

"local authority" means—

(a) [M2]in England and Wales, a local authority within the meaning of the Local Government Act 1972 , the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) [M3]in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973 ;

(c) [M4]in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972 ;

[[F4]"management company" has the meaning given by Article 1a.2 of the UCITS directive as amended by Directive 2001/107/EC;**]**

"managing agent" means a person who is permitted by the Council of Lloyd's in the conduct of his business as an underwriting agent to perform for a member of Lloyd's one or more of the following functions—

(a) underwriting contracts of insurance at Lloyd's;

(b) reinsuring such contracts in whole or in part;

(c) paying claims on such contracts;

[[F4]"market operator" means a market operator within the meaning of Article 4.1.13 of the markets in financial instruments directive, or a person who would be a market operator if he had his registered office, or if he does not have a registered office his head office, in an EEA State, but does not include—

(a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of that directive (the text of which is set out in Schedule 3);

(b) a person who does not have a home Member State to whom (if he had his registered office, or if he does not have a registered office his head office, in an EEA State) the markets in financial instruments directive would not apply by virtue of Article 2 of that directive;**]**

[[F4]"multilateral trading facility" means—

(a) a multilateral trading facility (within the meaning of Article 4.1.15 of the markets in financial instruments directive) operated by an investment firm, a credit institution or a market operator, or

(b) a facility which—

  (i) is operated by an investment firm, a credit institution or market operator which does not have a home Member State, and

(ii) if its operator had a home Member State, would be a multilateral trading facility within the meaning of Article 4.1.15 of the markets in financial instruments directive;**]**

[[F7]"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993 but with paragraph (b) of the definition omitted;**]**

"overseas person" means a person who—

(a) carries on activities of the kind specified by any of articles 14, 21, 25, **[**[F8]25A,**][**[F9]25B, 25C,**][**[F10]25D,**]** 37**[**[F11], 39A**]** 40, 45, 51, 52**[**[F12], 53, 53A**][**[F13], 53B, 53C, 61, 63B and 63F**]** or, so far as relevant to any of those articles, article 64 (or activities of a kind which would be so specified but for the exclusion in article 72); but

(b) does not carry on any such activities, or offer to do so, from a permanent place of business maintained by him in the United Kingdom;

"pension fund management contract" means a contract to manage the investments of pension funds (other than funds solely for the benefit of the officers or employees of the person effecting or carrying out the contract and their dependants or, in the case of a company, partly for the benefit of officers and employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company); and for the purposes of this definition, "subsidiary" and "holding company" are to be construed in accordance with section 736 of the Companies Act 1985 or article 4 of the Companies (Northern Ireland) Order 1986 ;

[[F14]"personal pension scheme" means a scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—

(a) on retirement,

(b) on having reached a particular age, or

(c) on termination of service in an employment;**]**

[[F15]"plan provider" has the meaning given by paragraph (3) of article 63B, read with paragraphs (7) and (8) of that article;**]**

"property" includes currency of the United Kingdom or any other country or territory;

"qualifying contract of insurance" means a contract of long-term insurance which is not—

(a) a reinsurance contract; nor

(b) a contract in respect of which the following conditions are met—

(i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;

(ii) the contract provides that benefits are payable on death (other than death due to an accident) only where the death occurs within ten years of the date on which the life of the person in question was first insured under the contract, or where the death occurs before that person attains a specified age not exceeding seventy years;

(iii) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and

(iv) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with any of the above conditions;

[[F16]"regulated home purchase plan" has the meaning given by article 63F(3);**]**

[[F16]"regulated home reversion plan" has the meaning given by article 63B(3);**]**

"regulated mortgage contract" has the meaning given by article 61(3);

[[F17]"relevant investment" means—

(a) rights under a qualifying contract of insurance;

(b) rights under any other contract of insurance;

(c) any investment of the kind specified by any of articles 83, 84, 85 and 87; or

(d) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (c);**]**

[[F18]"reversion seller" has the meaning given by article 63B(3);**]**

"security" means (except where the context otherwise requires) any investment of the kind specified by any of articles 76 to 82 or, so far as relevant to any such investment, article 89;

"selling", in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes "disposing" includes—

(a) in the case of an investment consisting of rights under a contract—

(i) surrendering, assigning or converting those rights; or

(ii) assuming the corresponding liabilities under the contract;

(b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and

(c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

"stakeholder pension scheme" has the meaning given by section 1 of the Welfare Reform and Pensions Act 1999 **[**[F19]in relation to Great Britain and has the meaning given by article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 in relation to Northern Ireland**]**;

"syndicate" means one or more persons, to whom a particular syndicate number has been assigned by or under the authority of the Council of Lloyd's, carrying out or effecting contracts of insurance written at Lloyd's;

"voting shares", in relation to a body corporate, means shares carrying voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of that body corporate.

(2) For the purposes of this Order, a transaction is entered into through a person if he enters into it as agent or arranges, in a manner constituting the carrying on of an activity of the kind specified by article 25(1)**[**[F20], 25A(1), 25B(1) or 25C(1)**]**, for it to be entered into by another person as agent or principal.

(3) For the purposes of this Order, a contract of insurance is to be treated as falling within Part II of Schedule 1, notwithstanding the fact that it contains related and subsidiary provisions such that it might also be regarded as falling within Part I of that Schedule, if its principal object is that of a contract falling within Part II and it is effected or carried out by an authorised person who has permission to effect or carry out contracts falling within paragraph I of Part II of Schedule 1.

Textual Amendments

F3 Words in art. 3(1) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), reg. 1, **Sch. 16 para. 1(2)**

F4 Words in art. 3(1) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **3(b)**

F5 Words in art. 3(1) inserted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **2**

F6 Words in art. 3(1) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(a)**

F7 Words in art. 3(1) substituted (1.10.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(2), **2(2)(a)**

F8 Word in art. 3(1) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **3(a)**

F9 Words in art. 3(1) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(b)(i)**

F10 Word in art. 3(1) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **3(a)**

F11 Word in art. 3(1) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **3(1)(a)**

F12 Words in art. 3(1) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **3(b)**

F13 Words in art. 3(1) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(b)(ii)**

F14 Words in art. 3(1) inserted (1.10.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(2), **2(2)(b)**

F15 Words in art. 3(1) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(c)**

F16 Words in art. 3(1) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(d)**

F17 Words in art. 3(1) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **3(1)(b)**

F18 Words in art. 3(1) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(e)**

F19 Words in art. 3(1) inserted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2005 (S.I. 2005/593), arts. 1, **2(2)(b)**

F20 Words in art. 3(2) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(2)**

Modifications etc. (not altering text)

C1 Art. 3 applied (21.5.2003) by The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Designated Countries and Territories) Order 2003 (S.I. 2003/1181), arts. 1, **3(2)(a)**

Marginal Citations

M2 1972 c. 70. The definition of "local authority" in section 270 of the 1972 Act has been amended by Sch. 17 to the Local Government Act 1985 (c. 51); and by section 1(5) of the Local Government (Wales) Act 1994 (c. 19).

M3 1973 c. 65. The definition of "local authority" in section 235 of the 1973 Act was substituted by para. 92(66) of Sch. 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

M4 1972 c. 9 (N.I.).

PART II

SPECIFIED ACTIVITIES

CHAPTER I

GENERAL

Specified activities: general

4.—(1) The following provisions of this Part specify kinds of activity for the purposes of section 22 of the Act (and accordingly any activity of one of those kinds, which is carried on by way of business [M5], and relates to an investment of a kind specified by any provision of Part III and applicable to that activity, is a regulated activity for the purposes of the Act).

(2) The kinds of activity specified by articles 51 and 52 are also specified for the purposes of section 22(1)(b) of the Act (and accordingly any activity of one of those kinds, when carried on by way of business, is a regulated activity when carried on in relation to property of any kind).

(3) Subject to paragraph (4), each provision specifying a kind of activity is subject to the exclusions applicable to that provision (and accordingly any reference in this Order to an activity of the kind specified by a particular provision is to be read subject to any such exclusions).

[[F21](4) Where an investment firm or credit institution—

(a) provides or performs investment services and activities on a professional basis, and

(b) in doing so would be treated as carrying on an activity of a kind specified by a provision of this Part but for an exclusion in any of articles 15, 16, 19, 22, 23, 29, 38, 67, 68, 69, 70 and 72E,

that exclusion is to be disregarded and, accordingly, the investment firm or credit institution is to be treated as carrying on an activity of the kind specified by the provision in question.**]**

[[F24](4A) Where a person, other than a person specified by Article 1.2 of the insurance mediation directive (the text of which is set out in Part 1 of Schedule 4)—

(a) for remuneration, takes up or pursues insurance mediation or reinsurance mediation in relation to a risk or commitment located in an EEA State, and

(b) in doing so would be treated as carrying on an activity of a kind specified by a provision of this Part but for an exclusion in any of articles 30, 66 and 67,

that exclusion is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question).**]**

(5) In this article—

[[F25]"core investment service" means any service listed in section A of the Annex to the investment services directive, the text of which is set out in Schedule 2; [F26]...**]**

[[F27]"insurance mediation" has the meaning given by Article 2.3 of the insurance mediation directive, the text of which is set out in Part II of Schedule 4;**]**

[[F25]"investment firm" means a person whose regular occupation or business is the provision of core investment services to third parties on a professional basis, other than—

(a) a person to whom the investment services directive does not apply by virtue of Article 2.2 of that directive (the text of which is set out in Schedule 3); or

(b) a person to whom (if he were incorporated in or formed under the law of an EEA State or, being an individual, had his head office in an EEA State) that directive would not apply by virtue of Article 2.2 of that directive;**]**

[[F28]"reinsurance mediation" has the meaning given by Article 2.4 of the insurance mediation directive, the text of which is set out in Part III of Schedule 4.**]**

Textual Amendments

F21 Art. 4(4) substituted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **4(a)**

F22 Words in art. 4(4)(b) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **11**

F23 Words in art. 4(4)(b) substituted (1.10.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2005 (S.I. 2005/1518), arts. 1, **2(2)**

F24 Art. 4(4A) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **3(2)(a)**

F25 Words in art. 4(5) omitted (1.4.2007 for specified purposes) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **4(b)**

F26 Word in art. 4(5) omitted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **3(2)(b)(ii)**

F27 Words in art. 4(5) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **3(2)(b)(i)**

F28 Words in art. 4(5) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **3(2)(b)(iii)**

Marginal Citations

M5 The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/), made under section 419 of the Act, makes provision as to the circumstances in which persons are, or are not, to be regarded as carrying on activities by way of business.

CHAPTER II

ACCEPTING DEPOSITS

The activity

Accepting deposits

5.—(1) Accepting deposits is a specified kind of activity if—

(a) money received by way of deposit is lent to others; or

(b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.

(2) In paragraph (1), "deposit" means a sum of money, other than one excluded by any of **[**[F29]articles 6 to 9A**]**, paid on terms—

(a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(b) which are not referable to the provision of property (other than currency) or services or the giving of security.

(3) For the purposes of paragraph (2), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if—

(a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or

(c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

Textual Amendments

F29 Words in art. 5(2) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **3(1)**

Exclusions

Sums paid by certain persons

6.—(1) A sum is not a deposit for the purposes of article 5 if it is—

(a) paid by any of the following persons—

(i) the Bank of England, the central bank of an EEA State other than the United Kingdom, or the European Central Bank;

(ii) an authorised person who has permission to accept deposits, or to effect or carry out contracts of insurance;

(iii) an EEA firm falling within paragraph 5(b), (c) or (d) of Schedule 3 to the Act (other than one falling within paragraph (ii) above);

(iv) the National Savings Bank;

(v) a municipal bank, that is to say a company which was, immediately before the coming into force of this article, exempt from the prohibition in section 3 of the Banking Act 1987 [M6] by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act;

(vi) Keesler Federal Credit Union;

(vii) a body of persons certified as a school bank by the National Savings Bank or by an authorised person who has permission to accept deposits;

(viii) a local authority;

(xi) any body which by virtue of any enactment has power to issue a precept to a local authority in England and Wales or a requisition to a local authority in Scotland, or to the expenses of which, by virtue of any enactment, a local authority in the United Kingdom is or can be required to contribute (and in this paragraph, “enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament);

(x) the European Community, the European Atomic Energy Community or the European Coal and Steel Community;

(xi) the European Investment Bank;

(xii) the International Bank for Reconstruction and Development;

(xiii) the International Finance Corporation;

(xiv) the International Monetary Fund;

(xv) the African Development Bank;

(xvi) the Asian Development Bank;

(xvii) the Caribbean Development Bank;

(xviii) the Inter-American Development Bank;

(xix) the European Bank for Reconstruction and Development;

[[F30](xx) the Council of Europe Development Bank;**]**

(b) paid by a person other than one mentioned in sub-paragraph (a) in the course of carrying on a business consisting wholly or to a significant extent of lending money;

(c) paid by one company to another at a time when both are members of the same group or when the same individual is a majority shareholder controller of both of them; or

(d) paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director or manager of that person or who is, or is a close relative of, a controller of that person.

(2) For the purposes of paragraph (1)(c), an individual is a majority shareholder controller of a company if he is a controller of the company by virtue of paragraph (a), (c), (e) or (g) of section 422(2) of the Act, and if in his case the greatest percentage of those referred to in those paragraphs is 50 or more.

(3) In the application of sub-paragraph (d) of paragraph (1) to a sum paid by a partnership, that sub-paragraph is to have effect as if, for the reference to the person paying the sum, there were substituted a reference to each of the partners.

Textual Amendments

F30 Art. 6(1)(a)(xx) substituted (5.6.2002) by The Financial Services and Markets Act 2000 (Financial Promotion and Miscellaneous Amendments) Order 2002 (S.I. 2002/1310), arts. 1, **4(1)**

Marginal Citations

M6 1987 c. 22. Section 3 was amended by the Bank of England Act 1998 (c. 11), Sch. 5, paras 1 and 3. "Municipal bank" is defined in section 103 of the Banking Act 1987, which was amended by the Local Government Act 1992 (c. 19), **Sch. 3**, para. 22, and by the Local Government and Rating Act 1997 (c. 29), Sch. 3, para. 21.

Sums received by solicitors etc.

7.—(1) A sum is not a deposit for the purposes of article 5 if it is received by a practising solicitor acting in the course of his profession.

(2) In paragraph (1), "practising solicitor" means—

(a) a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974 [M7], article 4 of the Solicitors (Northern Ireland) Order 1976 [M8] or section 4 of the Solicitors (Scotland) Act 1980 [M9];

(b) a recognised body;

(c) a registered foreign lawyer in the course of providing professional services as a member of a multi-national partnership;

(d) a registered European lawyer; or

(e) a partner of a registered European lawyer who is providing professional services in accordance with—

(i) rules made under section 31 [M10] of the Solicitors Act 1974;

(ii) regulations made under article 26 of the Solicitors (Northern Ireland) Order 1976; or

(iii) rules made under section 34 of the Solicitors (Scotland) Act 1980 [M11].

(3) In this article—

(a) "a recognised body" means a body corporate recognised by—

(i) the Council of the Law Society under section 9 of the Administration of Justice Act 1985 [M12];

(ii) the Incorporated Law Society of Northern Ireland under article 26A of the Solicitors (Northern Ireland) Order 1976 [M13]; or

(iii) the Council of the Law Society of Scotland under section 34 of the Solicitors (Scotland) Act 1980;

(b) "registered foreign lawyer" has the meaning given by section 89 of the Courts and Legal Services Act 1990 [M14] or, in Scotland, section 65 of the Solicitors (Scotland) Act 1980 [M15];

(c) "multi-national partnership" has the meaning given by section 89 of the Courts and Legal Services Act 1990 but, in Scotland, is a reference to a "multi-national practice" within the meaning of section 60A of the Solicitors (Scotland) Act 1980 [M16]"registered European lawyer" has the meaning given by regulation 2(1) of the European Communities (Lawyer's Practice) Regulations 2000 [M17] or regulation 2(1) of the European Communities (Lawyer's Practice) (Scotland) Regulation 2000 [M18].

Marginal Citations

M7 1974 c. 47.

M8 S.I. 1976/582 (N.I. 12); relevant amending instrument is S.I. 1989/1343 (N.I. 14).

M9 1980 c. 46.

M10 Section 31 was amended by para. 10 of Sch. 17 to the Courts and Legal Services Act 1990 (c. 41), and by para. 3 of Sch. 6 to, and para. 1 of Sch. 7 to, the Access to Justice Act 1999 (c. 22).

M11 Amended by section 31 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M12 1985 c. 61; section 9 was amended by para. 54 of Sch. 18 to the Courts and Legal Services Act 1990, and by para. 1 of Sch. 4 to the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119), and was repealed in part by Part II of Sch. 15 to the Access to Justice Act 1999.

M13 Inserted by article 10 of the Solicitors (Amendment) (Northern Ireland) Order 1989 (S.I. 1989/1343) (N.I. 14).

M14 1990 c. 41; section 89 was amended by para. 14 of Sch. 4 to the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119).

M15 Amended by para. 29(15) of Sch. 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M16 Inserted by section 32 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M17 S.I. 2000/1119.

M18 Scottish Statutory Instruments 2000 No. 121.

Sums received by persons authorised to deal etc.

8. A sum is not a deposit for the purposes of article 5 if it is received by a person who is—

(a) an authorised person with permission to carry on an activity of the kind specified by any of articles 14, 21, 25, 37, 51 and 52, or

(b) an exempt person in relation to any such activity,

in the course of, or for the purpose of, **[**[F31]carrying on any such activity (or any activity which would be such an activity but for any exclusion made by this Part)**]** with or on behalf of the person by or on behalf of whom the sum is paid.

Textual Amendments

F31 Words in art. 8 substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **3**

Sums received in consideration for the issue of debt securities

9.—(1) Subject to paragraph (2), a sum is not a deposit for the purposes of article 5 if it is received by a person as consideration for the issue by him of any investment of the kind specified by article 77 or 78.

(2) The exclusion in paragraph (1) does not apply to the receipt by a person of a sum as consideration for the issue by him of commercial paper unless—

(a) the commercial paper is issued to persons—

(i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or

(ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses; and

(b) the redemption value of the commercial paper is not less than £100,000 (or an amount of equivalent value denominated wholly or partly in a currency other than sterling), and no part of the commercial paper may be transferred unless the redemption value of that part is not less than £100,000 (or such an equivalent amount).

[[F32](3) In paragraph (2), "commercial paper" means an investment of the kind specified by article 77 or 78 having a maturity of less than one year from the date of issue.**]**

Textual Amendments

F32 Art. 9(3) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **12**

[[F33]Sums received in exchange for electronic money

9A. A sum is not a deposit for the purposes of article 5 if it is immediately exchanged for electronic money.**]**

Textual Amendments

F33 Art. 9A inserted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **3(2)**

[F34Information society services

9AA. Article 5 is subject to the exclusion in article 72A (information society services).**]**

Textual Amendments

F34 Art. 9AA inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(2)**

[F35CHAPTER IIA

ELECTRONIC MONEY

Textual Amendments

F35 Pt. 2 Ch. 2A inserted (11.4.2002 for specified purposes, 27.4.2002 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4** (with arts. 9, 10)

The activity

Issuing electronic money

9B. Issuing electronic money is a specified kind of activity.

Exclusions

Persons certified as small issuers etc.

9C.—(1) There is excluded from article 9B the issuing of electronic money by a person to whom the Authority has given a certificate under this article (provided the certificate has not been revoked).

(2) An application for a certificate may be made by—

(a) a body corporate, or

(b) a partnership,

(other than a credit institution as defined in **[**F36Article 4(1)(a)**]** of the banking consolidation directive) which has its head office in the United Kingdom.

(3) The authority must, on the application of such a person ("A"), give A a certificate if it appears to the Authority that paragraph (4), (5) or (6) applies.

(4) This paragraph applies if—

(a) A does not issue electronic money except on terms that the electronic device on which the monetary value is stored is subject to a maximum storage amount of not more than 150 euro; and

(b) A's total liabilities with respect to the issuing of electronic money do not (or will not) usually exceed 5 million euro and do not (or will not) ever exceed 6 million euro.

(5) This paragraph applies if—

(a) the condition in paragraph (4)(a) is met;

(b) A's total liabilities with respect to the issuing of electronic money do not (or will not) exceed 10 million euro; and

(c) electronic money issued by A is accepted as a means of payment only by—

(i) subsidiaries of A which perform operational or other ancillary functions related to electronic money issued or distributed by A; or

(ii) other members of the same group as A (other than subsidiaries of A).

(6) This paragraph applies if—

(a) the conditions in paragraphs (4)(a) and (5)(b) are met; and

(b) electronic money issued by A is accepted as a means of payment, in the course of business, by not more than one hundred persons where—

(i) those persons accept such electronic money only at locations within the same premises or limited local area; or

(ii) those persons have a close financial or business relationship with A, such as a common marketing or distribution scheme.

(7) For the purposes of paragraph (6)(b)(i), locations are to be treated as situated within the same premises or limited local area if they are situated within—

(a) a shopping centre, airport, railway station, bus station, or campus of a university, polytechnic, college, school or similar educational establishment; or

(b) an area which does not exceed four square kilometres;

but sub-paragraphs (a) and (b) are illustrative only and are not to be treated as limiting the scope of paragraph (6)(b)(i).

(8) For the purposes of paragraph (6)(b)(ii), persons are not to be treated as having a close financial or business relationship with A merely because they participate in arrangements for the acceptance of electronic money issued by A.

(9) In this article, references to amounts in euro include references to equivalent amounts in sterling.

(10) A person to whom a certificate has been given under this article (and whose certificate has not been revoked) is referred to in this Chapter as a "certified person".

Textual Amendments

F36 Words in art. 9C(2) substituted (1.1.2007) by The Capital Requirements Regulations 2006 (S.I. 2006/3221), reg. 1(1), **Sch. 6 para. 6(2)**

Applications for certificates

9D. The following provisions of the Act apply to applications to the Authority for certificates under 9C (and the determination of such applications) as they apply to applications for Part IV permissions (and the determination of such applications)—

(a) section 51(1)(b) and (3) to (6);

(b) section 52, except subsections (6), (8) and (9)(a) and (b); and

(c) section 55(1).

Revocation of certificate on Authority's own initiative

9E.—(1) The Authority may revoke a certificate given to a person ("A") under article 9C if—

(a) it appears to it that A does not meet the relevant conditions, or has failed to meet the relevant conditions at any time since the certificate was given; or

(b) the person to whom the certificate was given has contravened any rule or requirement to which he is subject as a result of article 9G.

(2) For the purposes of paragraph (1), A meets the relevant conditions at any time if, at that time, paragraph (4), (5) or (6) of article 9C applies.

(3) Sections 54 and 55(2) of the Act apply to the revocation of a certificate under paragraph (1) as they apply to the cancellation of a Part IV permission on the Authority's own initiative, as if references in those sections to an authorised person were references to a certified person.

Revocation of certificate on request

9F.—(1) A certified person ("B") may apply to the Authority for his certificate to be revoked, and the Authority must then revoke the certificate and give B written notice that it has done so.

(2) An application under paragraph (1) must be made in such manner as the Authority may direct.

(3) If—

(a) B has made an application under Part IV of the Act for permission to carry on a regulated activity of the kind specified by article 9B (or for variation of an existing permission so as to add a regulated activity of that kind), and

(b) on making an application for revocation of his certificate under paragraph (1), he requests that the revocation be conditional on the granting of his application under Part IV of the Act,

the revocation of B's certificate is to be conditional on the granting of his application under Part IV of the Act.

Obtaining information from certified persons etc.

9G.—(1) The Authority may make rules requiring certified persons to provide information to the Authority about their activities so far as relating to the issuing of electronic money, including the amount of their liabilities with respect to the issuing of electronic money.

(2) Section 148 of the Act (modification or waiver of rules) applies in relation to rules made under paragraph (1) as if references in that section to an authorised person were references to a certified person.

(3) Section 150 of the Act (actions for damages) applies in relation to a rule made under paragraph (1) as if the reference in subsection (1) of that section to an authorised person were a reference to a certified person.

(4) The Authority may, by notice in writing given to a certified person, require him—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(5) Paragraph (4) applies only to information or documents reasonably required for the purposes of determining whether the certified person meets, or has met, the relevant conditions.

(6) Subsections (2), (5) and (6) of section 165 of the Act (Authority's power to require information) apply to a requirement imposed under paragraph (4) as they apply to a requirement imposed under that section.

(7) Section 166 of the Act (reports by skilled persons) has effect as if—

(a) the reference in subsection (1) of that section to section 165 included a reference to paragraph (4) above; and

(b) the reference in section 166(2)(a) of the Act to an authorised person included a reference to a certified person.

(8) Subsection (4) of section 168 of the Act (appointment of persons to carry out investigations in particular cases) has effect as if it provided for subsection (5) of that section to apply if it appears to the Authority that there are circumstances suggesting that a certified person may not meet, or may not have met, the relevant conditions.

(9) Sections 175 (information and documents: supplemental provisions), 176 (entry of premises under warrant) and 177 (offences) of the Act apply to a requirement imposed under paragraph (4) as they apply to a requirement imposed under section 165 of the Act (the reference in section 176(3)(a) to an authorised person being read as a reference to a certified person).

(10) In this article—

(a) "specified", in paragraph (4), means specified in the notice mentioned in that paragraph;

(b) a certified person ("A") meets the relevant conditions at any time if, at that time, paragraph (4), (5) or (6) of article 9C applies.

Supplemental

Rules prohibiting the issue of electronic money at a discount

9H.—(1) The Authority may make rules applying to authorised persons with permission to carry on an activity of the kind specified by article 9B, prohibiting the issue of electronic money having a monetary value greater than the funds received.

(2) Section 148 of the Act (modification or waiver of rules) applies in relation to rules made under paragraph (1).

False claims to be a certified person

9I. A person who is not a certified person is to be treated as guilty of an offence under section 24 of the Act (false claims to be authorised or exempt) if he—

(a) describes himself (in whatever terms) as a certified person;

(b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is a certified person.

Exclusion of electronic money from the compensation scheme

9J. The compensation scheme established under Part XV of the Act is not to provide for the compensation of persons in respect of claims made in connection with any activity of the kind specified by article 9B.

Record of certified persons

9K. The record maintained by the Authority under section 347 of the Act (public record of authorised persons etc.) must include every certified person.**]**

CHAPTER III

INSURANCE

The activities

Effecting and carrying out contracts of insurance

10.—(1) Effecting a contract of insurance as principal is a specified kind of activity.

(2) Carrying out a contract of insurance as principal is a specified kind of activity.

Exclusions

Community co-insurers

11.—(1) There is excluded from article 10(1) or (2) the effecting or carrying out of a contract of insurance by an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act—

(a) other than through a branch in the United Kingdom; and

(b) pursuant to a Community co-insurance operation in which the firm is participating otherwise than as the leading insurer.

(2) In paragraph (1), "Community co-insurance operation" and "leading insurer" have the same meaning as in the Council Directive of 30 May 1978 on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance (No. 78/473/EEC) [M19].

Marginal Citations

M19 O.J. No. L151, 7.6.1978, p.25.

Breakdown insurance

12.—(1) There is excluded from article 10(1) or (2) the effecting or carrying out, by a person who does not otherwise carry on an activity of the kind specified by that article, of a contract of insurance which—

(a) is a contract under which the benefits provided by that person ("the provider") are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle; and

(b) contains the terms mentioned in paragraph (2).

(2) Those terms are that—

(a) the assistance takes either or both of the forms mentioned in paragraph (3)(a) and (b);

(b) the assistance is not available outside the United Kingdom and the Republic of Ireland except where it is provided without the payment of additional premium by a person in the country concerned with whom the provider has entered into a reciprocal agreement; and

(c) assistance provided in the case of an accident or breakdown occurring in the United Kingdom or the Republic of Ireland is, in most circumstances, provided by the provider's servants.

(3) The forms of assistance are—

(a) repairs to the relevant vehicle at the place where the accident or breakdown has occurred; this assistance may also include the delivery of parts, fuel, oil, water or keys to the relevant vehicle;

(b) removal of the relevant vehicle to the nearest or most appropriate place at which repairs may be carried out, or to—

(i) the home, point of departure or original destination within the United Kingdom of the driver and passengers, provided the accident or breakdown occurred within the United Kingdom;

(ii) the home, point of departure or original destination within the Republic of Ireland of the driver and passengers, provided the accident or breakdown occurred within the Republic of Ireland or within Northern Ireland;

(iii) the home, point of departure or original destination within Northern Ireland of the driver and passengers, provided the accident or breakdown occurred within the Republic of Ireland;

and this form of assistance may include the conveyance of the driver or passengers of the relevant vehicle, with the vehicle, or (where the vehicle is to be conveyed only to the nearest or most appropriate place at which repairs may be carried out) separately, to the nearest location from which they may continue their journey by other means.

(4) A contract does not fail to meet the condition in paragraph (1)(a) solely because the provider may reimburse the person entitled to the assistance for all or part of any sums paid by him in respect of assistance either because he failed to identify himself as a person entitled to the assistance or because he was unable to get in touch with the provider in order to claim the assistance.

(5) In this article—

"the assistance" means the benefits to be provided under a contract of the kind mentioned in paragraph (1);

"breakdown" means an event—

(a) which causes the driver of the relevant vehicle to be unable to start a journey in the vehicle or involuntarily to bring the vehicle to a halt on a journey because of some malfunction of the vehicle or failure of it to function, and

(b) after which the journey cannot reasonably be commenced or continued in the relevant vehicle;

"the relevant vehicle" means the vehicle (including a trailer or caravan) in respect of which the assistance is required.

[[F37]Information society services

12A. Article 10 is subject to the exclusion in article 72A (information society services), as qualified by paragraph (2) of that article.**]**

Textual Amendments

F37 Art. 12A and words inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(3)**

Supplemental

Application of sections 327 and 332 of the Act to insurance market activities

13.—(1) In sections 327(5) and (7) and 332(3)(b) of the Act (exemption from the general prohibition for members of the professions, and rules in relation to such persons), the references to "a regulated activity" and "regulated activities" do not include—

(a) any activity of the kind specified by article 10(1) or (2), where—

(i) P is a member of the Society; and

(ii) by virtue of section 316 of the Act (application of the Act to Lloyd's underwriting), the general prohibition does not apply to the carrying on by P of that activity; or

(b) any activity of the kind specified by article 10(2), where—

(i) P is a former underwriting member; and

(ii) the contract of insurance in question is one underwritten by P at Lloyd's.

(2) In paragraph (1)—

"member of the Society" has the same meaning as in Lloyd's Act 1982 [M20]; and

"former underwriting member" has the meaning given by section 324(1) of the Act.

Marginal Citations

M20 1982 c. 14.

CHAPTER IV

DEALING IN INVESTMENTS AS PRINCIPAL

The activity

Dealing in investments as principal

14.—[[F38](1)**]** Buying, selling, subscribing for or underwriting securities or contractually based investments (other than investments of the kind specified by article 87, or article 89 so far as relevant to that article) as principal is a specified kind of activity.

[[F39](2) Paragraph (1) does not apply to a kind of activity to which article 25D applies.**]**

Textual Amendments

F38 Art. 14(1): art. 14 renumbered as art. 14(1) (1.4.2007 for specified purposes) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **5(a)**

F39 Art. 14(2) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **5(b)**

Exclusions

Absence of holding out etc.

15.—(1) Subject to paragraph (3), a person ("A") does not carry on an activity of the kind specified by article 14 by entering into a transaction which relates to a security or is the assignment (or, in Scotland, the assignation) of a qualifying contract of insurance (or an investment of the kind specified by article 89, so far as relevant to such a contract), unless—

(a) A holds himself out as willing, as principal, to buy, sell or subscribe for investments of the kind to which the transaction relates at prices determined by him generally and continuously rather than in respect of each particular transaction;

(b) A holds himself out as engaging in the business of buying investments of the kind to which the transaction relates, with a view to selling them;

(c) A holds himself out as engaging in the business of underwriting investments of the kind to which the transaction relates; or

(d) A regularly solicits members of the public with the purpose of inducing them, as principals or agents, to enter into transactions constituting activities of the kind specified by article 14, and the transaction is entered into as a result of his having solicited members of the public in that manner.

(2) In paragraph (1)(d), "members of the public" means any persons other than—

(a) authorised persons or persons who are exempt persons in relation to activities of the kind specified by article 14;

(b) members of the same group as A;

(c) persons who are or who propose to become participators with A in a joint enterprise;

(d) any person who is solicited by A with a view to the acquisition by A of 20 per cent or more of the voting shares in a body corporate;

(e) if A (either alone or with members of the same group as himself) holds more than 20 per cent of the voting shares in a body corporate, any person who is solicited by A with a view to—

(i) the acquisition by A of further shares in the body corporate; or

(ii) the disposal by A of shares in the body corporate to the person solicited or to a member of the same group as the person solicited;

(f) any person who—

(i) is solicited by A with a view to the disposal by A of shares in a body corporate to the person solicited or to a member of the same group as that person; and

(ii) either alone or with members of the same group holds 20 per cent or more of the voting shares in the body corporate;

(g) any person whose head office is outside the United Kingdom, who is solicited by an approach made or directed to him at a place outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or (so far as relevant to any of those articles) article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(3) This article does not apply where A enters into the transaction as bare trustee or, in Scotland, as nominee for another person and is acting on that other person's instructions (but the exclusion in article 66(1) applies if the conditions set out there are met).

[[F40](4) This article is subject to article 4(4).**]**

Textual Amendments

F40 Art. 15(4) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **6**

Dealing in contractually based investments

16.—[F41(1)**]** A person who is not an authorised person does not carry on an activity of the kind specified by article 14 by entering into a transaction relating to a contractually based investment—

(a) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(b) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or, so far as relevant to any of those articles, article 64 (or would do so apart from any exclusion from any of those articles made by this Order).

[F42(2) This article is subject to article 4(4).**]**

Textual Amendments

F41 Art. 16(1): art. 16 renumbered as art. 16(1) (1.4.2007 for specified purposes) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **7(a)**

F42 Art. 16(2) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **7(b)**

Acceptance of instruments creating or acknowledging indebtedness

17.—(1) A person does not carry on an activity of the kind specified by article 14 by accepting an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.

(2) The reference in paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Issue by a company of its own shares etc.

18.—(1) There is excluded from article 14 the issue by a company of its own shares or share warrants, and the issue by any person of his own debentures or debenture warrants.

(2) In this article—

(a) "company" means any body corporate other than an open-ended investment company;

(b) "shares" and "debentures" include any investment of the kind specified by article 76 or 77;

(c) "share warrants" and "debenture warrants" mean any investment of the kind specified by article 79 which relates to shares in the company concerned or, as the case may be, debentures issued by **[F43**the person concerned**]**.

Textual Amendments

F43 Words in art. 18(2)(c) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **4**

[[F44]Dealing by a company in its own shares

18A.—(1) A company does not carry on an activity of the kind specified by article 14 by purchasing its own shares where section 162A of the Companies Act 1985 (Treasury shares) applies to the shares purchased.

(2) A company does not carry on an activity of the kind specified by article 14 by dealing in its own shares held as treasury shares, in accordance with section 162D of that Act (Treasury shares: disposal and cancellation).

(3) In this article "shares held as treasury shares" has the same meaning as in that Act.**]**

Textual Amendments

F44 Art. 18A inserted (1.12.2003) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2003 (S.I. 2003/2822), arts. 1, **3**

Risk management

19.—(1) A person ("B") does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction with another person ("C") if—

(a) the transaction relates to investments of the kind specified by any of articles 83 to 85 (or article 89 so far as relevant to any of those articles);

(b) neither B nor C is an individual;

(c) the sole or main purpose for which B enters into the transaction (either by itself or in combination with other such transactions) is that of limiting the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of a regulated activity; and

(d) the relevant business consists mainly of activities other than—

(i) regulated activities; or

(ii) activities which would be regulated activities but for any exclusion made by this Part.

(2) In paragraph (1), "relevant business" means a business carried on by—

(a) B;

(b) a member of the same group as B; or

(c) where B and another person are, or propose to become, participators in a joint enterprise, that other person.

[[F45](3) This article is subject to article 4(4).**]**

Textual Amendments

F45 Art. 19(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **8**

Other exclusions

20. Article 14 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes)**[**[F46], 72 (overseas persons) and 72A (information society services)**]**.

Textual Amendments

F46 Words in art. 20 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(4)**

CHAPTER V

DEALING IN INVESTMENTS AS AGENT

The activity

Dealing in investments as agent

21.—**[**[F47](1)**]** Buying, selling, subscribing for or underwriting securities or **[**[F48]relevant investments**]** (other than investments of the kind specified by article 87, or article 89 so far as relevant to that article) as agent is a specified kind of activity.

[[F49](2) Paragraph (1) does not apply to a kind of activity to which article 25D applies.**]**

Textual Amendments

F47 Art. 21(1): art. 21 renumbered as art. 21(1) (1.4.2007 for specified purposes) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **9(a)**

F48 Words in art. 21 substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **4(1)**

F49 Art. 21(2) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **9(b)**

Exclusions

Deals with or through authorised persons

22.—(1) A person who is not an authorised person does not carry on an activity of the kind specified by article 21 by entering into a transaction as agent for another person (“the client") with or through an authorised person if—

(a) the transaction is entered into on advice given to the client by an authorised person; or

(b) it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from the agent as to the merits of the client’s entering into the transaction (or, if the client has sought such advice, the agent has declined to give it but has recommended that the client seek such advice from an authorised person).

[[F50](2) But the exclusion in paragraph (1) does not apply if—

(a) the transaction relates to a contract of insurance; or

(b) the agent receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction.**]**

[[F51](3) This article is subject to article 4(4).**]**

Textual Amendments

F50 Art. 22(2) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **4(2)**

F51 Art. 22(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **10**

Modifications etc. (not altering text)

C2 Art. 22 modified (31.10.2001) by The Financial Services and Markets Act 2000 (Interim Permissions) Order 2001 (S.I. 2001/3374), art. 1, **Sch. para. 10** (with Sch. para. 4)

C3 Art. 22 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), art. 1(2)(b), **Sch. para. 11** (with Sch. para. 4)

C4 Art. 22 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), art. 1(2)(b), **Sch. para. 10(1)** (with Sch. para. 4)

Risk management

23.—(1) A person ("B") does not carry on an activity of the kind specified by article 21 by entering as agent for a relevant person into a transaction with another person ("C") if—

(a) the transaction relates to investments of the kind specified by any of articles 83 to 85 (or article 89 so far as relevant to any of those articles);

(b) neither B nor C is an individual;

(c) the sole or main purpose for which B enters into the transaction (either by itself or in combination with other such transactions) is that of limiting the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of a regulated activity; and

(d) the relevant business consists mainly of activities other than—

(i) regulated activities; or

(ii) activities which would be regulated activities but for any exclusion made by this Part.

(2) In paragraph (1), "relevant person" means—

(a) a member of the same group as B; or

(b) where B and another person are, or propose to become, participators in a joint enterprise, that other person;

and "relevant business" means a business carried on by a relevant person.

[[F52](3) This article is subject to article 4(4).**]**

Textual Amendments

F52 Art. 23(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **11**

Other exclusions

24. Article 21 is also subject to the exclusions in articles 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes)**[**[F53], 72 (overseas persons)**][**[F54], 72A (information society services), 72B (activities carried on by a provider of relevant goods or services) and 72D (large risks contracts where risk situated outside the EEA)**]**.

Textual Amendments

F53 Words in art. 24 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(5)**

F54 Words in art. 24 substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **4(3)**

CHAPTER VI

ARRANGING DEALS IN INVESTMENTS

The activities

Arranging deals in investments

25.—(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

(a) a security,

(b) a **[**[F55]relevant investment**]**, or

(c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity.

[[F56](3) Paragraphs (1) and (2) do not apply to a kind of activity to which article 25D applies.**]**

Textual Amendments

F55 Words in art. 25(1) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(1)**

F56 Art. 25(3) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **12**

[[F57]Arranging regulated mortgage contracts

25A.—(1) Making arrangements—

(a) for another person to enter into a regulated mortgage contract as borrower; or

(b) for another person to vary the terms of a regulated mortgage contract entered into by him as borrower after the coming into force of article 61, in such a way as to vary his obligations under that contract,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated mortgage contract as borrower is also a specified kind of activity.

(3) In this article "borrower" has the meaning given by article 61(3)(a)(i).**]**

Textual Amendments

F57 Art. 25A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **4**

[[F58]Arranging regulated home reversion plans

25B.—(1) Making arrangements—

(a) for another person to enter into a regulated home reversion plan as reversion seller or as plan provider; or

(b) for another person to vary the terms of a regulated home reversion plan, entered into on or after 6th April 2007 by him as reversion seller or as plan provider, in such a way as to vary his obligations under that plan,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated home reversion plan as reversion seller or as plan provider is also a specified kind of activity.**]**

Textual Amendments

F58 Arts. 25B, 25C inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **4**

[[F58]Arranging regulated home purchase plans

25C.—(1) Making arrangements—

(a) for another person to enter into a regulated home purchase plan as home purchaser; or

(b) for another person to vary the terms of a regulated home purchase plan, entered into on or after 6th April 2007 by him as home purchaser, in such a way as to vary his obligations under that plan,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated home purchase plan as home purchaser is also a specified kind of activity.**]**

Textual Amendments

F58 Arts. 25B, 25C inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **4**

[F59Operating a multilateral trading facility

25D.—(1) The operation of a multilateral trading facility on which MiFID instruments are traded is a specified kind of activity.

(2) In paragraph (1), "MiFID instrument" means any investment—

(a) of the kind specified by article 76, 77, 78, 79, 80, 81, 83, 84 or 85; or

(b) of the kind specified by article 89 so far as relevant to an investment falling within sub-paragraph (a),

that is a financial instrument.**]**

Textual Amendments

F59 Art. 25D inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **13**

Exclusions

Arrangements not causing a deal

26. There are excluded from **[**F60articles 25(1), 25A(1), 25B(1) and 25C(1)**]** arrangements which do not or would not bring about the transaction to which the arrangements relate.

Textual Amendments

F60 Words in art. 26 substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **5**

Enabling parties to communicate

27. A person does not carry on an activity of the kind specified by **[**F61article 25(2), 25A(2), 25B(2) or 25C(2)**]** merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

Textual Amendments

F61 Words in art. 27 substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **6**

Arranging transactions to which the arranger is a party

28.—(1) There are excluded from article 25(1) any arrangements for a transaction into which the person making the arrangements enters or is to enter as principal or as agent for some other person.

(2) There are excluded from article 25(2) any arrangements which a person makes with a view to transactions into which he enters or is to enter as principal or as agent for some other person.

[[F62](3) But the exclusions in paragraphs (1) and (2) do not apply to arrangements made for or with a view to a transaction which relates to a contract of insurance, unless the person making the arrangements either—

(a) is the only policyholder; or

(b) as a result of the transaction, would become the only policyholder.**]**

Textual Amendments

F62 Art. 28(3) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(2)**

[[F63]**Arranging contracts [**[F64]**or plans] to which the arranger is a party**

28A.—(1) There are excluded from **[**[F65]articles 25A(1), 25B(1) and 25C(1)**]** any arrangements—

(a) for a **[**[F66]contract or plan**]** into which the person making the arrangements enters or is to enter; or

(b) for a variation of a **[**[F66]contract or plan**]** to which that person is (or is to become) a party.

(2) There are excluded from **[**[F67]articles 25A(2), 25B(2) and 25C(2)**]** any arrangements which a person makes with a view to contracts **[**[F68]or plans**]** into which he enters or is to enter.**]**

Textual Amendments

F63 Art. 28A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **7**

F64 Words in art. 28A heading inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **7(1)**

F65 Words in art. 28A(1) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **7(2)(a)(i)**

F66 Words in art. 28A(1) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **7(2)(a)(ii)**

F67 Words in art. 28A(2) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **7(2)(b)(i)**

F68 Words in art. 28A(2) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **7(2)(b)(ii)**

Arranging deals with or through authorised persons

29.—(1) There are excluded from **[**[F69]articles 25(1) and (2), 25A(1) and (2), 25B(1) and (2) and 25C(1) and (2)**]** arrangements made by a person ("A") who is not an authorised person for or with a view to a transaction which is or is to be entered into by a person ("the client") with or though an authorised person if—

(a) the transaction is or is to be entered into on advice to the client by an authorised person; or

(b) it is clear, in all the circumstances, that the client, in his capacity as an **[**[F70]investor, borrower, reversion seller, plan provider or (as the case may be) home purchaser**]**, is not seeking and has not sought advice from A as to the merits of the client's entering into the transaction (or, if the client has sought such advice, A has declined to give it but has recommended that the client seek such advice from an authorised person).

[[F71](2) But the exclusion in paragraph (1) does not apply if—

(a) the transaction relates, or would relate, to a contract of insurance; or

(b) A receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his making the arrangements.**]**

[[F72](3) This article is subject to article 4(4).**]**

Textual Amendments

F69 Words in art. 29(1) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **8(a)**

F70 Words in art. 29(1)(b) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **8(b)**

F71 Art. 29(2) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(3)**

F72 Art. 29(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **14**

Modifications etc. (not altering text)

C5 Art. 29 modified (31.10.2001) by The Financial Services and Markets Act 2000 (Interim Permissions) Order 2001 (S.I. 2001/3374), art. 1, **Sch. para. 11** (with Sch. para. 4)

C6 Art. 29 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), art. 1(2)(b), **Sch. para. 11** (with Sch. para. 4)

C7 Art. 29 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), art. 1(2)(b), **Sch. para. 10(2)** (with Sch. para. 4)

C8 Art. 29 modified (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), art. 1(2), **Sch. para. 9**

[[F73]Arrangements made in the course of administration by authorised person

29A.—[
[F74](1)**]** A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 25A(1)(b) as a result of—

(a) anything done by an authorised person ("B") in relation to a regulated mortgage contract which B is administering pursuant to an arrangement of the kind mentioned in article 62(a); or

(b) anything A does in connection with the administration of a regulated mortgage contract in circumstances falling within article 62(b).**]**

[[F75](2) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 25B(1)(b) as a result of—

(a) anything done by an authorised person ("B") in relation to a regulated home reversion plan which B is administering pursuant to an arrangement of the kind mentioned in article 63C(a); or

(b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).

(3) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 25C(1)(b) as a result of—

(a) anything done by an authorised person ("B") in relation to a regulated home purchase plan which B is administering pursuant to an arrangement of the kind mentioned in article 63G(a); or

(b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).**]**

Textual Amendments

F73 Art. 29A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **9**

F74 Art. 29A(1): art. 29A renumbered as art. 29A(1) (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **9(a)**

F75 Art. 29A(2)(3) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **9(b)**

Modifications etc. (not altering text)

C9 Art. 29A(2)(a) applied (with modifications) (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), art. 1(2), **Sch. para. 10**

C10 Art. 29A(3)(a) applied (with modifications) (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), art. 1(2), **Sch. para. 10**

Arranging transactions in connection with lending on the security of insurance policies

30.—(1) There are excluded from article 25(1) and (2) arrangements made by a money-lender under which either—

[[F76](a) a relevant authorised person or a person acting on his behalf will introduce to the money-lender persons with whom the relevant authorised person has entered, or proposes to enter, into a relevant transaction, or will advise such persons to approach the money-lender, with a view to the money-lender lending money on the security of any contract effected pursuant to a relevant transaction;**]**

(b) a relevant authorised person gives an assurance to the money-lender as to the amount which, on the security of any contract effected pursuant to a relevant transaction, will or

may be received by the money-lender should the money-lender lend money to a person introduced to him pursuant to the arrangements.

(2) In paragraph (1)—

"money-lender" means a person who is—

(a) [M21]a money-lending company within the meaning of section 338 of the Companies Act 1985 ;

(b) a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies; or

(c) a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans;

"relevant authorised person" means an authorised person who has permission to effect **[**[F77]contracts of insurance**]** or to sell investments of the kind specified by article 89, so far as relevant to such contracts;

"relevant transaction" means the effecting of a **[**[F78]contract of insurance**]** or the sale of an investment of the kind specified by article 89, so far as relevant to such contracts.

[[F79](3) This article is subject to article 4(4A).**]**

Textual Amendments

F76 Art. 30(1)(a) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **5**

F77 Words in art. 30(2) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(4)(a)**

F78 Words in art. 30(2) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(4)(b)**

F79 Art. 30(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **15**

Marginal Citations

M21 1985 c. 6. Section 338 was amended by section 138 of, and para. 10 of Sch. 10 to, the Companies Act 1989 (c. 40).

Arranging the acceptance of debentures in connection with loans

31.—(1) There are excluded from article 25(1) and (2) arrangements under which a person accepts or is to accept, whether as principal or agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which is, or is to be, made, granted or provided by that person or his principal.

(2) The reference in paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Provision of finance

32. There are excluded from article 25(2) arrangements having as their sole purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

Introducing

33. There are excluded from **[**[F80]articles 25(2), 25A(2), 25B(2) and 25C(2)**]** arrangements where—

(a) they are arrangements under which persons ("clients") will be introduced to another person;

(b) the person to whom introductions are to be made is—

(i) an authorised person;

(ii) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(iii) a person who is not unlawfully carrying on regulated activities in the United Kingdom and whose ordinary business involves him in engaging in an activity of the kind specified by any of articles 14, 21, 25, **[**[F81]25A,**][**[F82]25B, 25C,**]** 37**[**[F83], 39A**]** 40, 45, 51, **[**[F84]52, 53**][**[F85], 53A, 53B and 53C**]** (or, so far as relevant to any of those articles, article 64), or would do so apart from any exclusion from any of those articles made by this Order; [F86]...

(c) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or in relation to any class of investments to which the arrangements relate**[**[F87]; and

(d) the arrangements are made with a view to a person entering into a transaction which does not relate to a contract of insurance.**]**

Textual Amendments

F80 Words in art. 33 substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **10(a)**

F81 Words in art. 33(b)(iii) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **10(b)(i)**

F82 Words in art. 33(b)(iii) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **10(b)(i)**

F83 Word in art. 33(b)(iii) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(5)(a)**

F84 Words in art. 33(b)(iii) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **10(b)(ii)**

F85 Words in art. 33(b)(iii) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **10(b)(ii)**

F86 Word in art. 33(b)(iii) omitted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(5)(b)**

F87 Art. 33(d) and preceding word inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(5)(c)**

[[F88]Introducing to authorised persons etc.

33A.—(1) There are excluded from article 25A(2) arrangements where—

(a) they are arrangements under which a client is introduced to a person ("N") who is—

(i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25A, 53A, and 61(1),

(ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25A and 53A without contravening the general prohibition, or

(iii) an overseas person who carries on activities specified by any of articles 25A, 53A and 61(1); and

(b) the conditions mentioned in paragraph (2) are satisfied.

[

[F89](1A) There are excluded from article 25B(2) arrangements where—

(a) they are arrangements under which a client is introduced to a person ("N") who is—

(i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25B, 53B and 63B(1),

(ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25B and 53B without contravening the general prohibition, or

(iii) an overseas person who carries on activities specified by any of articles 25B, 53B and 63B(1); and

(b) the conditions mentioned in paragraph (2) are satisfied.

(1B) There are excluded from article 25C(2) arrangements where—

(a) they are arrangements under which a client is introduced to a person ("N") who is—

(i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25C, 53C and 63F(1),

(ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25C and 53C without contravening the general prohibition, or

(iii) an overseas person who carries on activities specified by any of articles 25C, 53C and 63F(1); and

(b) the conditions mentioned in paragraph (2) are satisfied.**]**

(2) Those conditions are—

(a) that the person making the introduction ("P") does not receive any money, other than money payable to P on his own account, paid by the client for or in connection with any transaction which the client enters into with or through N as a result of the introduction; and

(b) that before making the introduction P discloses to the client such of the information mentioned in paragraph (3) as applies to P.

(3) That information is—

(a) that P is a member of the same group as N;

(b) details of any payment which P will receive from N, by way of fee or commission, for introducing the client to N;

(c) an indication of any other reward or advantage received or to be received by P that arises out of his introducing clients to N.

[[F90](4) In this article, "client" means—

(a) for the purposes of paragraph (1), a borrower within the meaning given by article 61(3)(a)(i), or a person who is or may be contemplating entering into a regulated mortgage contract as such a borrower;

(b) for the purposes of paragraph (1A), a reversion seller, a plan provider or a person who is or may be contemplating entering into a regulated home reversion plan as a reversion seller or as a plan provider;

(c) for the purposes of paragraph (1B), a home purchaser or a person who is or may be contemplating entering into a regulated home purchase plan as a home purchaser.**]]**

Textual Amendments

F88 Art. 33A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **11**

F89 Art. 33A(1A)(1B) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **11(a)**

F90 Art. 33A(4) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **11(b)**

Arrangements for the issue of shares etc.

34.—(1) There are excluded from article 25(1) and (2)—

(a) arrangements made by a company for the purposes of issuing its own shares or share warrants; and

(b) arrangements made by any person for the purposes of issuing his own debentures or debenture warrants;

and for the purposes of article 25(1) and (2), a company is not, by reason of issuing its own shares or share warrants, and a person is not, by reason of issuing his own debentures or debenture warrants, to be treated as selling them.

(2) In paragraph (1), “company", “shares", “debentures", “share warrants" and “debenture warrants" have the meanings given by article 18(2).

International securities self-regulating organisations

35.—(1) There are excluded from article 25(1) and (2) any arrangements made for the purposes of carrying out the functions of a body or association which is approved under this article as an international securities self-regulating organisation, whether the arrangements are made by the organisation itself or by a person acting on its behalf.

(2) The Treasury may approve as an international securities self-regulating organisation any body corporate or unincorporated association with respect to which the conditions mentioned in paragraph (3) appear to them to be met if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as they consider relevant, it appears to them that to do so would be desirable and not result in any undue risk to investors.

(3) The conditions are that—

(a) the body or association does not have its head office in the United Kingdom;

(b) the body or association is not eligible for recognition under section 287 or 288 of the Act (applications by investment exchanges and clearing houses) on the ground that (whether or not it has applied, and whether or not it would be eligible on other grounds) it is unable to satisfy the requirements of one or both of paragraphs (a) and (b) of section 292(3) of the Act (requirements for overseas investment exchanges and overseas clearing houses);

(c) the body or association is able and willing to co-operate with the Authority by the sharing of information and in other ways;

(d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the body or association in the country or territory in which its head office is situated;

(e) the body or association has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempt persons, and persons whose head offices are outside the United Kingdom and whose ordinary business involves them in engaging in activities which are activities of a kind specified by this Order (or would be apart from any exclusion made by this Part); and

(f) the body or association facilitates and regulates the activity of its members in the conduct of international securities business.

(4) In paragraph (3)(f), "international securities business" means the business of buying, selling, subscribing for or underwriting investments (or agreeing to do so), either as principal or agent, where—

(a) the investments are securities or **[**[F91]relevant investments**]** and are of a kind which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand the risks involved; and

(b) either the transaction is international or each of the parties may be expected to be indifferent to the location of the other;

and, for the purposes of this definition, it is irrelevant that the investments may ultimately be bought otherwise than in the course of such business by persons not so expert.

(5) Any approval under this article is to be given by notice in writing; and the Treasury may by a further notice in writing withdraw any such approval if for any reason it appears to them that it is not appropriate to it to continue in force.

Textual Amendments

F91 Words in art. 35(4)(a) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(6)**

Modifications etc. (not altering text)

C11 Art. 35 extended (1.12.2001) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (S.I. 2001/2636), arts. 1(2)(b), 2(1), **80**; S.I. 2001/3538, art. 2(1)

Other exclusions

36.—[[F92](1)**]** Article 25 is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes) **[**[F93], 72 (overseas persons) **[**[F94], 72A (information society services), 72B (activities carried on by a provider of relevant goods or services), 72C (provision of information about contracts of insurance on an incidental basis) and 72D (large risks contracts where risk situated outside the EEA)**]]**.

[[F95](2) **[**[F96]Articles 25A, 25B and 25C are**]** also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 72 (overseas persons) and 72A (information society services).**]**

[[F97](3) Article 25D is also subject to the exclusion in article 72 (overseas persons).**]**

Textual Amendments

F92 Art. 36(1): art. 36 renumbered as art. 36(1) (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **12(a)**

F93 Words in art. 36 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(6)**

F94 Words in art. 36(1) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(7)**

F95 Art. 36(2) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **12(b)**

F96 Words in art. 36(2) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **12**

F97 Art. 36(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **16**

CHAPTER VII

MANAGING INVESTMENTS

The activity

Managing investments

37. Managing assets belonging to another person, in circumstances involving the exercise of discretion, is a specified kind of activity if—

(a) the assets consist of or include any investment which is a security or a contractually based investment; or

(b) the arrangements for their management are such that the assets may consist of or include such investments, and either the assets have at any time since 29th April 1988 done so, or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.

Exclusions

Attorneys

38.—[[F98](1)**]** A person does not carry on an activity of the kind specified by article 37 if—

(a) he is a person appointed to manage the assets in question under a power of attorney; and

(b) all routine or day-to-day decisions, so far as relating to investments of a kind mentioned in article 37(a), are taken on behalf of that person by—

(i) an authorised person with permission to carry on activities of the kind specified by article 37; [F99]...

(ii) a person who is an exempt person in relation to activities of that kind**[**[F100]; or

(iii) an overseas person.**]**

[[F101](2) This article is subject to article 4(4).**]**

Textual Amendments

F98 Art. 38(1): art. 38 renumbered as art. 38(1) (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **17(a)**

F99 Word in art. 38(b) omitted (1.12.2001) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **6(a)**

F100 Art. 38(b)(iii) and word inserted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **6(b)**

F101 Art. 38(2) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **17(b)**

Other exclusions

39. Article 37 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services)**[**[F102], 69 (groups and joint enterprises)**][**[F103], 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)**]**.

Textual Amendments

F102 Words in art. 39 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(7)**

F103 Words in art. 39 substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **6**

[[F104]CHAPTER VIIA

ASSISTING IN THE ADMINISTRATION AND PERFORMANCE OF A CONTRACT OF INSURANCE

Textual Amendments

F104 Pt. 2 Ch. 7A inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **7**

The activity

Assisting in the administration and performance of a contract of insurance

39A. Assisting in the administration and performance of a contract of insurance is a specified kind of activity.

Exclusions

Claims management on behalf of an insurer etc.

39B.—(1) A person does not carry on an activity of the kind specified by article 39A if he acts in the course of carrying on the activity of—

(a) expert appraisal;

(b) loss adjusting on behalf of a relevant insurer; or

(c) managing claims on behalf of a relevant insurer,

and that activity is carried on in the course of carrying on any profession or business.

(2) In this article—

(a) "relevant insurer" means—

(i) a person who has Part IV permission to carry on an activity of the kind specified by article 10;

(ii) a person to whom the general prohibition does not apply by virtue of section 316(1)(a) of the Act (members of the Society of Lloyd's);

(iii) an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act (insurance undertaking); or

(iv) a relevant reinsurer;

(b) "relevant reinsurer" means a person whose main business consists of accepting risks ceded by—

(i) a person falling within sub-paragraph (i), (ii) or (iii) of the definition of "relevant insurer"; or

(ii) a person who is established outside the United Kingdom who carries on an activity of the kind specified by article 10 by way of business.

Other exclusions

39C. Article 39A is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 72A (information society services), 72B (activities carried on by a provider of relevant goods or services), 72C (provision of information about contracts of insurance on an incidental basis) and 72D (large risks contracts where risk situated outside the EEA).**]**

CHAPTER VIII

SAFEGUARDING AND ADMINISTERING INVESTMENTS

The activity

Safeguarding and administering investments

40.—(1) The activity consisting of both—

(a) the safeguarding of assets belonging to another, and

(b) the administration of those assets,

or arranging for one or more other persons to carry on that activity, is a specified kind of activity if the condition in sub-paragraph (a) or (b) of paragraph (2) is met.

(2) The condition is that—

(a) the assets consist of or include any investment which is a security or a contractually based investment; or

(b) the arrangements for their safeguarding and administration are such that the assets may consist of or include such investments, and either the assets have at any time since 1st June 1997 done so, or the arrangements have at any time (whether before or after that date) been held out as ones under which such investments would be safeguarded and administered.

(3) For the purposes of this article—

(a) it is immaterial that title to the assets safeguarded and administered is held in uncertificated form;

(b) it is immaterial that the assets safeguarded and administered may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

Exclusions

Acceptance of responsibility by third party

41.—(1) There are excluded from article 40 any activities which a person carries on pursuant to arrangements which—

(a) are ones under which a qualifying custodian undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the qualifying custodian would have if the qualifying custodian were safeguarding and administering the assets; and

(b) are operated by the qualifying custodian in the course of carrying on in the United Kingdom an activity of the kind specified by article 40.

(2) In paragraph (1), “qualifying custodian" means a person who is—

(a) an authorised person who has permission to carry on an activity of the kind specified by article 40, or

(b) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.

Introduction to qualifying custodians

42.—(1) There are excluded from article 40 any arrangements pursuant to which introductions are made by a person (“P") to a qualifying custodian with a view to the qualifying custodian providing in the United Kingdom a service comprising an activity of the kind specified by article 40, where the qualifying person (or other person who is to safeguard and administer the assets in question) is not connected with P.

(2) For the purposes of paragraph (1)—

(a) “qualifying custodian" has the meaning given by article 41(2); and

(b) a person is connected with P if either he is a member of the same group as P, or P is remunerated by him.

Activities not constituting administration

43. The following activities do not constitute the administration of assets for the purposes of article 40—

(a) providing information as to the number of units or the value of any assets safeguarded;

(b) converting currency;

(c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

Other exclusions

44. Article 40 is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises)**[**[F105], 71 (employee share schemes)**][**[F106], 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)**]**.

Textual Amendments

F105 Words in art. 44 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(8)**

F106 Words in art. 44 substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **8**

CHAPTER IX

SENDING DEMATERIALISED INSTRUCTIONS

The activities

Sending dematerialised instructions

45.—(1) Sending, on behalf of another person, dematerialised instructions relating to a security **[**[F107]or a contractually based investment**]** is a specified kind of activity, where those instructions are sent by means of a relevant system in respect of which an Operator is approved under the **[**[F108]2001**]** Regulations.

(2) Causing dematerialised instructions relating to a security **[**[F109]or a contractually based investment**]** to be sent **[**[F110]on behalf of another person**]** by means of such a system is also a specified kind of activity where the person causing them to be sent is a system-participant.

(3) In this Chapter—

[[F111](a) "the 2001 Regulations" means the Uncertificated Securities Regulations 2001;**]**

(b) "dematerialised instruction", "Operator", "settlement bank" and "system-participant" have the meaning given by regulation 3 of the **[**[F112]2001**]** Regulations.

Textual Amendments

F107 Words in art. 45(1) inserted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(1)(a)**

F108 Word in art. 45(1) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(1)(b)**

F109 Words in art. 45(2) inserted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(2)**

F110 Words in art. 45(2) inserted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **7**

F111 Art. 45(3)(a) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(3)(a)**

F112 Word in art. 45(3)(b) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(3)(b)**

Exclusions

Instructions on behalf of participating issuers

46. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a participating issuer within the meaning of the **[**[F113]2001**]** Regulations.

Textual Amendments

F113 Word in art. 46 substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(4)**

Instructions on behalf of settlement banks

47. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a settlement bank in its capacity as such.

Instructions in connection with takeover offers

48.—(1) There is excluded from article 45 of the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is an offeror making a takeover offer.

(2) In this article—

(a) "offeror" means, in the case of a takeover offer made by two or more persons jointly, the joint offers or any of them;

(b) "takeover offer" means—

(i) an offer to acquire shares (which in this sub-paragraph has the same meaning as in section 428(1) of the Companies Act 1985 [M22]) in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of Part XIIIA of that Act [M23] (or would be such an offer if that Part of that Act applied in relation to any body corporate);

(ii) an offer to acquire all or substantially all the shares, or all the shares of a particular class, in a body corporate incorporated outside the United Kingdom; or

(iii) an offer made to all the holders of shares, or shares of a particular class, in a body corporate to acquire a specified proportion of those shares;

but in determining whether an offer falls within paragraph (ii) there are to be disregarded any shares which the offeror or any associate of his (within the meaning of section 430E of the Companies Act 1985 [M24]) holds or has contracted to acquire; and in determining whether an offer falls within paragraph (iii) the offeror, any such associate and any person whose shares the offeror or any such associate has contracted to acquire is not to be regarded as a holder of shares.

Marginal Citations

M22 1985 c. 6. Section 428 was substituted by the Financial Services Act 1986 (c. 60), Sch. 12.

M23 Part XIIIA was inserted by the Financial Services Act 1986, Sch. 12.

M24 Section 430E was inserted by the Financial Services Act 1986, Sch. 12.

Instructions in the course of providing a network

49. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction as a necessary part of providing a network, the purpose of which is to carry dematerialised instructions which are at all time properly authenticated (within the meaning of the **[**[F114]2001**]** Regulations).

Textual Amendments

F114 Word in art. 49 substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(4)**

Other exclusions

50. Article 45 is also subject to the exclusions in articles 66 (trustees etc.)**[**[F115], 69 (groups and joint enterprises) and 72A (information society services)**]**.

Textual Amendments

F115 Words in art. 50 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(9)**

CHAPTER X

COLLECTIVE INVESTMENT SCHEMES

The activities

Establishing etc. a collective investment scheme

51.—(1) The following are specified kinds of activity—

(a) establishing, operating or winding up a collective investment scheme;

(b) acting as trustee of an authorised unit trust scheme;

(c) acting as the depositary or sole director of an open-ended investment company.

(2) In this article, “trustee", “authorised unit trust scheme" and “depositary" have the meaning given by section 237 of the Act.

[[F116]*Exclusion*

Textual Amendments

F116 Art. 51A and cross-heading inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(10)**

Information society services

51A. Article 51 is subject to the exclusion in article 72A (information society services).**]**

CHAPTER XI

[F117]... PENSION SCHEMES

Textual Amendments

F117 Word in Pt. 2 Ch. 11 title omitted (1.10.2006 for specified purposes, 6.4.2007 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(2), **2(3)**

The activities

[F118Establishing etc. a pension scheme

52. The following are specified kinds of activity—

(a) establishing, operating or winding up a stakeholder pension scheme;

(b) establishing, operating or winding up a personal pension scheme.**]**

Textual Amendments

F118 Art. 52 substituted (1.10.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(2), **2(4)**

[F119Exclusion

Textual Amendments

F119 Art. 52A and cross-heading inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(11)**

Information society services

52A. Article 52 is subject to the exclusion in article 72A (information society services).**]**

[F120CHAPTER XIA

PROVIDING BASIC ADVICE ON STAKEHOLDER PRODUCTS

Textual Amendments

F120 Pt. 2 Ch. 11A inserted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2004 (S.I. 2004/2737), arts. 1(1), **3**

The activity

Providing basic advice on stakeholder products

52B.—(1) Providing basic advice to a retail consumer on a stakeholder product is a specified kind of activity.

(2) For the purposes of paragraph (1), a person ("P") provides basic advice when—

(a) he asks a retail consumer questions to enable him to assess whether a stakeholder product is appropriate for that consumer; and

(b) relying on the information provided by the retail consumer P assesses that a stakeholder product is appropriate for the retail consumer and—

(i) describes that product to that consumer;

(ii) gives a recommendation of that product to that consumer; and

(c) the retail consumer has indicated to P that he has understood the description and the recommendation in sub-paragraph (b).

(3) In this article—

"retail consumer" means any person who is advised by P on the merits of opening or buying a stakeholder product in the course of a business carried on by P and who does not receive the advice in the course of a business carried on by him;

"stakeholder product" means—

(a) an account which qualifies as a stakeholder child trust fund within the meaning given by the Child Trust Funds Regulations 2004;

(b) **[**[F121]rights under a stakeholder pension scheme;**]**

"relevant stakeholder pension scheme" means a stakeholder pension scheme within the meaning given by section 1 of the Welfare Reform and Pensions Act 1999 and which is subject to lifestyling, and

"lifestyling" means the process, applied from a date at least five years before the member's retirement date, or, in the case of a member who joins the scheme less than five years before his retirement date, immediately after he becomes a member, and continuing until the member's retirement date, by which an investment strategy is adopted by the trustees or manager which aims progressively to minimise the variation or potential variation in the value of the member's rights caused by market conditions from time to time, and the words "member" and "scheme" have the same meaning as they have in the Welfare Reform and Pensions Act 1999;

(c) an investment of a kind specified in regulations made by the Treasury.**]**

Textual Amendments

F121 Words in art. 52B(3) substituted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2005 (S.I. 2005/593), arts. 1, **2(3)**

CHAPTER XII

ADVISING ON INVESTMENTS

The activity

Advising on investments

53. Advising a person is a specified kind of activity if the advice is—

(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and

(b) advice on the merits of his doing any of the following (whether as principal or agent)—

(i) buying, selling, subscribing for or underwriting a particular investment which is a security or a **[**[F122]relevant investment**]**, or

(ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

Textual Amendments

F122 Words in art. 53(b)(i) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **9(1)**

[[F123]Advising on regulated mortgage contracts

53A.—(1) Advising a person is a specified kind of activity if the advice—

(a) is given to the person in his capacity as a borrower or potential borrower; and

(b) is advice on the merits of his doing any of the following—

(i) entering into a particular regulated mortgage contract, or

(ii) varying the terms of a regulated mortgage contract entered into by him after the coming into force of article 61 in such a way as to vary his obligations under that contract.

(2) In this article, "borrower" has the meaning given by article 61(3)(a)(i).**]**

Textual Amendments

F123 Art. 53A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **13**

[[F124]Advising on regulated home reversion plans

53B. Advising a person is a specified kind of activity if the advice—

(a) is given to the person in his capacity as—

(i) a reversion seller or potential reversion seller, or

(ii) a plan provider or potential plan provider; and

(b) is advice on the merits of his doing either of the following—

(i) entering into a particular regulated home reversion plan, or

(ii) varying the terms of a regulated home reversion plan, entered into on or after 6th April 2007 by him, in such a way as to vary his obligations under that plan.**]**

Textual Amendments

F124 Arts. 53B, 53C inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **13**

[F124Advising on regulated home purchase plans

53C. Advising a person is a specified kind of activity if the advice—

(a) is given to the person in his capacity as a home purchaser or potential home purchaser; and

(b) is advice on the merits of his doing either of the following—

(i) entering into a particular regulated home purchase plan, or

(ii) varying the terms of a regulated home purchase plan, entered into on or after 6th April 2007 by him, in such a way as to vary his obligations under that plan.**]**

Textual Amendments

F124 Arts. 53B, 53C inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **13**

Exclusions

Advice given in newspapers etc.

54.—(1) There is excluded from **[F125**articles 53, 53A, 53B and 53C**]** the giving of advice in writing or other legible form if the advice is contained in a newspaper, journal, magazine, or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any advertisements or other promotional material contained in it, is neither—

(a) that of giving advice of a kind mentioned in article 53**[F126**, 53A, 53B or 53C, as the case may be**]**; nor

[F127(b) that of leading or enabling persons—

(i) to buy, sell, subscribe for or underwrite securities or **[F128**relevant investments**]**, or (as the case may be),

(ii) to enter as borrower into regulated mortgage contracts, or vary the terms of regulated mortgage contracts entered into by them as borrower**[F129**;

(iii) to enter as reversion seller or plan provider into regulated home reversion plans, or vary the terms of regulated home reversion plans entered into by them as reversion seller or plan provider,

(iv) to enter as home purchaser into regulated home purchase plans, or vary the terms of regulated home purchase plans entered into by them as home purchaser**].]**

(2) There is also excluded from **[F130**articles 53, 53A, 53B and 53C**]** the giving of advice in any service consisting of the broadcast or transmission of television or radio programmes, if the principal

purpose of the service, taken as a whole and including any advertisements or other promotional material contained in it, is neither of those mentioned in paragraph (1)(a) and (b).

(3) The Authority may, on the application of the proprietor of any such publication or service as is mentioned in paragraph (1) or (2), certify that it is of the nature described in that paragraph, and may revoke any such certificate if it considers that it is no longer justified.

(4) A certificate given under paragraph (3) and not revoked is conclusive evidence of the matters certified.

Textual Amendments

F125 Words in art. 54(1) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **14(a)(i)**

F126 Words in art. 54(1)(a) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **14(a)(ii)**

F127 Art. 54(1)(b) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **14(4)**

F128 Words in art. 54(1)(b) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **9(2)**

F129 Art. 54(1)(b)(iii)(iv) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **14(a)(iii)**

F130 Words in art. 54(2) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **14(b)**

[[F131]Advice given in the course of administration by authorised person

54A.—[

[F132](1)**]** A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 53A by reason of—

(a) anything done by an authorised person ("B") in relation to a regulated mortgage contract which B is administering pursuant to arrangements of the kind mentioned in article 62(a); or

(b) anything A does in connection with the administration of a regulated mortgage contract in circumstances falling within article 62(b).

[

[F133](2) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 53B by reason of—

(a) anything done by an authorised person ("B") in relation to a regulated home reversion plan which B is administering pursuant to arrangements of the kind mentioned in article 63C(a); or

(b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).

(3) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 53C by reason of—

(a) anything done by an authorised person ("B") in relation to a regulated home purchase plan which B is administering pursuant to arrangements of the kind mentioned in article 63G(a); or

(b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).**]]**

Textual Amendments

F131 Art. 54A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **15**

F132 Art. 54A(1) renumbered (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **15(a)**

F133 Art. 54A(2)(3) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **15(b)**

Other exclusions

55.—[[F134](1)**]** Article 53 is also subject to the exclusions in articles 66 (trustees etc.), 67, (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate)**[**[F135], 72 (overseas persons)**][**[F136], 72A (information society services), 72B (activities carried on by a provider of relevant goods or services) and 72D (large risks contracts where risk situated outside the EEA)**]**.

[[F137](2) **[**[F138]Articles 53A, 53B and 53C are**]** also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business) and 72A (information society services).**]**

Textual Amendments

F134 Art. 55(1): art.55 renumbered as art. 55(1) (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **16(a)**

F135 Words in art. 55 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(12)**

F136 Words in art. 55(1) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **9(3)**

F137 Art. 55(2) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **16(b)**

F138 Words in art. 55(2) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **16**

CHAPTER XIII

LLOYD'S

The activities

Advice on syndicate participation at Lloyd's

56. Advising a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate is a specified kind of activity.

Managing the underwriting capacity of a Lloyd's syndicate

57. Managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's is a specified kind of activity.

Arranging deals in contracts of insurance written at Lloyd's

58. The arranging, by the society incorporated by Lloyd's Act 1871 [M25] by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's, is a specified kind of activity.

Marginal Citations
M25 1871 c. 21.

[F139 Exclusion

Textual Amendments
F139 Art. 58A and cross-heading inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(13)**

Information society services

58A. Articles 56 to 58 are subject to the exclusion in article 72A (information society services).**]**

CHAPTER XIV

FUNERAL PLAN CONTRACTS

The activity

Funeral plan contracts

59.—(1) Entering as provider into a funeral plan contract is a specified kind of activity.

(2) A "funeral plan contract" is a contract (other than one excluded by article 60) under which—

(a) a person ("the customer") makes one or more payments to another person ("the provider"); and

(b) the provider undertakes to provide, or secure that another person provides, a funeral in the United Kingdom for the customer (or some other person who is living at the date when the contract is entered into) on his death;

unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month.

Commencement Information
I1 Art. 59 in force at 1.1.2002, see art. 2(2)(a)

[F140 Exclusions]

Textual Amendments

F140 Art. 60 cross-heading substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(14)**

Plans covered by insurance or trust arrangements

60.—(1) There is excluded from article 59 any contract under which—

(a) the provider undertakes to secure that sums paid by the customer under the contract will be applied towards a contract of whole life insurance on the life of the customer (or other person for whom the funeral is to be provided), effected and carried out by an authorised person who has permission to effect and carry out such contracts of insurance, for the purpose of providing the funeral; or

(b) the provider undertakes to secure that sums paid by the customer under the contract will be held on trust for the purpose of providing the funeral, and that the following requirements are or will be met with respect to the trust—

(i) the trust must be established by a written instrument;

(ii) more than half of the trustees must be unconnected with the provider;

(iii) the trustees must appoint, or have appointed, an independent fund manager who is an authorised person who has permission to carry on an activity of the kind specified by article 37, and who is a person who is unconnected with the provider, to manage the assets of the trust;

(iv) annual accounts must be prepared, and audited by a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989 [M26], with respect to the assets and liabilities of the trust; and

(v) the assets and liabilities of the trust must, at least once every three years, be determined, calculated and verified by an actuary who is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.

(2) For the purposes of paragraph (1)(b)(ii) and (iii), a person is unconnected with the provider if he is a person other than—

(a) the provider;

(b) a member of the same group as the provider;

(c) a director, other officer or employee of the provider, or of any member of the same group as the provider;

(d) a partner of the provider;

(e) a close relative of a person falling within sub-paragraph (a), (c) or (d); or

(f) an agent of any person falling within sub-paragraphs (a) to (e).

Commencement Information

I2 Art. 60 in force at 1.1.2002, see art. 2(2)(a)

Marginal Citations

M26 1989 c. 40.

[[F141]Information society services

60A. Article 59 is subject to the exclusion in article 72A (information society services).**]**

Textual Amendments

F141 Art. 60A inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(15)**

CHAPTER XV

REGULATED MORTGAGE CONTRACTS

The activities

Regulated mortgage contracts

61.—(1) Entering into a regulated mortgage contract as lender is a specified kind of activity.

(2) Administering a regulated mortgage contract is also a specified kind of activity, where the contract was entered into **[**[F142]by way of business**]** after the coming into force of this article.

(3) In this Chapter—

[[F143](a) a contract is a "regulated mortgage contract" if, at the time it is entered into, the following conditions are met—

(i) the contract is one under which a person ("the lender") provides credit to an individual or to trustees ("the borrower");

(ii) the contract provides for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom;

(iii) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person;

[[F144]but such a contract is not a regulated mortgage contract if it is a regulated home purchase plan;**]]**

(b) "administering" a regulated mortgage contract means either or both of—

(i) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and

(ii) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;

but a person is not to be treated as administering a regulated mortgage contract merely because he has, or exercises, a right to take action for the purposes of enforcing the contract (or to require that such action is or is not taken);

(c) "credit" includes a cash loan, and any other form of financial accommodation.

(4) For the purposes of **[**[F145]paragraph 3(a)**]**—

(a) a "first legal mortgage" means a legal mortgage ranking in priority ahead of all other mortgages (if any) affecting the land in question, where "mortgage" includes charge and (in Scotland) a heritable security;

(b) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;

(c) "related person", in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—

(i) that person's spouse [[F146]or civil partner];

(ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or

(iii) that person's parent, brother, sister, child, grandparent or grandchild; and

(d) "timeshare accommodation" has the meaning given by section 1 of the Timeshare Act 1992 [M27].

Textual Amendments

F142 Words in art. 61(2) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(1)(b), **8(a)**

F143 Art. 61(3)(a) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(1)(b), **8(b)**

F144 Words in art. 61(3)(a) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **17**

F145 Words in art. 61(4) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(1)(b), **8(c)**

F146 Words in art. 61(4)(c)(i) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), reg. 1, **Sch. 16 para. 1(3)**

Commencement Information

I3 Art. 61 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

Marginal Citations

M27 1992 c. 35. The definition of "timeshare accommodation" in section 1 was amended by S.I. 1997/1081, reg. 2.

Exclusions

Arranging administration by authorised person

62. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he—

(a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the contract; or

(b) administers the contract himself during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Commencement Information

I4 Art. 62 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

Administration pursuant to agreement with authorised person

63. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he administers the contract pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

Commencement Information

I5 Art. 63 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

[[F147]Other exclusions

63A. Article 61 is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons) and 72A (information society services).**]**

Textual Amendments

F147 Art. 63A substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **17**

[[F148]Chapter XVA

Regulated Home Reversion Plans

Textual Amendments

F148 Pt. 2 Chs. 15A, 15B inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **18**

The activities

Entering into and administering regulated home reversion plans

63B.—(1) Entering into a regulated home reversion plan as plan provider is a specified kind of activity.

(2) Administering a regulated home reversion plan is also a specified kind of activity where the plan was entered into on or after 6th April 2007.

(3) In this Chapter—

(a) a "regulated home reversion plan" is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into—

(i) the arrangement is one under which a person (the "plan provider") buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the "reversion seller");

(ii) the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so; and

(iii) the arrangement specifies one or more qualifying termination events, on the occurrence of which that entitlement will end;

(b) "administering" a regulated home reversion plan means any of—

(i) notifying the reversion seller of changes in payments due under the plan, or of other matters of which the plan requires him to be notified;

(ii) taking any necessary steps for the purposes of making payments to the reversion seller under the plan; and

(iii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the reversion seller,

but a person is not to be treated as administering a regulated home reversion plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken).

(4) For the purposes of paragraph (3)—

(a) the reference to a "qualifying interest" in land—

(i) in relation to land in England or Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;

(ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant's right over or interest in a property subject to a lease;

(iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

(b) "timeshare accommodation" has the meaning given by section 1 of the Timeshare Act 1992;

(c) "related person" in relation to the reversion seller or, where the reversion seller is a trustee, a beneficiary of the trust, means—

(i) that person's spouse or civil partner;

(ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or

(iii) that person's parent, brother, sister, child, grandparent or grandchild; and

(d) "qualifying termination event", in relation to a person's entitlement to occupy land, means—

(i) the person becomes a resident of a care home;

(ii) the person dies;

(iii) the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement.

(5) For the purposes of paragraph (3)(a)(ii), the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys.

(6) For the purposes of the definition of "qualifying termination event" in paragraph (4), "care home"—

(a) in relation to England and Wales, has the meaning given by section 3 of the Care Standards Act 2000;

(b) in relation to Scotland, means accommodation provided by a "care home" within the meaning of section 2(3) of the Regulation of Care (Scotland) Act 2001;

(c) in relation to Northern Ireland, means—

(i) a residential care home within the meaning of article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003; or

(ii) a nursing home within the meaning of article 11 of that Order.

(7) In this Order—

(a) references to entering into a regulated home reversion plan as plan provider include acquiring any obligations or rights (including his interest in land) of the plan provider, under such a plan; but

(b) in relation to a person who acquires any such obligations or rights, an activity is a specified kind of activity for the purposes of articles 25B(1)(b) and 53B(b)(ii) and paragraph (2) only if the plan was entered into by the plan provider (rather than the obligations or rights acquired) on or after 6th April 2007.

(8) Accordingly, references in this Order to a plan provider, other than in paragraph (7), include a person who acquires any such obligations or rights.

Exclusions

Arranging administration by authorised person

63C. A person who is not an authorised person does not carry on an activity of the kind specified by article 63B(2) in relation to a regulated home reversion plan where he—

(a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the plan; or

(b) administers the plan himself during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

63D. A person who is not an authorised person does not carry on an activity of the kind specified by article 63B(2) in relation to a regulated home reversion plan where he administers the plan pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

Other exclusions

63E. Article 63B is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons) and 72A (information society services).**]**

[[F148]Chapter XVB

Regulated Home Purchase Plans

The activities

Entering into and administering regulated home purchase plans

63F.—(1) Entering into a regulated home purchase plan as home purchase provider is a specified kind of activity.

(2) Administering a regulated home purchase plan is also a specified kind of activity where the plan was entered into by way of business on or after 6th April 2007.

(3) In this Chapter—

(a) a "regulated home purchase plan" is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into—

(i) the arrangement is one under which a person (the "home purchase provider") buys a qualifying interest or an undivided share of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;

(ii) where an undivided share of a qualifying interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in paragraph (iii) as beneficial tenants in common;

(iii) the arrangement provides for the obligation of an individual or trustees (the "home purchaser") to buy the interest bought by the home purchase provider over the course of or at the end of a specified period; and

(iv) the home purchaser (if he is an individual) or an individual who is a beneficiary of the trust (if the home purchaser is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling during that period, and intends to do so;

(b) "administering" a regulated home purchase plan means either or both of—

(i) notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and

(ii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser;

but a person is not to be treated as administering a regulated home purchase plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan or to require that such action is or is not taken.

(4) Article 63B(4)(a) to (c) applies for the purposes of paragraph (3)(a) with references to the "reversion seller" being read as references to the "home purchaser".

(5) Article 63B(5) applies for the purposes of paragraph (3)(a)(iv) with the reference to "paragraph (3)(a)(ii)" being read as a reference to "paragraph (3)(a)(iv)".

Exclusions

Arranging administration by authorised person

63G. A person who is not an authorised person does not carry on an activity of the kind specified by article 63F(2) in relation to a regulated home purchase plan where he—

(a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the plan; or

(b) administers the plan himself during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

63H. A person who is not an authorised person does not carry on an activity of the kind specified by article 63F(2) in relation to a regulated home purchase plan where he administers the plan pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

Other exclusions

63I. Article 63F is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons) and 72A (information society services).**]**

CHAPTER XVI

AGREEING TO CARRY ON ACTIVITIES

The activity

Agreeing to carry on specified kinds of activity

64. Agreeing to carry on an activity of the kind specified by any other provision of this Part (other than article 5, **[**[F149]9B,**]** 10, **[**[F150]25D,**]** 51 or 52) is a specified kind of activity.

Textual Amendments

F149 Word in art. 64 inserted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **5**

F150 Word in art. 64 inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **18**

[[F151]*Exclusions*

Textual Amendments

F151 Art. 65 and cross-heading substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(17)**

Overseas persons etc

65. Article 64 is subject to the exclusions in articles 72 (overseas persons) and 72A (information society services).**]**

CHAPTER XVII

EXCLUSIONS APPLYING TO SEVERAL SPECIFIED KINDS OF ACTIVITY

Trustees, nominees and personal representatives

66.—(1) A person (“X") does not carry on an activity of the kind specified by article 14 where he enters into a transaction as bare trustee or, in Scotland, as nominee for another person (“Y") and—

(a) X is acting on Y’s instructions; and

(b) X does not hold himself out as providing a service of buying and selling securities or contractually based investments.

(2) Subject to paragraph (7), there are excluded from **[**[F152]articles 25(1) and (2)**][**[F153], 25A(1) and (2), 25B(1) and (2) and 25C(1) and (2)**]** arrangements made by a person acting as trustee or personal representative for or with a view to a transaction which is or is to be entered into—

(a) by that person and a fellow trustee or personal representative (acting in their capacity as such); or

(b) by a beneficiary under the trust, will or intestacy.

(3) Subject to paragraph (7), there is excluded from article 37 any activity carried on by a person acting as trustee or personal representative, unless—

(a) he holds himself out as providing a service comprising an activity of the kind specified by article 37; or

(b) the assets in question are held for the purposes of an occupational pension scheme, and, by virtue of article 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 [M28], he is to be treated as carrying on that activity by way of business.

[[F154](3A) Subject to paragraph (7), there is excluded from article 39A any activity carried on by a person acting as trustee or personal representative, unless he holds himself out as providing a service comprising an activity of the kind specified by article 39A.**]**

(4) Subject to paragraph (7), there is excluded from article 40 any activity carried on by a person acting as trustee or personal representative, unless he holds himself out as providing a service comprising an activity of the kind specified by article 40.

[[F155](4A) There is excluded from article 40 any activity carried on by a person acting as trustee which consists of arranging for one or more other persons to safeguard and administer trust assets where—

(a) that other person is a qualifying custodian; or

(b) that safeguarding and administration is also arranged by a qualifying custodian.

In this paragraph, "qualifying custodian" has the meaning given by article 41(2).**]**

(5) A person does not, by sending or causing to be sent a dematerialised instruction (within the meaning of article 45), carry on an activity of the kind specified by that article if the instruction relates to an investment which that person holds as trustee or personal representative.

(6) Subject to paragraph (7), there is excluded from **[**[F156]articles 53**][**[F157], 53A, 53B and 53C**]** the giving of advice by a person acting as trustee or personal representative where he gives the advice to—

(a) a fellow trustee or personal representative for the purposes of the trust or the estate; or

(b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate.

[[F158](6A) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 61(1) or (2) where the borrower under the regulated mortgage contract in question is a beneficiary under the trust, will or intestacy.**]**

[[F159](6B) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63B(1) or (2) where the reversion seller under the regulated home reversion plan in question is a beneficiary under the trust, will or intestacy.

(6C) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63F(1) or (2) where the home purchaser under the regulated home purchase plan in question is a beneficiary under the trust, will or intestacy.**]**

(7) Paragraphs (2), (3)**[**[F160], (3A)**]**, **[**[F161](4), (6)**][**[F162], (6A), (6B) and (6C)**]** do not apply if the person carrying on the activity is remunerated for what he does in addition to any remuneration he receives as trustee or personal representative, and for these purposes a person is not to be regarded as receiving additional remuneration merely because his remuneration is calculated by reference to time spent.

[[F163](8) This article is subject to article 4(4A).**]**

Textual Amendments

F152 Words in art. 66(2) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **18(a)**

F153 Words in art. 66(2) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **19(a)**

F154 Art. 66(3A) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(1)(a)**

F155 Art. 66(4A) inserted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2005 (S.I. 2005/593), arts. 1, **2(4)**

F156 Words in art. 66(6) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **18(b)**

F157 Words in art. 66(6) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **19(b)**

F158 Art. 66(6A) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **18(c)**

F159 Art. 66(6B)(6C) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **19(c)**

F160 Word in art. 66(7) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(1)(b)**

F161 Words in art. 66(7) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **18(d)**

F162 Words in art. 66(7) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **19(d)**

F163 Art. 66(8) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **19**

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Activities carried on in the course of a profession or non-investment business

67.—(1) There is excluded from articles 21, 25(1) and (2)**[**[F164], 25A**]**, **[**[F165]25B, 25C,**][**[F166]39A, 40**][**[F167]53**][**[F168], 53A, 53B and 53C**]** any activity which—

(a) is carried on in the course of carrying on any profession or business which does not otherwise consist of **[**[F169]the carrying on of regulated activities in the United Kingdom**]**; and

(b) may reasonably be regarded as a necessary part of other services provided in the course of that profession or business.

(2) But the exclusion in paragraph (1) does not apply if the activity in question is remunerated separately from the other services.

[[F170](3) This article is subject to article 4(4) and (4A).**]**

Textual Amendments

F164 Word in art. 67(1) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **19(a)**

F165 Words in art. 67(1) inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **20(a)**

F166 Words in art. 67 substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(2)**

F167 Words in art. 67(1) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **19(b)**

F168 Words in art. 67(1) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **20(b)**

F169 Words in art. 67(1)(a) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **9**

F170 Art. 67(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **20**

Activities carried on in connection with the sale of goods or supply of services

68.—[F171](1) Subject to paragraphs (9), (10) and (11), this article concerns certain activities carried on for the purposes of or in connection with the sale of goods or supply of services by a supplier to a customer, where—

> "supplier" means a person whose main business is to sell goods or supply services and not to carry on any activities of the kind specified by any of articles 14, 21, 25, 37**[**[F171], 39A**]**, 40, 45, 51, 52 and 53 and, where the supplier is a member of a group, also means any other member of that group; and
>
> "customer" means a person, other than an individual, to whom a supplier sells goods or supplies services, or agrees to do so, and, where the customer is a member of a group, also means any other member of that group;

and in this article "related sale or supply" means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the same purpose as the sale or supply mentioned above.

(2) There is excluded from article 14 any transaction entered into by a supplier with a customer, if the transaction is entered into for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(3) There is excluded from article 21 any transaction entered into **[**[F172]by a supplier as agent for a customer**]**, if the transaction is entered into for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply, and provided that—

(a) where the investment to which the transaction relates is a security, the supplier does not hold himself out (other than to the customer) as engaging in the business of buying securities of the kind to which the transaction relates with a view to selling them, and does not regularly solicit members of the public for the purpose of inducing them (as principals or agents) to buy, sell, subscribe for or underwrite securities;

(b) where the investment to which the transaction relates is a contractually based investment, the supplier enters into the transaction—

(i) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(ii) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or, so

far as relevant to any of those articles, article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(4) In paragraph (3)(a), "members of the public" has the meaning given by article 15(2), references to "A" being read as references to the supplier.

(5) There are excluded from article 25(1) and (2) arrangements made by a supplier for, or with a view to, a transaction which is or is to be entered into by a customer for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(6) There is excluded from article 37 any activity carried on by a supplier where the assets in question—

(a) are those of a customer; and

(b) are managed for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(7) There is excluded from article 40 any activity carried on by a supplier where the assets in question are or are to be safeguarded and administered for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(8) There is excluded from article 53 the giving of advice by a supplier to a customer for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply, or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with such a sale or supply or related sale or supply.

(9) Paragraphs (2), (3) and (5) do not apply in the case of a transaction for the sale or purchase of a **[**[F173]contract of insurance**]**, an investment of the kind specified by article 81, or an investment of the kind specified by article 89 so far as relevant to such a contract or such an investment.

(10) Paragraph (6) does not apply where the assets managed consist of qualifying contracts of insurance, investments of the kind specified by article 81, or investments of the kind specified by article 89 so far as relevant to such contracts or such investments.

(11) Paragraph (8) does not apply in the case of advice in relation to an investment which is a **[**[F174]contract of insurance**]**, is of the kind specified by article 81, or is of the kind specified by article 89 so far as relevant to such a contract or such an investment.

[[F175](12) This article is subject to article 4(4).**]**

Textual Amendments

F171 Word in art. 68(1) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(3)(a)**

F172 Words in art. 68(3) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **10**

F173 Words in art. 68(9) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(3)(b)**

F174 Words in art. 68(11) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(3)(c)**

F175 Art. 68(12) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **21**

Groups and joint enterprises

69.—(1) There is excluded from article 14 any transaction into which a person enters as principal with another person if that other person is also acting as principal and—

(a) they are members of the same group; or

(b) they are, or propose to become, participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise.

(2) There is excluded from article 21 any transaction into which a person enters as agent for another person if that other person is acting as principal, and the condition in paragraph (1)(a) or (b) is met, provided that—

(a) where the investment to which the transaction relates is a security, the agent does not hold himself out (other than to members of the same group or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying securities of the kind to which the transaction relates with a view to selling them, and does not regularly solicit members of the public for the purpose of inducing them (as principals or agents) to buy, sell, subscribe for or underwrite securities;

(b) where the investment to which the transaction relates is a contractually based investment, the agent enters into the transaction—

(i) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(ii) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or, so far as relevant to any of those articles, article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(3) In paragraph (2)(a), “members of the public" has the meaning given by article 15(2), references to “A" being read as references to the agent.

(4) There are excluded from article 25(1) and (2) arrangements made by a person if—

(a) he is a member of a group and the arrangements in question are for, or with a view to, a transaction which is or is to be entered into, as principal, by another member of the same group; or

(b) he is or proposes to become a participator in a joint enterprise, and the arrangements in question are for, or with a view to, a transaction which is or is to be entered into, as principal, by another person who is or proposes to become a participator in that enterprise, for the purposes of or in connection with that enterprise.

(5) There is excluded from article 37 any activity carried on by a person if—

(a) he is a member of a group and the assets in question belong to another member of the same group; or

(b) he is or proposes to become a participator in a joint enterprise with the person to whom the assets belong, and the assets are managed for the purposes of or in connection with that enterprise.

(6) There is excluded from article 40 any activity carried on by a person if—

(a) he is a member of a group and the assets in question belong to another member of the same group; or

(b) he is or proposes to become a participator in a joint enterprise, and the assets in question—

(i) belong to another person who is or proposes to become a participator in that joint enterprise; and

(ii) are or are to be safeguarded and administered for the purposes of or in connection with that enterprise.

(7) A person who is a member of a group does not carry on an activity of the kind specified by article 45 where he sends a dematerialised instruction, or causes one to be sent, on behalf of another member of the same group, if the investment to which the instruction relates is one in respect of which a member of the same group is registered as holder in the appropriate register of securities, or will be so registered as a result of the instruction.

(8) In paragraph (7), "dematerialised instruction" and "register of securities" have the meaning given by regulation 3 of the Uncertificated Securities Regulations **[**[F176]2001**]**.

(9) There is excluded from article 53 the giving of advice by a person if—

(a) he is a member of a group and gives the advice in question to another member of the same group; or

(b) he is, or proposes to become, a participator in a joint enterprise and the advice in question is given to another person who is, or proposes to become, a participator in that enterprise for the purposes of or in connection with that enterprise.

[[F177](10) Paragraph (2) does not apply to a transaction for the sale or purchase of a contract of insurance.

(11) Paragraph (4) does not apply to arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance.

(12) Paragraph (9) does not apply where the advice relates to a transaction for the sale or purchase of a contract of insurance.**]**

[[F178](13) This article is subject to article 4(4).**]**

Textual Amendments

F176 Word in art. 69(8) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(4)**

F177 Art. 69(10)-(12) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(4)**

F178 Art. 69(13) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **22**

Activities carried on in connection with the sale of a body corporate

70.—(1) A person does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction if—

(a) the transaction is one to acquire or dispose of shares in a body corporate other than an open-ended investment company, or is entered into for the purposes of such an acquisition or disposal; and

(b) either—

(i) the conditions set out in paragraph (2) are met; or

(ii) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.

(2) The conditions mentioned in paragraph (1)(b) are that—

(a) the shares consist of or include 50 per cent or more of the voting shares in the body corporate; or

(b) the shares, together with any already held by the person acquiring them, consist of or include at least that percentage of such shares; and

(c) in either case, the acquisition or disposal is between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.

(3) In paragraph (2)(c), "a group of connected individuals" means—

(a) in relation to a party disposing of shares in a body corporate, a single group of persons each of whom is—

(i) a director or manager of the body corporate;

(ii) a close relative of any such director or manager;

(iii) a person acting as trustee for any person falling within paragraph (i) or (ii); and

(b) in relation to a party acquiring shares in a body corporate, a single group of persons each of whom is—

(i) a person who is or is to be a director or manager of the body corporate;

(ii) a close relative of any such person; or

(iii) a person acting as trustee for any person falling within paragraph (i) or (ii).

(4) A person does not carry on an activity of the kind specified by article 21 by entering as agent into a transaction of the kind described in paragraph (1).

(5) There are excluded from article 25(1) and (2) arrangements made for, or with a view to, a transaction of the kind described in paragraph (1).

(6) There is excluded from article 53 the giving of advice in connection with a transaction (or proposed transaction) of the kind described in paragraph (1).

[[F179](7) Paragraphs (4), (5) and (6) do not apply in the case of a transaction for the sale or purchase of a contract of insurance.**]**

[[F180](8) This article is subject to article 4(4).**]**

Textual Amendments

F179 Art. 70(7) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(5)**

F180 Art. 70(8) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **23**

Activities carried on in connection with employee share schemes

71.—(1) A person ("C"), a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction the purpose of which is to enable or facilitate—

(a) transactions in shares in, or debentures issued by, C between, or for the benefit of, any of the persons mentioned in paragraph (2); or

(b) the holding of such shares or debentures by, or for the benefit of, such persons.

(2) The persons referred to in paragraph (1) are—

(a) the bona fide employees or former employees of C or of another member of the same group as C;

(b) the wives, husbands, widows, widowers, **[**[F181]civil partners, surviving civil partners,**]** or children or step-children under the age of eighteen of such employees or former employees.

(3) C, a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by article 21 by entering as agent into a transaction of the kind described in paragraph (1).

(4) There are excluded from article 25(1) or (2) arrangements made by C, a member of the same group as C or a relevant trustee if the arrangements in question are for, or with a view to, a transaction of the kind described in paragraph (1).

(5) There is excluded from article 40 any activity if the assets in question are, or are to be, safeguarded and administered by C, a member of the same group as C or a relevant trustee for the purpose of enabling or facilitating transactions of the kind described in paragraph (1).

(6) In this article—

(a) "shares" and "debentures" include—

(i) any investment of the kind specified by article 76 or 77;

(ii) any investment of the kind specified by article 79 or 80 so far as relevant to articles 76 and 77; and

(iii) any investment of the kind specified by article 89 so far as relevant to investments of the kind mentioned in paragraph (i) or (ii);

(b) "relevant trustee" means a person who, in pursuance of the arrangements made for the purpose mentioned in paragraph (1), holds, as trustee, shares in or debentures issued by C.

Textual Amendments

F181 Words in art. 71(2)(b) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), reg. 1, **Sch. 16 para. 1(4)**

Overseas persons

72.—(1) An overseas person does not carry on an activity of the kind specified by article 14 **[**[F182]or 25D**]** by—

(a) entering into a transaction as principal with or though an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(b) entering into a transaction as principal with a person in the United Kingdom, if the transaction is the result of a legitimate approach.

(2) An overseas person does not carry on an activity of the kind specified by article 21 **[**[F183]or 25D**]** by—

(a) entering into a transaction as agent for any person with or through an authorised person or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(b) entering into a transaction with another party ("X") as agent for any person ("Y"), other than with or through an authorised person or such an exempt person, unless—

(i) either X or Y is in the United Kingdom; and

(ii) the transaction is the result of an approach (other than a legitimate approach) made by or on behalf of, or to, whichever of X or Y is in the United Kingdom.

(3) There are excluded from article 25(1) **[**[F184]or 25D**]** arrangements made by an overseas person with an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.

(4) There are excluded from article 25(2) **[**[F185]or 25D**]** arrangements made by an overseas person with a view to transactions which are, as respects transactions in the United Kingdom, confined to—

(a) transactions entered into by authorised persons as principal or agent; and

(b) transactions entered into by exempt persons, as principal or agent, in the course of business comprising regulated activities in relation to which they are exempt.

(5) There is excluded from article 53 the giving of advice by an overseas person as a result of a legitimate approach.

[[F186](5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a), 25B(1)(a) or 25C(1)(a) if each person who may be contemplating entering into the relevant type of agreement in the relevant capacity is non-resident.

(5B) There are excluded from articles 25A(1)(b), 25B(1)(b) and 25C(1)(b) arrangements made by an overseas person to vary the terms of a qualifying agreement.

(5C) There are excluded from articles 25A(2), 25B(2) and 25C(2), arrangements made by an overseas person which are made solely with a view to non-resident persons who participate in those arrangements entering, in the relevant capacity, into the relevant type of agreement.

(5D) An overseas person does not carry on an activity of the kind specified in article 61(1), 63B(1) or 63F(1) by entering into a qualifying agreement.

(5E) An overseas person does not carry on an activity of the kind specified in article 61(2), 63B(2) or 63F(2) where he administers a qualifying agreement.

(5F) In paragraphs (5A) to (5E)—

(a) "non-resident" means not normally resident in the United Kingdom;

(b) "qualifying agreement" means—

(i) in relation to articles 25A and 61, a regulated mortgage contract where the borrower (or each borrower) is non-resident when he enters into it;

(ii) in relation to articles 25B and 63B, a regulated home reversion plan where the reversion seller (or each reversion seller) is non-resident when he enters into it;

(iii) in relation to articles 25C and 63F, a regulated home purchase plan where the home purchaser (or each home purchaser) is non-resident when he enters into it;

(c) "the relevant capacity" means—

(i) in the case of a regulated mortgage contract, as borrower;

(ii) in the case of a regulated home reversion plan, as reversion seller or plan provider;

(iii) in the case of a regulated home purchase plan, as home purchaser;

(d) "the relevant type of agreement" means—

(i) in relation to article 25A, a regulated mortgage contract;

(ii) in relation to article 25B, a regulated home reversion plan;

(iii) in relation to article 25C, a regulated home purchase plan.**]**

(6) There is excluded from article 64 any agreement made by an overseas person to carry on an activity of the kind specified by article 25(1) or (2), 37**[**[F187], 39A**]**, 40 or 45 if the agreement is the result of a legitimate approach.

(7) In this article, "legitimate approach" means—

(a) an approach made to the overseas person which has not been solicited by him in any way, or has been solicited by him in a way which does not contravene section 21 of the Act; or

(b) an approach made by or on behalf of the overseas person in a way which does not contravene that section.

[[F188](8) Paragraphs (1) to (5) do not apply where the overseas person is an investment firm or credit institution—

(a) who is providing or performing investment services and activities on a professional basis; and

(b) whose home Member State is the United Kingdom.**]**

Textual Amendments

F182 Words in art. 72(1) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(a)**

F183 Words in art. 72(2) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(b)**

F184 Words in art. 72(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(c)**

F185 Words in art. 72(4) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(d)**

F186 Art. 72(5A)-(5F) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **21**

F187 Word in art. 72(6) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(6)**

F188 Art. 72(8) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(e)**

Modifications etc. (not altering text)

C12 Art. 72 modified in part (31.10.2001) by The Financial Services and Markets Act 2000 (Interim Permissions) Order 2001 (S.I. 2001/3374), art. 1, **Sch. para. 12** (with Sch. para. 4)

C13 Art. 72 modified in part (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), art. 1(2)(b), **Sch. para. 12** (with Sch. para. 4)

C14 Art. 72 modified in part (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), art. 1(2)(b), **Sch. para. 11** (with Sch. para. 4)

[[F189]**Information society services**

72A.—(1) There is excluded from this Part any activity consisting of the provision of an information society service from an EEA State other than the United Kingdom.

(2) The exclusion in paragraph (1) does not apply to the activity of effecting or carrying out a contract of insurance as principal, where—

(a) the activity is carried on by an undertaking which has received official authorisation in accordance with **[**[F190]Article 4 of the life assurance consolidation directive**]** or the first non-life insurance directive, and

(b) the insurance falls within the scope of any of the insurance directives.**]**

Textual Amendments

F189 Art. 72A inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **2**

F190 Words in art. 72A(2)(a) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), regs. 1, **17**

[F191 Activities carried on by a provider of relevant goods or services

72B.—(1) In this article—

"connected contract of insurance" means a contract of insurance which—

(a) is not a contract of long-term insurance;

(b) has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less;

(c) has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euro or less, or the equivalent amount in sterling or other currency;

(d) covers the risk of—

(i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or

(ii) damage to, or loss of, baggage and other risks linked to the travel booked with the provider ("travel risks");

(e) does not cover any liability risks (except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract);

(f) is complementary to the non-motor goods being supplied or service being provided by the provider; and

(g) is of such a nature that the only information that a person requires in order to carry on an activity of the kind specified by article 21, 25, 39A or 53 in relation to it is the cover provided by the contract;

"non-motor goods" means goods which are not mechanically propelled road vehicles;

"provider" means a person who supplies non-motor goods or provides services related to travel in the course of carrying on a profession or business which does not otherwise consist of the carrying on of regulated activities.

(2) There is excluded from article 21 any transaction for the sale or purchase of a connected contract of insurance into which a provider enters as agent.

(3) There are excluded from article 25(1) and (2) any arrangements made by a provider for, or with a view to, a transaction for the sale or purchase of a connected contract of insurance.

(4) There is excluded from article 39A any activity carried on by a provider where the contract of insurance in question is a connected contract of insurance.

(5) There is excluded from article 53 the giving of advice by a provider in relation to a transaction for the sale or purchase of a connected contract of insurance.

(6) For the purposes of this article, a contract of insurance which covers travel risks is not to be treated as a contract of long-term insurance, notwithstanding the fact that it contains related and subsidiary provisions such that it might be regarded as a contract of long-term insurance, if the cover to which those provisions relate is ancillary to the main cover provided by the contract.

Textual Amendments

F191 Arts. 72B-72D inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **11**

Provision of information on an incidental basis

72C.—(1) There is excluded from articles 25(1) and (2) the making of arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract, where that activity meets the conditions specified in paragraph (4).

(2) There is excluded from articles 37 and 40 any activity—

(a) where the assets in question are rights under a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract; and

(b) which meets the conditions specified in paragraph (4).

(3) There is excluded from article 39A any activity which meets the conditions specified in paragraph (4).

(4) The conditions specified in this paragraph are that the activity—

(a) consists of the provision of information to the policyholder or potential policyholder;

(b) is carried on by a person in the course of carrying on a profession or business which does not otherwise consist of the carrying on of regulated activities; and

(c) may reasonably be regarded as being incidental to that profession or business.

Textual Amendments

F191 Arts. 72B-72D inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **11**

Large risks contracts where risk situated outside the EEA

72D.—(1) There is excluded from articles 21, 25(1) and (2), 39A and 53 any activity which is carried on in relation to a large risks contract of insurance, to the extent that the risk or commitment covered by the contract is not situated in an EEA State.

(2) In this article, a "large risks contract of insurance" is a contract of insurance the principal object of which is to cover—

(a) risks falling within paragraph 4 (railway rolling stock), 5 (aircraft), 6 (ships), 7 (goods in transit), 11 (aircraft liability) or 12 (liability of ships) of Part 1 of Schedule 1;

(b) risks falling within paragraph 14 (credit) or 15 (suretyship) of that Part provided that the risks relate to a business carried on by the policyholder; or

(c) risks falling within paragraph 3 (land vehicles), 8 (fire and natural forces), 9 (damage to property), 10 (motor vehicle liability), 13 (general liability) or 16 (miscellaneous financial loss) of that Part provided that the risks relate to a business carried on by the policyholder and that the condition specified in paragraph (3) is met in relation to that business.

(3) The condition specified in this paragraph is that at least two of the three following criteria were met in the most recent financial year for which information is available—

(a) the balance sheet total of the business (within the meaning of section 247(5) of the Companies Act 1985 or article 255(5) of the Companies (Northern Ireland) Order 1986) exceeded 6.2 million euro,

(b) the net turnover (within the meaning given to "turnover" by section 262(1) of that Act or article 270(1) of that Order) exceeded 12.8 million euro,

(c) the number of employees (within the meaning given by section 247(6) of that Act or article 255(6) of that Order) exceeded 250,

and for a financial year which is a company's financial year but not in fact a year, the net turnover of the policyholder shall be proportionately adjusted.

(4) For the purposes of paragraph (3), where the policyholder is a member of a group for which consolidated accounts (within the meaning of the Seventh Company Law Directive) are drawn up, the question whether the condition specified by that paragraph is met is to be determined by reference to those accounts.**]**

Textual Amendments

F191 Arts. 72B-72D inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **11**

[F192Business Angel-led Enterprise Capital Funds

72E.—(1) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified by article 21 by entering as agent into a transaction on behalf of the participants of a Business Angel-led Enterprise Capital Fund.

(2) There are excluded from article 25(1) and (2) arrangements, made by a body corporate of a type specified in paragraph (7), for or with a view to a transaction which is or is to be entered into by or on behalf of the participants in a Business Angel-led Enterprise Capital Fund.

(3) There is excluded from article 37 any activity, carried on by a body corporate of a type specified in paragraph (7), which consists in the managing of assets belonging to the participants in a Business Angel-led Enterprise Capital Fund.

(4) There is excluded from article 40 any activity, carried on by a body corporate of a type specified in paragraph (7), in respect of assets belonging to the participants in a Business Angel-led Enterprise Capital Fund.

(5) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified in article 51(1)(a) where it carries on the activity of establishing, operating or winding up a Business Angel-led Enterprise Capital Fund.

(6) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified in article 53 where it is advising the participants in a Business Angel-led Enterprise Capital Fund on investments to be made by or on behalf of the participants of that Business Angel-led Enterprise Capital Fund.

(7) The type of body corporate specified is a limited company—

(i) which operates a Business Angel-led Enterprise Capital Fund; and

(ii) the members of which are participants in the Business Angel-led Enterprise Capital Fund operated by that limited company and between them have invested at least 50 per cent of the total investment in that Business Angel-led Enterprise Capital Fund excluding any investment made by the Secretary of State.

(8) For the purposes of paragraph (7), "a limited company" means a body corporate with limited liability which is a company or firm formed in accordance with the law of an EEA State and having its registered office, central administration or principal place of business within the territory of an EEA State.

(9) Nothing in this article has the effect of excluding a body corporate from the application of the Money Laundering Regulations 2003, in so far as those Regulations would have applied to it but for this article.

(10) Nothing in this article has the effect of excluding a body corporate from the application of section 397 of the Act (misleading statements and practices), in so far as that section would have applied to it but for this article.

[
[F193](11) This article is subject to article 4(4).**]]**

Textual Amendments

F192 Arts. 72E, 72F inserted (1.10.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2005 (S.I. 2005/1518), arts. 1, **2(3)**

F193 Art. 72E(11) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **25**

[[F192]Interpretation

72F.—(1) For the purposes of this article and of article 72E—

"Business Angel-led Enterprise Capital Fund" means a collective investment scheme which—

(a) is established for the purpose of enabling participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of investments falling within one or more of—

(i) article 76, being shares in an unlisted company;

(ii) article 77, being instruments creating or acknowledging indebtedness in respect of an unlisted company; and

(iii) article 79, being warrants or other instruments entitling the holder to subscribe for shares in an unlisted company;

(b) has only the following as its participants—

(i) the Secretary of State;

(ii) a body corporate of a type specified in article 72E(7); and

(iii) one or more persons each of whom at the time they became a participant was—

(aa) a sophisticated investor;

(bb) a high net worth individual;

(cc) a high net worth company;

(dd) a high net worth unincorporated association;

(ee) a trustee of a high value trust; or

(ff) a self-certified sophisticated investor;

(c) is prevented, by the arrangements by which it is established, from—

(i) acquiring investments, other than those falling within paragraphs (i) to (iii) of sub-paragraph (a); and

(ii) acquiring investments falling within paragraphs (i) to (iii) of sub-paragraph (a) in an unlisted company, where the aggregated cost of those investments exceeds £2 million, unless that acquisition is necessary to prevent or reduce the dilution of an existing share-holding in that unlisted company;

"high net worth company" means a body corporate which—

(a) falls within article 49(2)(a) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (high net worth companies, unincorporated associations etc.); and

(b) has executed a document **[**[F194](in a manner which binds the company)**]** in the following terms:

> "This company is a high net worth company and falls within article 49(2)(a) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001. We understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this company participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this company participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). We understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. We also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and are aware that it is open to us to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment."

"high net worth individual" means an individual who—

(a) is a "certified high net worth individual" within the meaning of article 48(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (certified high net worth individuals); and

(b) has signed a statement in the following terms:

> "I declare that I am a certified high net worth individual within the meaning of article 48(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"high net worth unincorporated association" means an unincorporated association—

(a) which falls within article 49(2)(b) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001; and

(b) on behalf of which an officer of that association or a member of its governing body has signed a statement in the following terms:

> "This unincorporated association is a high net worth unincorporated association and falls within article 49(2)(b) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001. I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this association participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this association participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to the association to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"high value trust" means a trust—

(a) where the aggregate value of the cash and investments which form a part of the trust's assets (before deducting the amount of its liabilities) is £10 million or more;

(b) on behalf of which a trustee has signed a statement in the following terms:

> "This trust is a high value trust. I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this trust participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this trust participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to the trust to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"self-certified sophisticated investor" means an individual who—

(a) is a "self-certified sophisticated investor" within the meaning of article 50A of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001;

(b) has signed a statement in the following terms:

> "I declare that I am a self-certified sophisticated investor within the meaning of article 50A of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who

operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"sophisticated investor" means an individual who—

(a) is a "certified sophisticated investor" within the meaning of article 50(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001; and

(b) has signed a statement in the following terms:

"I declare that I am a certified sophisticated investor within the meaning of article 50(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"unlisted company" has the meaning given by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.

(2) References in this Article and in Article 72E to a participant in a Business Angel-led Enterprise Capital Fund, doing things on behalf of such a participant and property belonging to such a participant are, respectively, references to that participant in that capacity, to doing things on behalf of that participant in that capacity or to the property of that participant held in that capacity.**]**

Textual Amendments

F192 Arts. 72E, 72F inserted (1.10.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2005 (S.I. 2005/1518), arts. 1, **2(3)**

F194 Words in art. 72F(1) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **22**

PART III

SPECIFIED INVESTMENTS

Investments: general

73. The following kinds of investment are specified for the purposes of section 22 of the Act.

Deposits

74. A deposit.

[F195Electronic money

74A. Electronic money.**]**

Textual Amendments

F195 Art. 74A inserted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **6**

Contracts of insurance

75. Rights under a contract of insurance.

Shares etc.

76.—(1) Shares or stock in the share capital of—

(a) any body corporate (wherever incorporated), and

(b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom.

(2) Paragraph (1) includes—

(a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 [M29]; and

(b) any transferable shares in a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions, or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body.

(3) But subject to paragraph (2) there are excluded from paragraph (1) shares or stock in the share capital of—

(a) an open-ended investment company;

(b) a building society incorporated under the law of, or any part of, the United Kingdom;

(c) a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions;

(d) any body constituted under the law of an EEA State for purposes equivalent to those of a body falling within sub-paragraph (b) or (c).

Marginal Citations
M29 1986 c. 53.

Instruments creating or acknowledging indebtedness

77.—(1) Subject to paragraph (2), such of the following as do not fall within article 78—

(a) debentures;

(b) debenture stock;

(c) loan stock;

(d) bonds;

(e) certificates of deposit;

(f) any other instrument creating or acknowledging indebtedness.

(2) If and to the extent that they would otherwise fall within paragraph (1), there are excluded from that paragraph—

(a) an instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

(b) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);

(c) a banknote, a statement showing a balance on a current, deposit or savings account, a lease or other disposition of property, or a heritable security; and

(d) a contract of insurance.

(3) An instrument excluded from paragraph (1) of article 78 by paragraph (2)(b) of that article is not thereby to be taken to fall within paragraph (1) of this article.

Government and public securities

78.—(1) Subject to paragraph (2), loan stock, bonds and other instruments creating or acknowledging indebtedness, issued by or on behalf of any of the following—

(a) the government of the United Kingdom;

(b) the Scottish Administration;

(c) the Executive Committee of the Northern Ireland Assembly;

(d) the National Assembly for Wales;

(e) the government of any country or territory outside the United Kingdom;

(f) a local authority in the United Kingdom or elsewhere; or

(g) a body the members of which comprise—

(i) states including the United Kingdom or another EEA State; or

(ii) bodies whose members comprise states including the United Kingdom or another EEA State.

(2) There are excluded from paragraph (1)—

(a) so far as applicable, the instruments mentioned in article 77(2)(a) to (d);

(b) any instrument creating or acknowledging indebtedness in respect of—

(i) money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank;

(ii) money raised under the National Loans Act 1968 [M30] under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972 [M31].

Marginal Citations

M30 1968 c. 13.

M31 1972 c. 65.

Instruments giving entitlements to investments

79.—(1) Warrants and other instruments entitling the holder to subscribe for any investment of the kind specified by article 76, 77 or 78.

(2) It is immaterial whether the investment to which the entitlement relates is in existence or identifiable.

(3) An investment of the kind specified by this article is not to be regarded as falling within article 83, 84 or 85.

Certificates representing certain securities

80.—(1) Subject to paragraph (2), certificates or other instruments which confer contractual or property rights (other than rights consisting of an investment of the kind specified by article 83)—

(a) in respect of any investment of the kind specified by any of articles 76 to 79, being an investment held by a person other than the person on whom the rights are conferred by the certificate or instrument; and

(b) the transfer of which may be effected without the consent of that person.

(2) There is excluded from paragraph (1) any certificate or other instrument which confers rights in respect of two or more investments issued by different persons, or in respect of two or more different investments of the kind specified by article 78 and issued by the same person.

Units in a collective investment scheme

81. Units in a collective investment scheme (within the meaning of Part XVII of the Act).

[[F196]Rights under a pension scheme

82.—(1) Rights under a stakeholder pension scheme.

(2) Rights under a personal pension scheme.**]**

Textual Amendments

F196 Art. 82 substituted (1.10.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(2), **2(5)**

Options

83.—[[F197](1)**]** Options to acquire or dispose of—

(a) a security or contractually based investment (other than one of a kind specified by this article);

(b) currency of the United Kingdom or any other country or territory;

(c) palladium, platinum, gold or silver; **[**[F198]or**]**

(d) an option to acquire or dispose of an investment of the kind specified by this article by virtue of paragraph (a), (b) or (c) **[**[F199];

(e) subject to paragraph (4), an option to acquire or dispose of an option to which paragraph 5, 6, 7 or 10 of Section C of Annex I to the markets in financial instruments directive (the text of which is set out in Part I of Schedule 2) applies**]**.

[[F200](2) Subject to paragraph (4), options—

(a) to which paragraph (1) does not apply;

(b) which relate to commodities;

(c) which may be settled physically; and

(d) either—

(i) to which paragraph 5 or 6 of Section C of Annex I to the markets in financial instruments directive, the text of which is set out in Part 1 of Schedule 2, applies, or

(ii) which in accordance with Article 38 of the Commission Regulation (the text of which is set out in Part 2 of Schedule 2) are to be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes, and to which paragraph 7 of Section C of Annex I to the markets in financial instruments directive applies.

(3) Subject to paragraph (4), options—

(a) to which paragraph (1) does not apply;

(b) which may be settled physically; and

(c) to which paragraph 10 of Section C of Annex I to the markets in financial instruments directive (read with the Commission Regulation) applies.

(4) Paragraphs (1)(e), (2) and (3) only apply to options in relation to which—

(a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,

(b) a management company is providing, in accordance with Article 5(3) of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, or

(c) a market operator is providing the investment service specified in paragraph 8 of Section A of Annex I to the markets in financial instruments directive.

(5) Expressions used in paragraphs (1)(e), (2) and (3) and in the markets in financial instruments directive have the same meaning as in that directive.**]**

Textual Amendments

F197 Art. 83(1): art. 83 renumbered as art. 83(1) (1.4.2007 for specified purposes) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **26(a)**

F198 Word in art. 83(1)(c) omitted (1.4.2007 for specified purposes) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **26(b)(i)**

F199 Art. 83(1)(e) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **26(b)(ii)**

F200 Art. 83(2)-(5) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **26(c)**

Futures

84.—(1) Subject to paragraph (2), rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.

[[F201](1A) Subject to paragraph (1D), futures—

(a) to which paragraph (1) does not apply;

(b) which relate to commodities;

(c) which may be settled physically; and

(d) to which paragraph 5 or 6 of Section C of Annex I to the markets in financial instruments directive applies.

(1B) Subject to paragraph (1D), futures and forwards—

(a) to which paragraph (1) does not apply;

(b) which relate to commodities;

(c) which may be settled physically;

(d) which in accordance with Article 38 of the Commission Regulation (the text of which is set out in Part 2 of Schedule 2) are to be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes; and

(e) to which paragraph 7 of Section C of Annex I to the markets in financial instruments directive applies.

(1C) Subject to paragraph (1D), futures—

(a) to which paragraph (1) does not apply;

(b) which may be settled physically; and

(c) to which paragraph 10 of Section C of Annex I to the markets in financial instruments directive (read with the Commission Regulation) applies.

(1D) Paragraph (1A), (1B) and (1C) only apply to futures or forwards in relation to which—

(a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,

(b) a management company is providing, in accordance with Article 5(3) of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, or

(c) a market operator is providing the investment service specified in paragraph 8 of Section A of Annex I to the markets in financial instruments directive.

(1E) Expressions used in paragraphs (1A) to (1C) and in the markets in financial instruments directive have the same meaning as in that directive.**]**

(2) There are excluded from paragraph (1) rights under any contract which is made for commercial and not investment purposes.

(3) A contract is to be regarded as made for investment purposes if it is made or traded on a recognised investment exchange, or is made otherwise than on a recognised investment exchange but is expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(4) A contract not falling within paragraph (3) is to be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days, unless it can be shown that there existed an understanding that (notwithstanding the express terms of the contract) delivery would not be made within seven days.

(5) The following are indications that a contract not falling within paragraph (3) or (4) is made for commercial purposes and the absence of them is an indication that it is made for investment purposes—

(a) one or more of the parties is a producer of the commodity or other property, or uses it in his business;

(b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.

(6) It is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms.

(7) The following are indications that a contract is made for investment purposes—

(a) it is expressed to be as traded on an investment exchange;

(b) performance of the contract is ensured by an investment exchange or a clearing house;

(c) there are arrangements for the payment or provision of margin.

(8) For the purposes of paragraph (1), a price is to be taken to be agreed on when a contract is made—

(a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or

(b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Textual Amendments

F201 Art. 84(1A)-(1E) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **27**

Modifications etc. (not altering text)

C15 Art. 84 applied (1.12.2001) by The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335), reg. 1(2), **Sch. 1 para. 22(3)**; S.I. 2001/3538, art. 2(1)

Contracts for differences etc.

85.—(1) Subject to paragraph (2), rights under—

(a) a contract for differences; or

(b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—

(i) the value or price of property of any description; or

(ii) an index or other factor designated for that purpose in the contract.

(2) There are excluded from paragraph (1)—

(a) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates;

(b) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor;

(c) rights under any contract under which—

(i) money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank; or

(ii) money is raised under the National Loans Act 1968 under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972;

(d) rights under a qualifying contract of insurance.

[[F202](3) Subject to paragraph (4), derivative instruments for the transfer of credit risk—

(a) to which neither article 83 nor paragraph (1) applies; and

(b) to which paragraph 8 of Section C of Annex I to the markets in financial instruments directive applies.

(4) Paragraph (3) only applies to derivatives in relation to which—

(a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,

(b) a management company is providing, in accordance with Article 5(3) of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, or

(c) a market operator is providing the investment service specified in paragraph 8 of Section A of Annex I to the markets in financial instruments directive.

(5) ”Derivative instruments for the transfer of credit risk” has the same meaning as in the markets in financial instruments directive.**]**

Textual Amendments

F202 Art. 85(3)-(5) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **28**

Lloyd’s syndicate capacity and syndicate membership

86.—(1) The underwriting capacity of a Lloyd’s syndicate.

(2) A person’s membership (or prospective membership) of a Lloyd’s syndicate.

Funeral plan contracts

87. Rights under a funeral plan contract.

Commencement Information

I6 Art. 87 in force at 1.1.2002, see art. 2(2)(a)

Regulated mortgage contracts

88. Rights under a regulated mortgage contract.

Commencement Information

I7 Art. 88 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

[[F203]Regulated home reversion plans

88A. Rights under a regulated home reversion plan.**]**

Textual Amendments

F203 Arts. 88A, 88B inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **23**

[[F203]Regulated home purchase plans

88B. Rights under a regulated home purchase plan.**]**

Textual Amendments

F203 Arts. 88A, 88B inserted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **23**

Rights to or interests in investments

89.—(1) Subject to paragraphs (2) to (4), any right to or interest in anything which is specified by any other provision of this Part (other than **[**[F204]article 88, 88A or 88B**]**).

(2) Paragraph (1) does not include interests under the trusts of an occupational pension scheme.

(3) Paragraph (1) does not include—

(a) rights to or interests in a contract of insurance of the kind referred to in paragraph (1)(a) of article 60; or

(b) interests under a trust of the kind referred to in paragraph (1)(b) of that article.

(4) Paragraph (1) does not include anything which is specified by any other provision of this Part.

Textual Amendments

F204 Words in art. 89(1) substituted (6.11.2006 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **24**

PART IV

CONSEQUENTIAL PROVISIONS

Regulated mortgage contracts: consequential provisions

Consequential amendments of the Consumer Credit Act 1974

90.—(1) The Consumer Credit Act 1974[M32] is amended as follows.

(2) In section 16 (exempt agreements)[M33], after subsection (6B) insert—

"(6C) This Act does not regulate a consumer credit agreement if—

(a) it is secured by a land mortgage; and

(b) entering into that agreement as lender is a regulated activity for the purposes of the Financial Services and Markets Act 2000.

(6D) But section 126, and any other provision so far as it relates to section 126, applies to an agreement which would (but for subsection (6C)) be a regulated agreement.

(6E) Subsection (6C) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000 (regulated activities: power to specify classes of activity and categories of investment);

(b) any order for the time being in force under that section; and

(c) Schedule 2 to that Act.".

(3) In section 43 (advertisements), after subsection (3) insert—

"(3A) An advertisement does not fall within subsection (1)(a) in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication.

(3B) An "exempt generic communication" is a communication to which subsection (1) of section 21 of the Financial Services and Markets Act 2000 does not apply, as a result of an order under subsection (5) of that section, because it does not identify a person as providing an investment or as carrying on an activity to which the communication relates.".

(4) In section 52 (quotations), after subsection (2) insert—

"(3) In this section, "quotation" does not include—

(a) any document which is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000; or

(b) any document (other than one falling within paragraph (a)) provided by an authorised person (within the meaning of that Act) in connection with an agreement which would or might be an exempt agreement as a result of section 16(6C).".

(5) In section 53 (duty to display information), after "land" insert " (other than credit provided under an agreement which is an exempt agreement as a result of section 16(6C)) ".

(6) In section 137 (extortionate credit bargains), in subsection (2)(a), after "any agreement" insert " (other than an agreement which is an exempt agreement as a result of section 16(6C)) ".

(7) In section 151 (advertisements for the purposes of ancillary credit business), after subsection (2) insert—

"(2A) An advertisement does not fall within subsection (1) or (2) in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication (as defined in section 43(3B))."

Commencement Information

I8 Art. 90 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

Marginal Citations

M32 1974 c. 39.

M33 Subsection (6B) was inserted by s. 22(3) of the Housing and Planning Act 1986 (c. 63) and amended by the Housing Act 1988 (c. 50), Sch. 17, Part I, para. 20, and by the Government of Wales Act 1998 (c. 38), Sch. 18, Part VI.

Consequential amendments of subordinate legislation under the Consumer Credit Act 1974

91.—(1) In the Consumer Credit (Advertisements) Regulations 1989[M34], after paragraph (2) of regulation 9 (application of Regulations) insert—

"(3) These Regulations do not apply to any advertisement in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication.

(4) An "exempt generic communication" is a communication to which subsection (1) of section 21 of the Financial Services and Markets Act 2000 does not apply, as a result of an order under subsection (5) of that section, because it does not identify a person as providing an investment or as carrying on an activity to which the communication relates."

(2) In the Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements) (Amendment) Regulations 1999 [M35], in the definition of "quotation" in paragraph (1) of regulation 2 (interpretation of Part II)—

(a) omit "or" at the end of sub-paragraph (c); and

(b) after sub-paragraph (d) insert—

"(e) any document which is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000; or

(f) any document (other than one falling within sub-paragraph (e)), provided by an authorised person (within the meaning of that Act) in connection with an agreement which would or might be an exempt agreement as a result of section 16(6C) of the Act."

Commencement Information

I9 Art. 91 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

Marginal Citations

M34 Subsection (6B) was inserted by s. 22(3) of the Housing and Planning Act 1986 (c. 63) and amended by the Housing Act 1988 (c. 50), Sch. 17, Part I, para. 20, and by the Government of Wales Act 1998 (c. 38), Sch. 18, Part VI.

M35 S.I. 1989/1125, amended by S.I. 1999/2725, S.I. 1999/3177 and S.I. 2000/1797, and modified by S.I. 1992/3218.

[F205 PART V

UNAUTHORISED PERSONS CARRYING ON INSURANCE MEDIATION ACTIVITIES

Textual Amendments

F205 Pt. 5 inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **13**

Interpretation

92. In this Part—

"designated professional body" means a body which is for the time being designated by the Treasury under section 326 of the Act (designation of professional bodies);

"insurance mediation activity" means any regulated activity of the kind specified by article 21, 25(1) or (2), 39A or 53, or, so far as relevant to any of those articles, article 64, which is carried on in relation to a contract of insurance;

"the record" means the record maintained by the Authority under section 347 of the Act (public record of authorised persons etc.);

"recorded insurance intermediary" has the meaning given by article 93(4);

"a relevant member", in relation to a designated professional body, means a member (within the meaning of section 325(2) of the Act) of the profession in relation to which that designated professional body is established, or a person who is controlled or managed by one or more such members.

Duty to maintain a record of unauthorised persons carrying on insurance mediation activities

93.—(1) Subject to articles 95 and 96, the Authority must include in the record every person who—

(a) as a result of information obtained by virtue of its rules or by virtue of a direction given, or requirement imposed, under section 51(3) of the Act (procedure for applications under Part IV), appears to the Authority to fall within paragraph (2); or

(b) as a result of information obtained by virtue of article 94, appears to the Authority to fall within paragraph (3).

(2) A person falls within this paragraph if he is, or has entered into a contract by virtue of which he will be, an appointed representative who carries on any insurance mediation activity.

(3) A person falls within this paragraph if—

(a) he is a relevant member of a designated professional body who carries on, or is proposing to carry on, any insurance mediation activity; and

(b) the general prohibition does not (or will not) apply to the carrying on of those activities by virtue of section 327 of the Act (exemption from the general prohibition).

(4) In this Part, "recorded insurance intermediary" means a person who is included in the record by virtue of paragraph (1).

(5) The record must include—

(a) in the case of any recorded insurance intermediary, its address; and

(b) in the case of a recorded insurance intermediary which is not an individual, the name of the individuals who are responsible for the management of the business carried on by the intermediary, so far as it relates to insurance mediation activities.

Members of designated professional bodies

94.—(1) A designated professional body must, by notice in writing, inform the Authority of—

(a) the name,

(b) the address, and

(c) in the case of a relevant member which is not an individual, the name of the individuals who are responsible for the management of the business carried on by the member, so far as it relates to insurance mediation activities,

of any relevant member who falls within paragraph (2).

(2) A relevant member of a designated professional body falls within this paragraph if, in accordance with the rules of that body, he carries on, or proposes to carry on any insurance mediation activity but does not have, and does not propose to apply for, Part IV permission on the basis that the general prohibition does not (or will not) apply to the carrying on of that activity by virtue of section 327 of the Act.

(3) A designated professional body must also, by notice in writing, inform the Authority of any change in relation to the matters specified in sub-paragraphs (a) to (c) of paragraph (1).

(4) A designated professional body must inform the Authority when a relevant member to whom paragraph (2) applies ceases, for whatever reason, to carry on insurance mediation activities.

(5) The Authority may give directions to a designated professional body as to the manner in which the information referred to in paragraphs (1), (3) and (4) must be provided.

Exclusion from record where not fit and proper to carry on insurance mediation activities

95.—(1) If it appears to the Authority that a person who falls within article 93(2) (appointed representatives) ("AR") is not a fit and proper person to carry on insurance mediation activities, it may decide not to include him in the record or, if that person is already included in the record, to remove him from the record.

(2) Where the Authority proposes to make a determination under paragraph (1), it must give AR a warning notice.

(3) If the Authority makes a determination under paragraph (1), it must give AR a decision notice.

(4) If the Authority gives AR a decision notice under paragraph (3), AR may refer the matter to the Tribunal.

(5) The Authority may, on the application of AR, revoke a determination under paragraph (1).

(6) If the Authority decides to grant the application, it must give AR written notice of its decision.

(7) If the Authority proposes to refuse the application, it must give AR a warning notice.

(8) If the Authority decides to refuse the application, it must give AR a decision notice.

(9) If the Authority gives AR a decision notice under paragraph (8), AR may refer the matter to the Tribunal.

(10) Sections 393 and 394 of the Act (third party rights and access to Authority material) apply to a warning notice given in accordance with paragraph (2) or (7) and to a decision notice given in accordance with paragraph (3) or (8).

Exclusion from the record where Authority has exercised its powers under Part XX of the Act

96.—(1) If a person who appears to the Authority to fall within article 93(3) (member of a designated professional body) falls within paragraph (2) or (3), the Authority must not include him in the record or, if that person is already included in the record, must remove him from the record.

(2) A person falls within this paragraph if, by virtue of a direction given by the Authority under section 328(1) of the Act (directions in relation to the general prohibition), section 327(1) of the Act does not apply in relation to the carrying on by him of any insurance mediation activity.

(3) A person falls within this paragraph if the Authority has made an order under section 329(2) of the Act (orders in relation to the general prohibition) disapplying section 327(1) of the Act in relation to the carrying on by him of any insurance mediation activity.**]**

[[F206]PART 6

MISCELLANEOUS

Textual Amendments

F206 Pt. 6 and heading inserted (15.7.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2004 (S.I. 2004/1610), arts. 1(2), **3**

Disapplication of section 49(2) of the Act

97. In section 49 of the Act (persons connected with an applicant for Part 4 permission), after subsection (2) insert—

"(2A) But subsection (2) does not apply to the extent that the permission relates to—

(a) an insurance mediation activity (within the meaning given by paragraph 2(5) of Schedule 6); or

(b) a regulated activity involving a regulated mortgage contract.".**]**

Greg Pope
Jim Dowd
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Article 3(1)

CONTRACTS OF INSURANCE

Modifications etc. (not altering text)

C16 Sch. 1 applied in part (1.12.2001) by The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335), **art. 25(2)**, reg. 1(2); S.I. 2001/3538, art. 2(1)

C17 Sch. 1 applied in part (1.12.2001) by The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335), **art. 10(2)**, reg. 1(2); S.I. 2001/3538, art. 2(1)

PART I

CONTRACTS OF GENERAL INSURANCE

Accident

1. Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured or, in the case of a contract made by virtue of section 140, 140A or 140B of the Local Government Act 1972 [M36] (or, in Scotland, section 86(1) of the Local Government (Scotland) Act 1973 [M37]), a person for whose benefit the contract is made—

(a) sustaining injury as the result of an accident or of an accident of a specified class; or

(b) dying as a result of an accident or of an accident of a specified class; or

(c) becoming incapacitated in consequence of disease or of disease of a specified class,

including contracts relating to industrial injury and occupational disease but excluding contracts falling within paragraph 2 of Part I of, or paragraph IV of Part II of, this Schedule.

Marginal Citations

M36 S.I. 1999/2725, amended by S.I. 2000/1797.

M37 1972 c. 70. Section 140 was amended by the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), s. 39(1) and Sch. 7, Part XVI; by the Insurance Companies Act 1982 (c. 50), Sch. 5, para. 13; and by the London Regional Transport Act 1984 (c. 32), Sch. 7. Section 140A was inserted by s. 39(2) of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), and amended by the Planning (Consequential Provisions) Act 1990 (c. 10), Sch. 2, para. 28, and by the Environment Act 1995 (c. 25), Sch. 24. Section 140B was inserted by s. 39(2) of the Local Government (Miscellaneous Provisions) Act 1982, and amended by the Local Government Act 1985 (c. 51), Sch. 17, and by the Local Government (Wales) Act 1994 (c. 19), Sch. 15, para. 31.

Sickness

2. Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of loss to the persons insured attributable to sickness or infirmity but excluding contracts falling within paragraph IV of Part II of this Schedule.

Land vehicles

3. Contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.

Railway rolling stock

4. Contract of insurance against loss of or damage to railway rolling stock.

Aircraft

5. Contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.

Ships

6. Contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels.

Goods in transit

7. Contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.

Fire and natural forces

8. Contracts of insurance against loss of or damage to property (other than property to which paragraphs 3 to 7 relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.

Damage to property

9. Contracts of insurance against loss of or damage to property (other than property to which paragraphs 3 to 7 relate) due to hail or frost or any other event (such as theft) other than those mentioned in paragraph 8.

Motor vehicle liability

10. Contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.

Aircraft liability

11. Contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.

Liability of ships

12. Contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third party risks and carrier's liability.

General liability

13. Contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which paragraph 10, 11 or 12 relates.

Credit

14. Contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.

Suretyship

15.—(1) Contracts of insurance against the risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them.

(2) Fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, where these are—

(a) effected or carried out by a person not carrying on a banking business;

(b) not effected merely incidentally to some other business carried on by the person effecting them; and

(c) effected in return for the payment of one or more premiums.

Miscellaneous financial loss

16. Contracts of insurance against any of the following risks, namely—

(a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;

(b) risks of loss to the persons insured attributable to their incurring unforeseen expense (other than loss such as is covered by contracts falling within paragraph 18);

(c) risks which do not fall within sub-paragraph (a) or (b) and which are not of a kind such that contracts of insurance against them fall within any other provision of this Schedule.

Legal expenses

17. Contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).

Assistance

18. Contracts of insurance providing either or both of the following benefits, namely—

(a) assistance (whether in cash or in kind) for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; or

(b) assistance (whether in cash or in kind) for persons who get into difficulties otherwise than as mentioned in sub-paragraph (a).

PART II

CONTRACTS OF LONG-TERM INSURANCE

Life and annuity

I. Contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within paragraph III.

Marriage and birth

II. Contract of insurance to provide a sum on marriage **[**[F207]or the formation of a civil partnership**]** or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

Textual Amendments

F207 Words in Sch. 1 Pt. II para. 2 inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), reg. 1, **Sch. 16 para. 1(5)**

Linked long term

III. Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or party to be determined by references to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

Permanent health

IV. Contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that—

(a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and

(b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Tontines

V. Tontines.

Capital redemption contracts

VI. Capital redemption contracts, where effected or carried out by a person who does not carry on a banking business, and otherwise carries on a regulated activity of the kind specified by article 10(1) or (2).

Pension fund management

VII.

(a) Pension fund management contracts, and

(b) pension fund management contracts which are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest,

where effected or carried out by a person who does not carry on a banking business, and otherwise carries on a regulated activity of the kind specified by article 10(1) or (2).

Collective insurance etc.

VIII. Contracts of a kind referred to in article 1(2)(e) of the first life insurance directive.

Social insurance

IX. Contracts of a kind referred to in article 1(3) of the first life insurance directive.

[F208SCHEDULE 2

Article 3(1)

SECTIONS A AND C OF ANNEX I TO THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND RELATED COMMUNITY SUBORDINATE LEGISLATION

Textual Amendments

F208 Sch. 2 substituted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **29**

PART 1

SECTION C OF ANNEX I TO THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

"Financial instruments

1. Transferable securities;

2. Money-market instruments;

3. Units in collective investment undertakings;

4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

5. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

6. Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF;

7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

8. Derivative instruments for the transfer of credit risk;

9. Financial contracts for differences;

10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to

whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls."

PART 2

CHAPTER VI OF THE COMMISSION REGULATION

"Derivative financial instruments

Article 38

Characteristics of other derivative financial instruments

1. For the purposes of Section C(7) of Annex I to Directive 2004/39/EC, a contract which is not a spot contract within the meaning of paragraph 2 of this Article and which is not covered by paragraph 4 shall be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes if it satisfies the following conditions:

(a) it meets one of the following sets of criteria:

(i) it is traded on a third country trading facility that performs a similar function to a regulated market or an MTF;

(ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF or such a third country trading facility;

(iii) it is expressly stated to be equivalent to a contract traded on a regulated market, MTF or such a third country trading facility;

(b) it is cleared by a clearing house or other entity carrying out the same functions as a central counterparty, or there are arrangements for the payment or provision of margin in relation to the contract;

(c) it is standardised so that, in particular, the price, the lot, the delivery date or other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

2. A spot contract for the purposes of paragraph 1 means a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

(a) two trading days;

(b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

However, a contract is not a spot contract if, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period mentioned in the first subparagraph.

3. For the purposes of Section C(10) of Annex I to Directive 2004/39/EC, a derivative contract relating to an underlying referred to in that Section or in Article 39 shall be considered to have the characteristics of other derivative financial instruments if one of the following conditions is satisfied:

(a) that contract is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;

(b) that contract is traded on a regulated market or an MTF;

(c) the conditions laid down in paragraph 1 are satisfied in relation to that contract.

4. A contract shall be considered to be for commercial purposes for the purposes of Section C(7) of Annex I to Directive 2004/39/EC, and as not having the characteristics of other derivative financial instruments for the purposes of Sections C(7) and (10) of that Annex, if it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network, and it is necessary to keep in balance the supplies and uses of energy at a given time.

Article 39

Derivatives within Section C(10) of Annex I to Directive 2004/39/EC

In addition to derivative contracts of a kind referred to in Section C(10) of Annex I to Directive 2004/39/EC, a derivative contract relating to any of the following shall fall within that Section if it meets the criteria set out in that Section and in Article 38(3):

(a) telecommunications bandwidth;

(b) commodity storage capacity;

(c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;

(d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;

(e) a geological, environmental or other physical variable;

(f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation."

PART 3

SECTION A OF ANNEX I TO THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

"Investment services and activities

1. Reception and transmission of orders in relation to one or more financial instruments.

2. Execution of orders on behalf of clients.

3. Dealing on own account.

4. Portfolio management.

5. Investment advice.

6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.

7. Placing of financial instruments without a firm commitment basis.

8. Operation of Multilateral Trading Facilities."

PART 4

ARTICLE 52 OF COMMISSION DIRECTIVE 2006/73/EC

"Article 52

Investment advice

For the purposes of the definition of "investment advice" in Article 4(1)(4) of Directive 2004/39/EC, a personal recommendation is a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

That recommendation must be presented as suitable for that person, or must be based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following sets of steps:

(a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;

(b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public."**]**

[[F209]SCHEDULE 3

Article 3(1)

ARTICLE 2 OF THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

Textual Amendments

F209 Sch. 3 substituted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **30**

"Article 2

Exemptions

1. This Directive shall not apply to:

(a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC or assurance undertakings as defined in Article 1 of Directive 2002/83/EC or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC;

(b) persons 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) persons who do not provide any investment services or activities other than dealing on own account unless they are market makers or deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;

(e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;

(f) persons which provide investment services which only involve both administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(g) the members of the European System of Central Banks and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

(h) collective investment undertakings and pension funds whether coordinated at Community level or not and the depositaries and managers of such undertakings;

(i) persons dealing on own account in financial instruments, or providing investment services in commodity derivatives or derivative contracts included in Annex I, Section C10 to the clients of their main business, provided this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2000/12/EC;

(j) persons providing investment advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;

(k) persons whose main business consists of dealing on own account in commodities and/or commodity derivatives. This exception shall not apply where the persons that deal on own account in commodities and/or commodity derivatives are part of a group the main business of which is the provision of other investment services within the meaning of this Directive or banking services under Directive 2000/12/EC;

(l) firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives 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, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;

(m) associations set up by Danish and Finnish pensions funds with the sole aim of managing the assets of pension funds that are members of those associations;

(n) 'agenti di cambio' whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998.

2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under national provisions.

3. In order to take account of developments on financial markets, and to ensure the uniform application of this Directive, the Commission, acting in accordance with the procedure referred to in Article 64(2), may, in respect of exemptions (c), (i) and (k) define the criteria for determining when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner."**]**

[F210SCHEDULE 4

Article 4

RELEVANT TEXT OF THE INSURANCE MEDIATION DIRECTIVE

Textual Amendments

F210 Sch. 4 inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **12**

Part 1

Article 1.2

"This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:

(a) the insurance contract only requires knowledge of the insurance cover that is provided;

(b) the insurance contract is not a life assurance contract;

(c) the insurance contract does not cover any liability risks;

(d) the principal professional activity of the person is other than insurance mediation;

(e) the insurance is complementary to the product or service supplied by any provider, where such insurance covers:

(i) the risk of breakdown, loss of or damage to goods supplied by that provider; or

(ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;

(f) the amount of the annual premium does not exceed EUR 500 and the total duration of the insurance contract, including any renewals, does not exceed five years."

Part II

Article 2.3

""Insurance mediation" means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation."

Part III

Article 2.4

““Reinsurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by a reinsurance undertaking or an employee of a reinsurance undertaking who is acting under the responsibility of the reinsurance undertaking are not considered as reinsurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation.”**]**

EXPLANATORY NOTE

(This note is not part of the Order)
This Order specifies kinds of activities and investments for the purposes of the Financial Services and Markets Act 2000 (“the Act"). When an activity of a specified kind is carried on by way of business in relation to an investment of a specified kind, it is a “regulated activity" for the purposes of the Act. The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177) makes provision as to the circumstances in which a person is, or is not, to be regarded as carrying on a regulated activity by way of business. Section 19 of the Act prohibits person who are not authorised or exempt from carrying on any regulated activity in the United Kingdom. Contravention of that prohibition is a criminal offence.
Part I of this Order makes provision for the citation, commencement and interpretation of the Order.
Part II specifies types of activities. Those activities are accepting deposits; effecting and carrying out contracts of insurance; dealing in investments as principal, or as agent; arranging deals in investments; managing investments; safeguarding and administering investments; sending dematerialised instructions; establishing etc. a collective investment scheme, or a stakeholder pension scheme; advising on investments; certain activities in relation to Lloyd’s; entering into funeral plan contracts, or regulated mortgage contracts; and agreeing to carry on certain of the above activities.
Part II also sets out the exclusions (if any) applicable to each kind of specified activity.
Part III of the Order specifies the kinds of investment which are relevant for determining whether a person is carrying on a regulated activity for the purposes of the Act.
Part IV makes consequential amendments to the Consumer Credit Act 1974, and subordinate legislation under that Act, so as to exclude from its scope those categories of mortgage contract which are specified under this Order and which will therefore be regulated under the Act.
Schedule 1 to the Order lists the classes of insurance contract which are relevant to the scope of the activity specified by article 10.

Schedules 2 and 3 set out the text of certain provisions of Council Directive No. 93/22/EEC on investment services in the securities field which are relevant to the applicability of the exclusions contained in the Order (see article 4).

Status:
Point in time view as at 01/04/2007.

Changes to legislation:
The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is up to date with all changes known to be in force on or before 11 June 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.