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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 III

#### SPECIFIED INVESTMENTS

##### Investments: general

73. The following kinds of investment are specified for the purposes of section 22 of the Act.

##### Deposits

74. A deposit.

##### [<sup>F1</sup>Electronic money

74A. Electronic money.]

##### Textual Amendments

**F1** Art. 74A inserted (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2)(b), 6

##### Contracts of insurance

75. Rights under a contract of insurance.

##### Shares etc.

76.—(1) Shares or stock in the share capital of—

- (a) any body corporate (wherever incorporated), and
- (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom.

(2) Paragraph (1) includes—

- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986<sup>M1</sup>; and
- (b) any transferable shares in a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions, or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body.

**Status:** Point in time view as at 01/07/2005.

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(3) But subject to paragraph (2) there are excluded from paragraph (1) shares or stock in the share capital of—

- (a) an open-ended investment company;
- (b) a building society incorporated under the law of, or any part of, the United Kingdom;
- (c) a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions;
- (d) any body constituted under the law of an EEA State for purposes equivalent to those of a body falling within sub-paragraph (b) or (c).

#### Marginal Citations

**M1** 1986 c. 53.

### Instruments creating or acknowledging indebtedness

77.—(1) Subject to paragraph (2), such of the following as do not fall within article 78—

- (a) debentures;
- (b) debenture stock;
- (c) loan stock;
- (d) bonds;
- (e) certificates of deposit;
- (f) any other instrument creating or acknowledging indebtedness.

(2) If and to the extent that they would otherwise fall within paragraph (1), there are excluded from that paragraph—

- (a) an instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
- (c) a banknote, a statement showing a balance on a current, deposit or savings account, a lease or other disposition of property, or a heritable security; and
- (d) a contract of insurance.

(3) An instrument excluded from paragraph (1) of article 78 by paragraph (2)(b) of that article is not thereby to be taken to fall within paragraph (1) of this article.

### Government and public securities

78.—(1) Subject to paragraph (2), loan stock, bonds and other instruments creating or acknowledging indebtedness, issued by or on behalf of any of the following—

- (a) the government of the United Kingdom;
- (b) the Scottish Administration;
- (c) the Executive Committee of the Northern Ireland Assembly;
- (d) the National Assembly for Wales;
- (e) the government of any country or territory outside the United Kingdom;
- (f) a local authority in the United Kingdom or elsewhere; or
- (g) a body the members of which comprise—

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- (i) states including the United Kingdom or another EEA State; or
  - (ii) bodies whose members comprise states including the United Kingdom or another EEA State.
- (2) There are excluded from paragraph (1)—
- (a) so far as applicable, the instruments mentioned in article 77(2)(a) to (d);
  - (b) any instrument creating or acknowledging indebtedness in respect of—
    - (i) money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank;
    - (ii) money raised under the National Loans Act 1968 <sup>M2</sup> under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972 <sup>M3</sup>.

#### Marginal Citations

**M2** 1968 c. 13.

**M3** 1972 c. 65.

### Instruments giving entitlements to investments

**79.**—(1) Warrants and other instruments entitling the holder to subscribe for any investment of the kind specified by article 76, 77 or 78.

(2) It is immaterial whether the investment to which the entitlement relates is in existence or identifiable.

(3) An investment of the kind specified by this article is not to be regarded as falling within article 83, 84 or 85.

### Certificates representing certain securities

**80.**—(1) Subject to paragraph (2), certificates or other instruments which confer contractual or property rights (other than rights consisting of an investment of the kind specified by article 83)—

- (a) in respect of any investment of the kind specified by any of articles 76 to 79, being an investment held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
- (b) the transfer of which may be effected without the consent of that person.

(2) There is excluded from paragraph (1) any certificate or other instrument which confers rights in respect of two or more investments issued by different persons, or in respect of two or more different investments of the kind specified by article 78 and issued by the same person.

### Units in a collective investment scheme

**81.** Units in a collective investment scheme (within the meaning of Part XVII of the Act).

### Rights under a stakeholder pension scheme

**82.** Rights under a stakeholder pension scheme.

### Options

**83.** Options to acquire or dispose of—

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- (a) a security or contractually based investment (other than one of a kind specified by this article);
- (b) currency of the United Kingdom or any other country or territory;
- (c) palladium, platinum, gold or silver; or
- (d) an option to acquire or dispose of an investment of the kind specified by this article by virtue of paragraph (a), (b) or (c).

## **Futures**

**84.**—(1) Subject to paragraph (2), rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.

(2) There are excluded from paragraph (1) rights under any contract which is made for commercial and not investment purposes.

(3) A contract is to be regarded as made for investment purposes if it is made or traded on a recognised investment exchange, or is made otherwise than on a recognised investment exchange but is expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(4) A contract not falling within paragraph (3) is to be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days, unless it can be shown that there existed an understanding that (notwithstanding the express terms of the contract) delivery would not be made within seven days.

(5) The following are indications that a contract not falling within paragraph (3) or (4) is made for commercial purposes and the absence of them is an indication that it is made for investment purposes—

- (a) one or more of the parties is a producer of the commodity or other property, or uses it in his business;
- (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.

(6) It is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms.

(7) The following are indications that a contract is made for investment purposes—

- (a) it is expressed to be as traded on an investment exchange;
- (b) performance of the contract is ensured by an investment exchange or a clearing house;
- (c) there are arrangements for the payment or provision of margin.

(8) For the purposes of paragraph (1), a price is to be taken to be agreed on when a contract is made—

- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

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#### **Modifications etc. (not altering text)**

- C1** Art. 84 applied (1.12.2001) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) Order 2001 \(S.I. 2001/1335\)](#), reg. 1(2), **Sch. 1 para. 22(3)**; S.I. 2001/3538, art. 2(1)

#### **Contracts for differences etc.**

**85.**—(1) Subject to paragraph (2), rights under—

- (a) a contract for differences; or
- (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
  - (i) the value or price of property of any description; or
  - (ii) an index or other factor designated for that purpose in the contract.

(2) There are excluded from paragraph (1)—

- (a) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates;
- (b) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor;
- (c) rights under any contract under which—
  - (i) money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank; or
  - (ii) money is raised under the National Loans Act 1968 under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972;
- (d) rights under a qualifying contract of insurance.

#### **Lloyd's syndicate capacity and syndicate membership**

**86.**—(1) The underwriting capacity of a Lloyd's syndicate.

(2) A person's membership (or prospective membership) of a Lloyd's syndicate.

#### **Funeral plan contracts**

**87.** Rights under a funeral plan contract.

#### **Commencement Information**

- II** Art. 87 in force at 1.1.2002, see art. 2(2)(a)

#### **Regulated mortgage contracts**

**88.** Rights under a regulated mortgage contract.

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#### Commencement Information

**I2** Art. 88 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

#### Rights to or interests in investments

**89.**—(1) Subject to paragraphs (2) to (4), any right to or interest in anything which is specified by any other provision of this Part (other than article 88).

(2) Paragraph (1) does not include interests under the trusts of an occupational pension scheme.

(3) Paragraph (1) does not include—

(a) rights to or interests in a contract of insurance of the kind referred to in paragraph (1)(a) of article 60; or

(b) interests under a trust of the kind referred to in paragraph (1)(b) of that article.

(4) Paragraph (1) does not include anything which is specified by any other provision of this Part.

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