
STATUTORY INSTRUMENTS

2001 No. 544

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

PART II

SPECIFIED ACTIVITIES

CHAPTER V

Dealing in Investments as Agent

Exclusions

Deals with or through authorised persons

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

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

(2) But the exclusion in paragraph (1) does not apply if 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.

Risk management

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

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

(2) In paragraph (1), “relevant person” means—

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

and “relevant business” means a business carried on by a relevant person.

Other exclusions

24. Article 21 is also subject to the exclusions in articles 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes) and 72 (overseas persons).