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STATUTORY INSTRUMENTS

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**2005 No. 922**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act  
2000 (Carrying on Regulated Activities by  
Way of Business) (Amendment) Order 2005**

*Made* - - - - *24th March 2005*

*Coming into force* - - *6th April 2005*

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 429(1) of the Financial Services and Markets Act 2000<sup>(1)</sup>;

The Treasury, in exercise of the powers conferred on them by sections 419 and 428(3) of that Act, hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2005 and comes into force on 6th April 2005.

**Amendment of article 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001**

2.—(1) Article 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001<sup>(2)</sup> (managing investments: occupational pension schemes) is amended as follows.

(2) In paragraphs (1)(b), (2)(b) and (4)(d), omit “routine or”.

(3) In paragraph (3), for the definition of “occupational pension scheme” substitute—

““occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;”(3).

(4) For sub-paragraph (a) of paragraph (6), substitute—

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(1) 2000 c. 8.

(2) S.I. 2001/1177, amended by S.I. 2003/1475 and 1476.

(3) 1993 c. 48. The definition of occupational pension scheme in section 1 has been amended by the Pensions Act 2004 (c. 35), section 239.

- “(a) it is a decision by the trustees of an occupational pension scheme to buy, sell or subscribe for—
- (i) units in a collective investment scheme;
  - (ii) shares or debentures (or warrants relating to such shares or debentures) issued by a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; or
  - (iii) rights under (or rights to or interests in) any contract of insurance;”.
- (5) After paragraph (6)(a), omit “or debentures;”.
- (6) For sub-paragraph (b) of paragraph (6), substitute—
- “(b) the decision is taken after advice has been obtained and considered from a person who falls within any of the cases in paragraph (7);”.
- (7) Omit sub-paragraphs (c) and (d) of paragraph (6).
- (8) For paragraph (7), substitute—
- “(7) The cases are where the person is—
- “(a) an authorised person who has permission to carry on activities of the kind specified by article 53 of the Regulated Activities Order in relation to the decision in question;
  - (b) an exempt person in relation to such activities;
  - (c) exempt from the general prohibition by virtue of section 327 of the Financial Services and Markets Act 2000; or
  - (d) an overseas person.”.

24th March 2005

*Nick Ainger*  
*John Heppell*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends article 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I.2001/1177) (“the principal Order”). That article provides that a person who manages the assets of an occupational pension scheme is to be regarded as doing so by way of business except in certain circumstances.

This Order amends article 4 of the principal Order in several respects. Article 2(2) amends the phrase “routine or day to day decisions” to read “day to day decisions”. Article 2(3) amends the definition of occupational scheme. Article 2(4) and (7) widens the scope of investments falling within article 4(6) of the principal Order. Article 2(5) omits words that were unintentionally duplicated in the principal Order. Article 2(6) amends the criteria according to which a decision falls within article 4(6) of the principal Order.