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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 VI

##### ARRANGING DEALS IN INVESTMENTS

##### *The activities*

#### **Arranging deals in investments**

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

- (a) a security,
- (b) a [<sup>F1</sup>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.

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#### **Textual Amendments**

- F1** 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)**

#### **[<sup>F2</sup>Arranging regulated mortgage contracts**

**25A.**—(1) Making arrangements—

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

is a specified kind of activity.

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(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

**F2** 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

**26.** There are excluded from article 25(1) [<sup>F3</sup>and article 25A(1)] arrangements which do not or would not bring about the transaction to which the arrangements relate.

#### Textual Amendments

**F3** 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

**27.** A person does not carry on an activity of the kind specified by article 25(2) [<sup>F4</sup>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

**F4** 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

**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.

[<sup>F5</sup>(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.]

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#### Textual Amendments

- F5** Art. 28(3) inserted (31.10.2004 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **5(2)**

#### [<sup>F6</sup>Arranging contracts to which the arranger is a party

**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

- F6** 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

**29.**—(1) There are excluded from article 25(1) and (2) [<sup>F7</sup>and 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 through 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 [<sup>F8</sup>or (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).

[<sup>F9</sup>(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

- F7** 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)**
- F8** 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)**
- F9** Art. 29(2) substituted (31.10.2004 for specified purposes) 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)

- C1** 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)

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**C2** 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](#))

### **[<sup>F10</sup>Arrangements made in the course of administration by authorised person**

**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**

**F10** 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**

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

- [<sup>F11</sup>(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) <sup>M1</sup>a money-lending company within the meaning of section 338 of the Companies Act 1985 ;
- (b) a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies; or
- (c) a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans;

“relevant authorised person” means an authorised person who has permission to effect [<sup>F12</sup>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 [<sup>F13</sup>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

- F11** 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**
- F12** 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)**
- F13** 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

- M1** 1985 c. 6. Section 338 was amended by section 138 of, and para. 10 of Sch. 10 to, the [Companies Act 1989 \(c. 40\)](#).

## Arranging the acceptance of debentures in connection with loans

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

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

## Provision of finance

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

## Introducing

- 33.** There are excluded from article 25(2) [<sup>F14</sup>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, [<sup>F15</sup>25A,] 37 [<sup>F16</sup>, 39A] 40, 45, 51, [<sup>F17</sup>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; <sup>F18</sup>...
  - (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 [<sup>F19</sup>; 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.]

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### Textual Amendments

- F14** 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)**
- F15** 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)**
- F16** 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)**
- F17** 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)**
- F18** 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)**
- F19** 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)**

### [<sup>F20</sup>Introducing to authorised persons etc.

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

- (a) they are arrangements under which a client is introduced to a person (“N”) who is—
- (i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25A, 53A, and 61(1),
  - (ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25A and 53A without contravening the general prohibition, or
  - (iii) an overseas person who carries on activities specified by any of articles 25A, 53A and 61(1); and
- (b) the conditions mentioned in paragraph (2) are satisfied.

(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

**F20** 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.

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

- (a) arrangements made by a company for the purposes of issuing its own shares or share warrants; and
- (b) arrangements made by any person for the purposes of issuing his own debentures or debenture warrants;

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

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

### International securities self-regulating organisations

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

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

(3) The conditions are that—

- (a) the body or association does not have its head office in the United Kingdom;
- (b) the body or association is not eligible for recognition under section 287 or 288 of the Act (applications by investment exchanges and clearing houses) on the ground that (whether or not it has applied, and whether or not it would be eligible on other grounds) it is unable to satisfy the requirements of one or both of paragraphs (a) and (b) of section 292(3) of the Act (requirements for overseas investment exchanges and overseas clearing houses);
- (c) the body or association is able and willing to co-operate with the Authority by the sharing of information and in other ways;
- (d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the body or association in the country or territory in which its head office is situated;
- (e) the body or association has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempt persons, and persons whose head offices are outside the United Kingdom and whose ordinary business involves them in engaging in activities which are activities of a kind specified by this Order (or would be apart from any exclusion made by this Part); and
- (f) the body or association facilitates and regulates the activity of its members in the conduct of international securities business.

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(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 [<sup>F21</sup>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

- F21** Words in art. 35(4)(a) substituted (31.10.2004 for specified purposes) 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)

- C3** Art. 35 extended (1.12.2001) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Authorised Persons etc.\) Order 2001 \(S.I. 2001/2636\)](#), arts. 1(2)(b), 2(1), **80**; S.I. 2001/3538, art. 2(1)

#### Other exclusions

**36.**—[<sup>F22</sup>(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)[<sup>F23</sup>, 72 (overseas persons)[<sup>F24</sup>, 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)]].

[<sup>F25</sup>(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

- F22** 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)**
- F23** 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)**
- F24** 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)**
- F25** 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)**



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