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## STATUTORY INSTRUMENTS

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# 2001 No. 544

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

### PART II

#### SPECIFIED ACTIVITIES

##### CHAPTER IV

##### DEALING IN INVESTMENTS AS PRINCIPAL

##### *Exclusions*

##### **Absence of holding out etc.**

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

- (a) A holds himself out as willing, as principal, to buy, sell or subscribe for investments of the kind to which the transaction relates at prices determined by him generally and continuously rather than in respect of each particular transaction;
  - (b) A holds himself out as engaging in the business of buying investments of the kind to which the transaction relates, with a view to selling them;
  - (c) A holds himself out as engaging in the business of underwriting investments of the kind to which the transaction relates; or
  - (d) A regularly solicits members of the public with the purpose of inducing them, as principals or agents, to enter into transactions constituting activities of the kind specified by article 14, and the transaction is entered into as a result of his having solicited members of the public in that manner.
- (2) In paragraph (1)(d), “members of the public” means any persons other than—
- (a) authorised persons or persons who are exempt persons in relation to activities of the kind specified by article 14;
  - (b) members of the same group as A;
  - (c) persons who are or who propose to become participators with A in a joint enterprise;
  - (d) any person who is solicited by A with a view to the acquisition by A of 20 per cent or more of the voting shares in a body corporate;
  - (e) if A (either alone or with members of the same group as himself) holds more than 20 per cent of the voting shares in a body corporate, any person who is solicited by A with a view to—
    - (i) the acquisition by A of further shares in the body corporate; or

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- (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**

**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**

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

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

#### **Issue by a company of its own shares etc.**

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

(2) In this article—

- (a) "company" means any body corporate other than an open-ended investment company;
- (b) "shares" and "debentures" include any investment of the kind specified by article 76 or 77;
- (c) "share warrants" and "debenture warrants" mean any investment of the kind specified by article 79 which relates to shares in the company concerned or, as the case may be, debentures issued by [<sup>F1</sup>the person concerned].

### Textual Amendments

- F1** 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

### [<sup>F2</sup>Dealing by a company in its own shares

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

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

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

### Textual Amendments

- F2** Art. 18A inserted (1.12.2003) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 3\) Order 2003 \(S.I. 2003/2822\)](#), arts. 1, 3

### Risk management

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

- (a) the transaction relates to investments of the kind specified by any of articles 83 to 85 (or article 89 so far as relevant to any of those articles);
- (b) neither B nor C is an individual;
- (c) the sole or main purpose for which B enters into the transaction (either by itself or in combination with other such transactions) is that of limiting the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of a regulated activity; and
- (d) the relevant business consists mainly of activities other than—
  - (i) regulated activities; or
  - (ii) activities which would be regulated activities but for any exclusion made by this Part.

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

- (a) B;
- (b) a member of the same group as B; or
- (c) where B and another person are, or propose to become, participators in a joint enterprise, that other person.

### Other exclusions

**20.** Article 14 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes)<sup>F3</sup>, 72 (overseas persons) and 72A (information society services)].

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### Textual Amendments

- F3** 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)**

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