STATUTORY INSTRUMENTS

2001 No. 544

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

PART II U.K.

SPECIFIED ACTIVITIES

CHAPTER I U.K.

GENERAL

Specified activities: general U.K.

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 [M1], 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).

(4) Where an investment firm—

(a) provides core investment services to third parties 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 **[**[F1]articles 15, 16, 19, 22, 23, 29, 38, 68, 69 and 70**]**,

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

[[F2](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—

"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; [F3]...

[[F4]"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;**]**

"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.

[[F5]"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

F1 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**

F2 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)**

F3 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)**

F4 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)**

F5 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

M1 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 U.K.

ACCEPTING DEPOSITS

The activity

Accepting deposits U.K.

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 **[**[F6]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

F6 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 **U.K.**

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 [M2] 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;

[[F7](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

F7 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

M2 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. U.K.

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 [M3], article 4 of the Solicitors (Northern Ireland) Order 1976 [M4] or section 4 of the Solicitors (Scotland) Act 1980 [M5];

(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 [M6] 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 [M7].

(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 [M8];

(ii) the Incorporated Law Society of Northern Ireland under article 26A of the Solicitors (Northern Ireland) Order 1976 [M9]; 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 [M10] or, in Scotland, section 65 of the Solicitors (Scotland) Act 1980 [M11];

(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 [M12]"registered European lawyer" has the meaning given by regulation 2(1) of the European Communities (Lawyer's Practice) Regulations 2000 [M13] or regulation 2(1) of the European Communities (Lawyer's Practice) (Scotland) Regulation 2000 [M14].

Marginal Citations

M3 1974 c. 47.

M4 S.I. 1976/582 (N.I. 12); relevant amending instrument is S.I. 1989/1343 (N.I. 14).

M5 1980 c. 46.

M6 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).

M7 Amended by section 31 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M8 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.

M9 Inserted by article 10 of the Solicitors (Amendment) (Northern Ireland) Order 1989 (S.I. 1989/1343) (N.I. 14).

M10 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).

M11 Amended by para. 29(15) of Sch. 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M12 Inserted by section 32 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).
M13 S.I. 2000/1119.
M14 Scottish Statutory Instruments 2000 No. 121.

Sums received by persons authorised to deal etc. U.K.

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, **[**[F8]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
F8 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 U.K.

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).

[[F9](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
F9 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**

[[F10]Sums received in exchange for electronic money U.K.

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

Textual Amendments

F10 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)**

[F11 Information society services U.K.

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

Textual Amendments

F11 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)**

[F12 CHAPTER IIA U.K.

ELECTRONIC MONEY

Textual Amendments

F12 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 U.K.

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

Exclusions

Persons certified as small issuers etc. U.K.

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 Article 1(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".

Applications for certificates U.K.

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 U.K.

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 U.K.

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. U.K.

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 U.K.

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 U.K.

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 U.K.

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 U.K.

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 U.K.

INSURANCE

The activities

Effecting and carrying out contracts of insurance U.K.

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 U.K.

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) [M15].

Marginal Citations

M15 O.J. No. L151, 7.6.1978, p.25.

Breakdown insurance U.K.

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.

[[F13]Information society services U.K.

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

Textual Amendments

F13 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 U.K.

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 [M16]; and

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

Marginal Citations

M16 1982 c. 14.

CHAPTER IV U.K.

DEALING IN INVESTMENTS AS PRINCIPAL

The activity

Dealing in investments as principal U.K.

14. 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.

Exclusions

Absence of holding out etc. U.K.

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).

Dealing in contractually based investments U.K.

16. 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).

Acceptance of instruments creating or acknowledging indebtedness U.K.

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. U.K.

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 **[**[F14]the person concerned**]**.

Textual Amendments

F14 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**

[[F15]Dealing by a company in its own shares U.K.

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

F15 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 U.K.

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.

Other exclusions U.K.

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)**[**[F16], 72 (overseas persons) and 72A (information society services)**]**.

Textual Amendments

F16 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 U.K.

DEALING IN INVESTMENTS AS AGENT

The activity

Dealing in investments as agent U.K.

21. Buying, selling, subscribing for or underwriting securities or **[**[F17]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.

Textual Amendments

F17 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)**

Exclusions

Deals with or through authorised persons U.K.

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).

[[F18](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.**]**

Textual Amendments

F18 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)**

Modifications etc. (not altering text)

C1 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)

C2 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)

C3 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 U.K.

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.

Other exclusions U.K.

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)**[**[F19], 72 (overseas persons)**][**[F20], 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

F19 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)**

F20 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 U.K.

ARRANGING DEALS IN INVESTMENTS

The activities

Arranging deals in investments U.K.

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 **[**[F21]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.

Textual Amendments

F21 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)**

[[F22]Arranging regulated mortgage contracts U.K.

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

F22 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**

Exclusions

Arrangements not causing a deal U.K.

26. There are excluded from article 25(1) **[**[F23]and article 25A(1)**]** arrangements which do not or would not bring about the transaction to which the arrangements relate.

Textual Amendments

F23 Words in art. 26 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), **5**

Enabling parties to communicate U.K.

27. A person does not carry on an activity of the kind specified by article 25(2) **[**[F24]and article 25A(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

F24 Words in art. 27 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), **6**

Arranging transactions to which the arranger is a party U.K.

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.

[[F25](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

F25 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)**

[F26 Arranging contracts to which the arranger is a party U.K.

28A.—(1) There are excluded from article 25A(1) any arrangements—

(a) for a contract into which the person making the arrangements enters or is to enter; or

(b) for a variation of a contract to which that person is (or is to become) a party.

(2) There are excluded from article 25A(2) any arrangements which a person makes with a view to contracts into which he enters or is to enter.**]**

Textual Amendments

F26 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**

Arranging deals with or through authorised persons U.K.

29.—(1) There are excluded from article 25(1) and (2) **[**F27and article 25A(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 investor **[**F28or (as the case may be) a borrower under a regulated mortgage contract**]**, 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).

[F29(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.**]**

Textual Amendments

F27 Words in art. 29(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), **8(a)**

F28 Words in art. 29(1)(b) 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), **8(b)**

F29 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)**

Modifications etc. (not altering text)

C4 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)

C5 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)

C6 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)

[F30 Arrangements made in the course of administration by authorised person U.K.

29A. 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).]

Textual Amendments

F30 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**

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

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

[F31(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) M17a 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 **[**[F32]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 **[**[F33]contract of insurance**]** or the sale of an investment of the kind specified by article 89, so far as relevant to such contracts.

Textual Amendments

F31 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**

F32 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)**

F33 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)**

Marginal Citations

M17 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 U.K.

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 U.K.

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 U.K.

33. There are excluded from article 25(2) **[**[F34]and article 25A(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, **[**[F35]25A,**]** 37**[**[F36], 39A**]** 40, 45, 51, **[**[F37]52, 53 and 53A**]** (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; [F38]...

(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**[**[F39]; 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

F34 Words in art. 33 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(a)**

F35 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)**

F36 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)**

F37 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)**

F38 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)**

F39 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)**

[[F40]**Introducing to authorised persons etc.** U.K.

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.

(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.

(4) In this article, "client" means 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 (as the case may be).**]**

Textual Amendments

F40 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**

Arrangements for the issue of shares etc. U.K.

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 U.K.

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 **[**[F41]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

F41 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)

C7 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 U.K.

36.—[[F42](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)**[**[F43], 72 (overseas persons)**[**[F44], 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)**]]**.

[[F45](2) Article 25A is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 72 (overseas persons) and 72A (information society services).**]**

Textual Amendments

F42 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)**

F43 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)**

F44 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)**

F45 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)**

CHAPTER VII U.K.

MANAGING INVESTMENTS

The activity

Managing investments U.K.

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 U.K.

38. 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; [F46]...

(ii) a person who is an exempt person in relation to activities of that kind**[**[F47]; or

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

Textual Amendments

F46 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)**

F47 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)**

Other exclusions U.K.

39. Article 37 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services)**[**[F48], 69 (groups and joint enterprises)**][**[F49], 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)**]**.

Textual Amendments

F48 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)**

F49 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**

[F50CHAPTER VIIA U.K.

ASSISTING IN THE ADMINISTRATION AND PERFORMANCE OF A CONTRACT OF INSURANCE

Textual Amendments

F50 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 U.K.

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. U.K.

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 U.K.

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 U.K.

SAFEGUARDING AND ADMINISTERING INVESTMENTS

The activity

Safeguarding and administering investments U.K.

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 U.K.

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 U.K.

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 U.K.

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 U.K.

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)**[**[F51], 71 (employee share schemes)**][**[F52], 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)**]**.

Textual Amendments

F51 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)**

F52 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 U.K.

SENDING DEMATERIALISED INSTRUCTIONS

The activities

Sending dematerialised instructions U.K.

45.—(1) Sending, on behalf of another person, dematerialised instructions relating to a security **[**[F53]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 **[**[F54]2001**]** Regulations.

(2) Causing dematerialised instructions relating to a security **[**[F55]or a contractually based investment**]** to be sent **[**[F56]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—

[[F57](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 **[**[F58]2001**]** Regulations.

Textual Amendments

F53 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)**

F54 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)**

F55 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)**

F56 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**

F57 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)**

F58 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 U.K.

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 **[**[F59]2001**]** Regulations.

Textual Amendments

F59 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 U.K.

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 U.K.

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 [M18]) in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of Part XIIIA of that Act [M19] (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 [M20]) 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

M18 1985 c. 6. Section 428 was substituted by the Financial Services Act 1986 (c. 60), **Sch. 12**.

M19 Part XIIIA was inserted by the Financial Services Act 1986, Sch. 12.

M20 Section 430E was inserted by the Financial Services Act 1986, Sch. 12.

Instructions in the course of providing a network U.K.

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 **[**[F60]2001**]** Regulations).

Textual Amendments

F60 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 U.K.

50. Article 45 is also subject to the exclusions in articles 66 (trustees etc.)**[**[F61], 69 (groups and joint enterprises) and 72A (information society services)**]**.

Textual Amendments

F61 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 U.K.

COLLECTIVE INVESTMENT SCHEMES

The activities

Establishing etc. a collective investment scheme U.K.

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.

[[F62]*Exclusion*

Textual Amendments

F62 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 U.K.

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

CHAPTER XI U.K.

STAKEHOLDER PENSION SCHEMES

The activities

Establishing etc. a stakeholder pension scheme U.K.

52. Establishing, operating or winding up a stakeholder pension scheme is a specified kind of activity.

[F63 Exclusion

Textual Amendments

F63 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 U.K.

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

CHAPTER XII U.K.

ADVISING ON INVESTMENTS

The activity

Advising on investments U.K.

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 **[**F64relevant investment**]**, or

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

Textual Amendments

F64 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)**

[F65**Advising on regulated mortgage contracts** U.K.

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

F65 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**

Exclusions

Advice given in newspapers etc. U.K.

54.—(1) There is excluded from article 53 **[**[F66]and article 53A**]** 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 **[**[F67]or (as the case may be) article 53A**]**; nor

[[F68](b) that of leading or enabling persons—

(i) to buy, sell, subscribe for or underwrite securities or **[**[F69]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.**]**

(2) There is also excluded from article 53 **[**[F70]and article 53A**]** 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

F66 Words in art. 54(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), **14(2)**

F67 Words in art. 54(1)(a) 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), **14(3)**

F68 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)**

F69 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)**

F70 Words in art. 54(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), **14(5)**

[F71 Advice given in the course of administration by authorised person U.K.

54A. 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).**]**

Textual Amendments

F71 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**

Other exclusions U.K.

55.—[F72(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)**[F73**, 72 (overseas persons)**][F74**, 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)**]**.

[F75(2) Article 53A is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business) and 72A (information society services).**]**

Textual Amendments

F72 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)**

F73 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)**

F74 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)**

F75 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)**

CHAPTER XIII U.K.

LLOYD'S

The activities

Advice on syndicate participation at Lloyd's U.K.

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 U.K.

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 U.K.

58. The arranging, by the society incorporated by Lloyd's Act 1871 [M21] by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's, is a specified kind of activity.

Marginal Citations

M21 1871 c. 21.

[F76 Exclusion

Textual Amendments

F76 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 U.K.

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

CHAPTER XIV U.K.

FUNERAL PLAN CONTRACTS

The activity

Funeral plan contracts U.K.

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)

[F77 Exclusions]

Textual Amendments

F77 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 U.K.

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 [M22], 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

M22 1989 c. 40.

[F78Information society services U.K.

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

Textual Amendments

F78 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 U.K.

REGULATED MORTGAGE CONTRACTS

The activities

Regulated mortgage contracts U.K.

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 [F79by way of business] after the coming into force of this article.

[F80(3) In this Chapter—

(a) a "regulated mortgage contract" means a contract under which—

(i) a person ("the lender") provides credit to an individual or to trustees ("the borrower"); and

(ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom, at least 40% of which 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;

(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 [F81paragraph 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;

(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[M23].

Textual Amendments

F79 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)**

F80 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)**

F81 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)**

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

M23 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 U.K.

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 U.K.

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)

[F82Other exclusions U.K.

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

Textual Amendments

F82 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**

CHAPTER XVI U.K.

AGREEING TO CARRY ON ACTIVITIES

The activity

Agreeing to carry on specified kinds of activity U.K.

64. Agreeing to carry on an activity of the kind specified by any other provision of this Part (other than article 5, **[**F83**]**9B,**]** 10, 51 or 52) is a specified kind of activity.

Textual Amendments

F83 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**

[F84Exclusions

Textual Amendments

F84 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 U.K.

65. Article 64 is subject to the exclusions in articles 72 (overseas persons) and 72A (information society services).**]**

CHAPTER XVII U.K.

EXCLUSIONS APPLYING TO SEVERAL SPECIFIED KINDS OF ACTIVITY

Trustees, nominees and personal representatives U.K.

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 **[**[F85]articles 25(1) and (2) and 25A(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 [M24], he is to be treated as carrying on that activity by way of business.

[[F86](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.

(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 **[**[F87]articles 53 and 53A**]** 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.

[[F88](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.**]**

(7) Paragraphs (2), (3)**[**[F89], (3A)**]**, **[**[F90](4), (6) and (6A)**]** 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.

Textual Amendments

F85 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)**

F86 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)**

F87 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)**

F88 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)**

F89 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)**

F90 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)**

Marginal Citations

M24 S.I. 2001/ .

Activities carried on in the course of a profession or non-investment business U.K.

67.—(1) There is excluded from articles 21, 25(1) and (2)**[**[F91], 25A**]**, **[**[F92]39A, 40**][**[F93]53 and 53A**]** any activity which—

(a) is carried on in the course of carrying on any profession or business which does not otherwise consist of **[**[F94]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.

Textual Amendments

F91 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)**

F92 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)**

F93 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)**

F94 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**

Activities carried on in connection with the sale of goods or supply of services U.K.

68.—[F95](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**[**[F95], 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 **[**[F96]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 **[**[F97]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 **[**[F98]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.

Textual Amendments

F95 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)**

F96 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**

F97 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)**

F98 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)**

Groups and joint enterprises U.K.

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 **[**[F99]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.

[[F100](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.**]**

Textual Amendments

F99 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)**

F100 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)**

Activities carried on in connection with the sale of a body corporate U.K.

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).

[[F101](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.**]**

Textual Amendments

F101 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)**

Activities carried on in connection with employee share schemes U.K.

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, 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.

Overseas persons U.K.

72.—(1) An overseas person does not carry on an activity of the kind specified by article 14 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 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) 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) 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.

[[F102](5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a) where each person who may be contemplating entering into a regulated mortgage contract as borrower is a non-resident individual.

(5B) There are excluded from article 25A(1)(b) arrangements made by an overseas person to vary the terms of a qualifying contract.

(5C) There are excluded from article 25A(2) arrangements made by an overseas person which are made solely with a view to non-resident individuals who participate in those arrangements entering as borrower into regulated mortgage contracts.

(5D) An overseas person does not carry on an activity of the kind specified by article 61(1) by entering into a qualifying contract.

(5E) An overseas person does not carry on an activity of the kind specified by article 61(2) where he administers a qualifying contract.

(5F) In paragraphs (5A) to (5E)—

(a) "non-resident individual" means an individual who is not normally resident in the United Kingdom; and

(b) "qualifying contract" means a regulated mortgage contract within the meaning of article 61(3)(a), the borrower or, as the case may be, each borrower under which is (or was) a non-resident individual at the time when he enters (or entered) into the contract.**]**

(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**[**[F103], 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.

Textual Amendments

F102 Art. 72(5A)-(5F) 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), **20**

F103 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)**

Modifications etc. (not altering text)

C8 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)

C9 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)

C10 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)

[F104 Information society services U.K.

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 **[**F105 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

F104 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**

F105 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**

[F106 Activities carried on by a provider of relevant goods or services U.K.

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

F106 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 U.K.

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

F106 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 U.K.

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

F106 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**

Status:
Point in time view as at 14/01/2005.

Changes to legislation:
The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, PART II is up to date with all changes known to be in force on or before 20 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.