STATUTORY INSTRUMENTS

2001 No. 544

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

PART II

SPECIFIED ACTIVITIES

CHAPTER XVII

EXCLUSIONS APPLYING TO SEVERAL SPECIFIED KINDS OF ACTIVITY

Trustees, nominees and personal representatives

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 **[**[F1]articles 25(1) and (2)**][**[F2], 25A(1) and (2), 25B(1) and (2) **[**[F3], 25C(1) and (2) and 25E (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 [M1], he is to be treated as carrying on that activity by way of business.

[[F4](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.

[[F5](4A) There is excluded from article 40 any activity carried on by a person acting as trustee which consists of arranging for one or more other persons to safeguard and administer trust assets where—

(a) that other person is a qualifying custodian; or

(b) that safeguarding and administration is also arranged by a qualifying custodian.

In this paragraph, "qualifying custodian" has the meaning given by article 41(2).**]**

(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 **[**[F6]articles 53**][**[F7], 53A, 53B **[**[F8], 53C and 53D**]]** 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.

[[F9](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.**]**

[[F10](6B) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63B(1) or (2) where the reversion seller under the regulated home reversion plan in question is a beneficiary under the trust, will or intestacy.

(6C) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63F(1) or (2) where the home purchaser under the regulated home purchase plan in question is a beneficiary under the trust, will or intestacy.**]**

[[F11](6D) Subject to paragraph (7), a person acting as a trustee or personal representative does not carry on an activity of the kind specified by article 63J(1) or (2) where the agreement seller under the regulated sale and rent back agreement is a beneficiary under the trust, will or intestacy.**]**

(7) Paragraphs (2), (3) **[**[F12], (3A)**]**, **[**[F13](4), (6)**][**[F14], (6A), (6B) **[**[F15], (6C) and (6D)**]]** 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.

[[F16](8) This article is subject to article 4(4A).**]**

Textual Amendments

F1 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)**

F2 Words in art. 66(2) substituted (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), **19(a)**

F3 Words in art. 66(2) substituted (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), **18(a)**

F4 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)**

F5 Art. 66(4A) inserted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2005 (S.I. 2005/593), arts. 1, **2(4)**

F6 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)**

F7 Words in art. 66(6) substituted (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), **19(b)**

F8 Words in art. 66(6) substituted (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), **18(b)**

F9 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)**

F10 Art. 66(6B)(6C) 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), **19(c)**

F11 Art. 66(6D) 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), **18(c)**

F12 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)**

F13 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)**

F14 Words in art. 66(7) 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), **19(d)**

F15 Words in art. 66(7) substituted (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), **18(d)**

F16 Art. 66(8) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **19**

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

67.—(1) There is excluded from articles 21, 25(1) and (2) **[**[F17], 25A**]**, **[**[F18]25B, 25C,**][**[F19]25E,**][**[F20]39A, 40**][**[F21]53**][**[F22], 53A, 53B **[**[F23], 53C and 53D**]]** any activity which—

(a) is carried on in the course of carrying on any profession or business which does not otherwise consist of **[**[F24]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.

[[F25](3) This article is subject to article 4(4) and (4A).**]**

Textual Amendments

F17 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)**

F18 Words in art. 67(1) 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), **20(a)**

F19 Word in art. 67(1) 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), **19(a)**

F20 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)**

F21 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)**

F22 Words in art. 67(1) substituted (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), **20(b)**

F23 Words in art. 67(1) substituted (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), **19(b)**

F24 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**

F25 Art. 67(3) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **20**

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

68.—[F26](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 **[**[F26], 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 **[**[F27]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 **[**[F28]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 **[**[F29]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.

[[F30](12) This article is subject to article 4(4).**]**

Textual Amendments

F26 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)**

F27 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**

F28 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)**

F29 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)**

F30 Art. 68(12) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **21**

Groups and joint enterprises

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 **[**[F31]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.

[[F32](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.**]**

[[F33](13) This article is subject to article 4(4).**]**

Textual Amendments

F31 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)**

F32 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)**

F33 Art. 69(13) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **22**

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

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).

[[F34](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.**]**

[[F35](8) This article is subject to article 4(4).**]**

Textual Amendments

F34 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)**

F35 Art. 70(8) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **23**

Activities carried on in connection with employee share schemes

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, **[**[F36]civil partners, surviving civil partners,**]** 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 **[**[F37], 77 or 77A**]**;

(ii) any investment of the kind specified by article 79 or 80 so far as relevant to articles 76 **[**[F38], 77 and 77A**]**; 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.

Textual Amendments

F36 Words in art. 71(2)(b) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), reg. 1, **Sch. 16 para. 1(4)**

F37 Words in art. 71(6)(a)(i) substituted (24.2.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86), art. 1(2), **Sch. para. 5(c)**

F38 Words in art. 71(6)(a)(ii) substituted (24.2.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86), art. 1(2), **Sch. para. 5(d)**

Overseas persons

72.—(1) An overseas person does not carry on an activity of the kind specified by article 14 **[**[F39]or 25D**]** 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 **[**[F40]or 25D**]** 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) **[**[F41]or 25D**]** 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) **[**[F42]or 25D**]** 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.

[[F43](5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a), 25B(1)(a) **[**[F44], 25C(1)(a) or 25E(1)(a)**]** if each person who may be contemplating entering into the relevant type of agreement in the relevant capacity is non-resident.

(5B) There are excluded from articles 25A(1)(b), 25B(1)(b) **[**[F45], 25C(1)(b) and 25E(1)(b)**]** arrangements made by an overseas person to vary the terms of a qualifying agreement.

(5C) There are excluded from articles 25A(2), 25B(2) **[**[F46], 25C(2) and 25E(2)**]**, arrangements made by an overseas person which are made solely with a view to non-resident persons who

participate in those arrangements entering, in the relevant capacity, into the relevant type of agreement.

(5D) An overseas person does not carry on an activity of the kind specified in article 61(1), 63B(1) **[**[F47], 63F(1) or 63J(1)**]** by entering into a qualifying agreement.

(5E) An overseas person does not carry on an activity of the kind specified in article 61(2), 63B(2) **[**[F48], 63F(2) or 63J(2)**]** where he administers a qualifying agreement.

(5F) In paragraphs (5A) to (5E)—

(a) "non-resident" means not normally resident in the United Kingdom;

(b) "qualifying agreement" means—

(i) in relation to articles 25A and 61, a regulated mortgage contract where the borrower (or each borrower) is non-resident when he enters into it;

(ii) in relation to articles 25B and 63B, a regulated home reversion plan where the reversion seller (or each reversion seller) is non-resident when he enters into it;

(iii) in relation to articles 25C and 63F, a regulated home purchase plan where the home purchaser (or each home purchaser) is non-resident when he enters into it;

[[F49](iv) in relation to articles 25E and 63J, a regulated sale and rent back agreement where the agreement seller (or each agreement seller) is non-resident when the agreement seller enters into it;**]**

(c) "the relevant capacity" means—

(i) in the case of a regulated mortgage contract, as borrower;

(ii) in the case of a regulated home reversion plan, as reversion seller or plan provider;

(iii) in the case of a regulated home purchase plan, as home purchaser;

[[F50](iv) in the case of a regulated sale and rent back agreement, as agreement seller or agreement provider;**]**

(d) "the relevant type of agreement" means—

(i) in relation to article 25A, a regulated mortgage contract;

(ii) in relation to article 25B, a regulated home reversion plan;

(iii) in relation to article 25C, a regulated home purchase plan**[**[F51];

(iv) in relation to article 25E, a regulated sale and rent back agreement**]**.**]**

(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 **[**[F52], 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.

[[F53](8) Paragraphs (1) to (5) do not apply where the overseas person is an investment firm or credit institution—

(a) who is providing or performing investment services and activities on a professional basis; and

(b) whose home Member State is the United Kingdom.**]**

Textual Amendments

F39 Words in art. 72(1) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(a)**

F40 Words in art. 72(2) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(b)**

F41 Words in art. 72(3) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(c)**

F42 Words in art. 72(4) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(d)**

F43 Art. 72(5A)-(5F) substituted (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), **21**

F44 Words in art. 72(5A) substituted (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), **20(a)**

F45 Words in art. 72(5B) substituted (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), **20(b)**

F46 Words in art. 72(5C) substituted (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), **20(c)**

F47 Words in art. 72(5D) substituted (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), **20(d)**

F48 Words in art. 72(5E) substituted (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), **20(e)**

F49 Art. 72(5F)(b)(iv) 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), **20(f)**

F50 Art. 72(5F)(c)(iv) 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), **20(g)**

F51 Art. 72(5F)(d)(iv) and semi-colon 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), **20(h)**

F52 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)**

F53 Art. 72(8) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **24(e)**

Modifications etc. (not altering text)

C1 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)

C2 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)

C3 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)

C4 Art. 72 modified in part (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), art. 1(3), **Sch. para. 13** (with Sch. para. 4)

[F54Information society services

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 **[**F55Article 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

F54 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**

F55 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**

[F56Activities carried on by a provider of relevant goods or services

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) **[**F57damage to, or loss of, baggage and other risks linked to the travel booked with the provider ("travel risks") in circumstances where—

(aa) the travel booked with the provider relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his private capacity) or a small business; or

(bb) the travel booked with the provider is only the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation;**]**

(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. **[**[F58]For these purposes, the transfer of possession of an aircraft, vehicle or vessel under an agreement for hire which is not—

(a) a hire-purchase agreement within the meaning of section 189(1) of the Consumer Credit Act 1974, or

(b) any other agreement which contemplates that the property in those goods will also pass at some time in the future,

is the provision of a service related to travel, not a supply of goods;

"small business" means—

(a) subject to paragraph (b) a sole trader, body corporate, partnership or an unincorporated association which had a turnover in the last financial year of less than £1,000,000;

(b) where the business concerned is a member of a group within the meaning of section 262(1) of the Companies Act 1985 (and after the repeal of that section within the meaning of section 474(1) of the Companies Act 2006), reference to its turnover means the combined turnover of the group;

"turnover" means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.**]**

(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

F56 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**

F57 Words in art. 72B(1) substituted (30.6.2008 for specified purposes, 1.1.2009 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **2(2)** (with regs. 3-9)

F58 Words in art. 72B(1) inserted (30.6.2008 for specified purposes, 1.1.2009 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **2(3)** (with regs. 3-9)

Provision of information on an incidental basis

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

F56 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

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

F56 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**

[[F59]Business Angel-led Enterprise Capital Funds

72E.—(1) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified by article 21 by entering as agent into a transaction on behalf of the participants of a Business Angel-led Enterprise Capital Fund.

(2) There are excluded from article 25(1) and (2) arrangements, made by a body corporate of a type specified in paragraph (7), for or with a view to a transaction which is or is to be entered into by or on behalf of the participants in a Business Angel-led Enterprise Capital Fund.

(3) There is excluded from article 37 any activity, carried on by a body corporate of a type specified in paragraph (7), which consists in the managing of assets belonging to the participants in a Business Angel-led Enterprise Capital Fund.

(4) There is excluded from article 40 any activity, carried on by a body corporate of a type specified in paragraph (7), in respect of assets belonging to the participants in a Business Angel-led Enterprise Capital Fund.

(5) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified in article 51(1)(a) where it carries on the activity of establishing, operating or winding up a Business Angel-led Enterprise Capital Fund.

(6) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified in article 53 where it is advising the participants in a Business Angel-led Enterprise Capital Fund on investments to be made by or on behalf of the participants of that Business Angel-led Enterprise Capital Fund.

(7) The type of body corporate specified is a limited company—

(i) which operates a Business Angel-led Enterprise Capital Fund; and

(ii) the members of which are participants in the Business Angel-led Enterprise Capital Fund operated by that limited company and between them have invested at least 50 per cent of the

total investment in that Business Angel-led Enterprise Capital Fund excluding any investment made by the Secretary of State.

(8) For the purposes of paragraph (7), "a limited company" means a body corporate with limited liability which is a company or firm formed in accordance with the law of an EEA State and having its registered office, central administration or principal place of business within the territory of an EEA State.

(9) Nothing in this article has the effect of excluding a body corporate from the application of the Money Laundering Regulations **[**[F60]2007**]**, in so far as those Regulations would have applied to it but for this article.

(10) Nothing in this article has the effect of excluding a body corporate from the application of section 397 of the Act (misleading statements and practices), in so far as that section would have applied to it but for this article.

[
[F61](11) This article is subject to article 4(4).**]]**

Textual Amendments

F59 Arts. 72E, 72F inserted (1.10.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2005 (S.I. 2005/1518), arts. 1, **2(3)**

F60 Word in art. 72E(9) substituted (15.12.2007) by The Money Laundering Regulations 2007 (S.I. 2007/2157), reg. 1(1), **Sch. 6 para. 10**

F61 Art. 72E(11) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **25**

[[F59]**Interpretation**

72F.—(1) For the purposes of this article and of article 72E—

"Business Angel-led Enterprise Capital Fund" means a collective investment scheme which—

(a) is established for the purpose of enabling participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of investments falling within one or more of—

(i) article 76, being shares in an unlisted company;

(ii) article 77, being instruments creating or acknowledging indebtedness in respect of an unlisted company;

(iia) **[**[F62]article 77A, being rights under an alternative finance investment bond issued by an unlisted company;**]** and

(iii) article 79, being warrants or other instruments entitling the holder to subscribe for shares in an unlisted company;

(b) has only the following as its participants—

(i) the Secretary of State;

(ii) a body corporate of a type specified in article 72E(7); and

(iii) one or more persons each of whom at the time they became a participant was—

(aa) a sophisticated investor;

(bb) a high net worth individual;

(cc) a high net worth company;

(dd) a high net worth unincorporated association;

(ee) a trustee of a high value trust; or

(ff) a self-certified sophisticated investor;

(c) is prevented, by the arrangements by which it is established, from—

(i) acquiring investments, other than those falling within paragraphs (i) to (iii) of sub-paragraph (a); and

(ii) acquiring investments falling within paragraphs (i) to (iii) of sub-paragraph (a) in an unlisted company, where the aggregated cost of those investments exceeds £2 million, unless that acquisition is necessary to prevent or reduce the dilution of an existing share-holding in that unlisted company;

"high net worth company" means a body corporate which—

(a) falls within article 49(2)(a) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (high net worth companies, unincorporated associations etc.); and

(b) has executed a document **[**[F63](in a manner which binds the company)**]** in the following terms:

> "This company is a high net worth company and falls within article 49(2)(a) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001. We understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this company participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this company participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). We understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. We also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and are aware that it is open to us to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment."

"high net worth individual" means an individual who—

(a) is a "certified high net worth individual" within the meaning of article 48(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (certified high net worth individuals); and

(b) has signed a statement in the following terms:

> "I declare that I am a certified high net worth individual within the meaning of article 48(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial

Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"high net worth unincorporated association" means an unincorporated association—

(a) which falls within article 49(2)(b) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001; and

(b) on behalf of which an officer of that association or a member of its governing body has signed a statement in the following terms:

"This unincorporated association is a high net worth unincorporated association and falls within article 49(2)(b) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001. I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this association participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this association participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to the association to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"high value trust" means a trust—

(a) where the aggregate value of the cash and investments which form a part of the trust's assets (before deducting the amount of its liabilities) is £10 million or more;

(b) on behalf of which a trustee has signed a statement in the following terms:

"This trust is a high value trust. I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this trust participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this trust participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to the trust to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"self-certified sophisticated investor" means an individual who—

(a) is a "self-certified sophisticated investor" within the meaning of article 50A of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001;

(b) has signed a statement in the following terms:

> "I declare that I am a self-certified sophisticated investor within the meaning of article 50A of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"sophisticated investor" means an individual who—

(a) is a "certified sophisticated investor" within the meaning of article 50(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001; and

(b) has signed a statement in the following terms:

> "I declare that I am a certified sophisticated investor within the meaning of article 50(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"unlisted company" has the meaning given by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.

(2) References in this Article and in Article 72E to a participant in a Business Angel-led Enterprise Capital Fund, doing things on behalf of such a participant and property belonging to such a participant are, respectively, references to that participant in that capacity, to doing things on behalf of that participant in that capacity or to the property of that participant held in that capacity.**]**

Textual Amendments

F59 Arts. 72E, 72F inserted (1.10.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2005 (S.I. 2005/1518), arts. 1, **2(3)**

F62 Words in art. 72F(1) inserted (24.2.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86), art. 1(2), **Sch. para. 5(e)**

F63 Words in art. 72F(1) substituted (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), **22**

Status:
Point in time view as at 30/06/2010.

Changes to legislation:
The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Chapter XVII 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.