STATUTORY INSTRUMENTS

2001 No. 544

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

PART II

SPECIFIED ACTIVITIES

CHAPTER XII

ADVISING ON INVESTMENTS

The activity

Advising on investments

53.—[F1(1)**]** 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**[F2**, exchanging, redeeming, holding**]** or underwriting a particular investment which is a security**[F3**, structured deposit**]** or a **[F4**relevant investment**]**, or

(ii) exercising **[F5**or not exercising**]** any right conferred by such an investment to buy, sell, subscribe for**[F6**, exchange or redeem**]** such an investment.

[F7(1A) Paragraph (1) does not apply to a person who is appropriately authorised except to the extent that they are providing a personal recommendation.

(1B) A person is appropriately authorised when they are authorised for the purposes of the Act to carry on an activity of a kind specified by a provision of this Order which is not the activity specified by paragraph (1) and is not the activity of agreeing to carry on the activity specified by paragraph (1).

(1C) Subject to paragraph (1D), a personal recommendation is a recommendation–

(a) made to a person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor;

(b) which constitutes a recommendation to them to do any of the following (whether as principal or agent)–

(i) buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular investment which is a security**[F8**, structured deposit**]** or a relevant investment; or

(ii) exercise or not exercise any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment; and

(c) that is–

(i) presented as suitable for the person to whom it is made; or

(ii) based on a consideration of the circumstances of that person.

(1D) A recommendation is not a personal recommendation if it is issued exclusively to the public.**]**

[[F9](2) Advising a person is a specified kind of activity if the advice is—

(a) given to the person in that person's capacity as a lender or potential lender under a relevant article 36H agreement, or in that person's capacity as an agent for a lender or potential lender under such an agreement; and

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

(i) entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law,

(ii) providing instructions to an operator with a view to entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve—

(aa) accepting particular parameters for the terms of the agreement presented by an operator,

(bb) choosing between options governing the parameters of the terms of the agreement presented by an operator, or

(cc) specifying the parameters of the terms of the agreement by other means,

(iii) enforcing or exercising the lender's rights under a relevant article 36H agreement, or

(iv) assigning rights under a relevant article 36H agreement.

(3) Paragraph (2) does not apply in so far as—

(a) the advice is given in relation to a relevant article 36H agreement which has been facilitated by the person giving the advice, in the course of carrying on an activity of a kind specified by article 36H and is given by—

(i) an authorised person with permission to carry on a regulated activity of the kind specified by article 36H(1) (operating an electronic system in relation to lending),

(ii) an appointed representative in relation to that activity,

(iii) an exempt person in relation to that activity, or

(iv) a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity;

(b) the advice is given in the course of carrying on an activity of a kind specified by article 39F (debt-collecting) by a person carrying on that activity not in contravention of the general prohibition; or

(c) the advice is given in the course of carrying on an activity of a kind specified by article 39G (debt administration) by a person carrying on that activity not in contravention of the general prohibition.

(4) In this article—

"operator" means a person carrying on an activity of the kind specified by article 36H(1) or (2D), and

"relevant article 36H agreement" means an article 36H agreement (within the meaning of article 36H (operating an electronic system in relation to lending)) which has been, or may be, entered into with the facilitation of a person carrying on an activity of the kind specified by article 36H(1) or (2D).

(5) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by paragraph (2) of this article, article 88D (credit agreement), and article 73 (investments: general) in so far as it relates to that article, have effect as if the reference to a credit agreement in article 88D includes a reference to a relevant article 36H agreement.**]**

Textual Amendments

F1 Art. 53(1): art. 53 renumbered as art. 53(1) (17.3.2016 for specified purposes, 6.4.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(6)(a)** (with Pt. 5)

F2 Words in art. 53(1)(b)(i) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **2(2)**

F3 Words in art. 53(1)(b)(i) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), arts. 1(2), **4(4)**

F4 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)**

F5 Words in art. 53(1)(b)(ii) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **2(3)(a)**

F6 Words in art. 53(1)(b)(ii) substituted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **2(3)(b)**

F7 Art. 53(1A)-(1D) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **2(4)**

F8 Words in art. 53(1C)(b)(i) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(6), **Sch. 3 para. 2** (with reg. 7)

F9 Art. 53(2)-(5) inserted (17.3.2016 for specified purposes, 6.4.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(6)(b)** (with Pt. 5)

[F10Advising on regulated mortgage contracts

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

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

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

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

(ii) varying the terms of a regulated mortgage contract **[F11**falling within paragraph (1A)**]** entered into by him F12... in such a way as to vary his obligations under that contract.

[

F13(1A) A regulated mortgage contract falls within this paragraph if—

(a) the contract was entered into on or after 31st October 2004; or

(b) the contract—

(i) was entered into before 31st October 2004; and

(ii) was a regulated credit agreement immediately before 21st March 2016.**]**

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

Textual Amendments

F10 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**

F11 Words in art. 53A(1)(b)(ii) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(7)(a)(i)** (with Pt. 5)

F12 Words in art. 53A(1)(b)(ii) omitted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(7)(a)(ii)** (with Pt. 5)

F13 Art. 53A(1A) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(7)(b)** (with Pt. 5)

[F14 Advising on regulated home reversion plans

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

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

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

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

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

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

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

Textual Amendments

F14 Arts. 53B, 53C inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **13**

[F14 Advising on regulated home purchase plans

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

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

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

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

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

Textual Amendments

F14 Arts. 53B, 53C inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **13**

[F15 Advising on regulated sale and rent back agreements

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

(a) is given to the person ("A") in A's capacity as—

(i) an agreement seller or potential agreement seller, or

(ii) an agreement provider or potential agreement provider; and

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

(i) entering into a particular regulated sale and rent back agreement; or

(ii) varying the terms of a regulated sale and rent back agreement entered into on or after 1st July 2009 by A as agreement seller or agreement provider, in such a way so as to vary A's obligations under that agreement.**]**

Textual Amendments

F15 Art. 53D inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), **13**

[F16 Advising on regulated credit agreements for the acquisition of land

53DA.—(1) Advising a person ("P") is a specified kind of activity if—

(a) the advice is given to P in P's capacity as a recipient of credit, or potential recipient of credit, under a regulated credit agreement;

(b) P intends to use the credit to acquire or retain property rights in land or in an existing or projected building; and

(c) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to regulated credit agreements **[**F17 entered into, or to be entered into, on or after 21st March 2016**]**.

[F18 (2) In this article—

(a) a reference to any land or building—

(i) in relation to an agreement entered into before IP completion day, is a reference to any land or building in the United Kingdom or within the territory of an EEA State;

(ii) in relation to an agreement entered into on or after IP completion day, is a reference to any land or building in the United Kingdom;

(b) "regulated credit agreement" has the meaning given by article 60B(3).**]]**

Textual Amendments

F16 Art. 53DA inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(9)** (with Pt. 4)

F17 Words in art. 53DA(1)(c) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(8)** (with Pt. 5)

F18 Art. 53DA(2) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **136** (with savings in S.I. 2019/680, **reg. 11** (as

amended by S.I. 2019/1212, regs. 1(3), **22(3)** and S.I. 2020/1301, regs. 1, 3, **Sch. para. 33(n)**); 2020 c. 1, **Sch. 5 para. 1(1)**

[F19 Advising on conversion or transfer of pension benefits

53E.—(1) Advising a person ("P") is a specified kind of activity if—

(a) the advice is given to P in P's capacity as—

(i) a member of a pension scheme; or

(ii) a survivor of a member of a pension scheme;

(b) P has subsisting rights in respect of any safeguarded benefits; and

(c) the advice is advice on the merits of P requiring the trustee or manager of the pension scheme to—

(i) convert any of the safeguarded benefits into different benefits that are flexible benefits under the scheme;

(ii) make a transfer payment in respect of any of the safeguarded benefits with a view to acquiring a right or entitlement to flexible benefits for P under another pension scheme; or

(iii) pay a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the safeguarded benefits.

(2) In this article—

"flexible benefit" means—

(a) a money purchase benefit;

(b) a cash balance benefit; or

(c) a benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor);

"pension scheme" has the meaning given by section 1(5) of the Pension Schemes Act 1993 or section 1(5) of the Pension Schemes (Northern Ireland) Act 1993;

"safeguarded benefits" means benefits other than—

(a) money purchase benefits; and

(b) cash balance benefits;

"subsisting right"—

(a) in relation to a member of a pension scheme, means—

(i) any right which has accrued to or in respect of the member to future benefits under the scheme; or

(ii) any entitlement to benefits under the scheme; and

(b) in relation to a survivor of a member of a pension scheme means any right to future benefits, or entitlement to benefits, which the survivor has under the scheme in respect of the member;

"survivor", in relation to a member of a pension scheme, means a person who has survived the member and has a right to future benefits, or is entitled to benefits, under the scheme in respect of the member;

"trustees or managers" means—

(a) in relation to a scheme established under a trust, the trustees; and

(b) in relation to any other scheme, the managers; and

"uncrystallised funds pension lump sum" has the meaning given by paragraph 4A of Schedule 29 to the Finance Act 2004.

(3) Paragraphs (4) to (9) apply for the interpretation of "flexible benefit" and "safeguarded benefits".

(4) "Cash balance benefit", in relation to a member of a pension scheme or a survivor of a member, means a benefit calculated by reference to an amount available for the provision of benefits to or in respect of the member ("the available amount") where there is a promise about that amount.

(5) But a benefit is not a "cash balance benefit" if, under the scheme—

(a) a pension may be provided from the available amount to or in respect of the member; and

(b) there is a promise about the rate of that pension.

(6) The promise mentioned in paragraph (4) includes, in particular, a promise about the change in the value of, or the return from, payments made by the member or any other person in respect of the member.

(7) The promise mentioned in paragraph (5)(b) includes a promise that—

(a) the available amount will be sufficient to provide a pension of a particular rate;

(b) the rate of a pension will represent a particular proportion of the available amount.

(8) A benefit is not excluded from the definition of "cash balance benefit" by paragraph (5) merely because under the scheme there is a promise that—

(a) the rate or amount of the benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of the benefit which was (or would have been) payable to the member; or

(b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available amount.

(9) "Money purchase benefits"—

(a) in relation to a pension scheme governed by the law of England and Wales or Scotland, has the meaning given by section 181 of the Pension Schemes Act 1993; and

(b) in relation to a pensions scheme governed by the law of Northern Ireland, has the meaning given by section 176 of the Pension Schemes (Northern Ireland) Act 1993.**]**

Textual Amendments

F19 Art. 53E inserted (6.4.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015 (S.I. 2015/731), arts. 1, **2(2)**

Changes to legislation:
The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Cross Heading: The activity is up to date with all changes known to be in force on or before 15 July 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.
View outstanding changes

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:
Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

– Sch. 3 Pt. 1 para. 2(c) words substituted by S.I. 2023/548 art. 2(5)