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## EXPLANATORY NOTE

*(This note does not form part of the Order)*

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the principal Order”) so as to specify the activities of arranging regulated mortgage contracts and advising on regulated mortgage contracts as regulated activities for the purposes of the Financial Services and Markets Act 2000 (“FSMA”). It also amends instruments made under FSMA in order to apply the regulatory regime established under that Act to persons who carry on these newly specified regulated activities, and makes necessary consequential amendments to the Consumer Credit Act 1974.

Article 3 makes a consequential amendment to the definition of “overseas person” in the principal Order which reflects the new provision inserted by article 20.

Article 4 inserts a new article into the principal Order which specifies the new regulated activity of arranging regulated mortgage contracts (“mortgage arranging”). The activity consists of arranging for a borrower to enter into a regulated mortgage contract, arranging for a borrower to vary the terms of a regulated mortgage contract, and making arrangements with a view to a person who participates in those arrangements entering into a regulated mortgage contract as borrower.

Articles 5, 6, 8 and 10 amend, respectively, articles 26, 27, 29 and 33 of the principal Order, so as to apply the exclusions specified in those articles to the new regulated activity of arranging regulated mortgage contracts. Those exclusions relate to arrangements not causing a deal, the provision of the means of communication between the parties to a transaction, arrangements where the transaction is with or through an authorised person, and arrangements which consist of an introduction to an authorised person, appointed representative or other person lawfully carrying on regulated activities, with a view to the provision of independent advice.

Articles 7, 9 and 11 insert new articles into the principal Order specifying exclusions applicable to mortgage arranging. The effect of the first is that a person does not carry on that regulated activity if he is a party to any arrangements he makes. The second article inserted applies where regulated mortgage contracts have been securitised and ensure that an unauthorised special purpose vehicle will not be treated as carrying on the regulated activity by virtue of any thing done by an authorised person who administers those contracts pursuant to an arrangement with the special purpose vehicle. The third excludes from the scope of mortgage arranging introductions made to an authorised person, an appointed representative or an overseas person, provided that the person making the introduction does not handle client money and discloses specified information to the client.

Article 13 inserts a new article into the principal Order which specifies the new regulated activity of advising on regulated mortgage contracts (“mortgage advice”). The activity consists of giving advice to a borrower or potential borrower under a regulated mortgage contract on the merits of that person entering into a particular regulated mortgage contract or varying the terms of such a contract in a way which varies his obligations as borrower.

Article 14 amends article 54 of the principal Order so as to apply the exclusion relating to advice given in the media to mortgage advice.

Article 15 inserts a new article into the principal Order. That new article specifies an exclusion from the scope of mortgage advice which applies where regulated mortgage contracts have been securitised. It ensures that an unauthorised special purpose vehicle will not be treated as carrying on the regulated activity by virtue of any thing done by an authorised person who administers those contracts pursuant to an arrangement with the special purpose vehicle.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Articles 18 and 19 amend articles 66 and 67 of the principal Order, so as to extend the scope of the exclusions relating to trustees, nominees and personal representatives and to activities carried on in the course of a profession or non-investment business to mortgage arranging and mortgage advice. Article 18 also extends the scope of the exclusion relating to trustees, nominees and personal representatives to the activity of entering into a regulated mortgage contract as lender.

Article 20 inserts new provisions into article 72 of the principal Order (the overseas person exclusion). Those amendments apply the overseas persons exclusion to mortgage arranging and to the activities of entering into a regulated mortgage contract as lender and administering a regulated mortgage contract, in cases where the activity is carried out by an overseas person in relation to a contract the borrower or prospective borrower under which is not, or was not, resident in the United Kingdom at the time when the contract is, or was, entered into.

Articles 21 and 22 make consequential amendments to the Consumer Credit Act 1974. The effect of those amendments is to exclude mortgage arranging and mortgage advice from the scope of ancillary credit business within the meaning of that Act, and to disapply section 155 of that Act in relation to fees charged by brokers in respect of introductions which constitute mortgage broking.

Article 23 inserts new provisions into the Financial Services and Markets Act 2000 (Appointed Representatives) Order 2001, so as to prescribe mortgage arranging and mortgage advice as descriptions of business which appointed representatives of authorised persons may carry on without themselves requiring authorisation under FSMA.

Article 24 inserts a new provision into the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001. That provision specifies mortgage advice which consists of a recommendation to enter into a regulated mortgage contract with a particular person as a regulated activity which does not fall within the exemption under Part XX of FSMA.

Article 25 amends the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001, to provide that persons are to be regarded as carrying on regulated activities of mortgage arranging or mortgage advice only if they carry on the business of engaging in that activity.

Articles 27 to 29 make certain transitional provision. In particular, articles 27 and 28 extend the time in which the Financial Services Authority must determine applications for permission under Part IV of FSMA to carry on regulated activities in relation to mortgage arranging and mortgage advice and the time in which the Financial Services Authority must determine applications for approval for persons to carry on certain functions in relation to those activities.