

2001 No. 544

FINANCIAL SERVICES AND MARKETS

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

Approved by both Houses of Parliament

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Coming into force in accordance with article 2

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ARTICLE 2.2 OF THE INVESTMENT SERVICES DIRECTIVE

The Treasury, in exercise of the powers conferred on them by sections 22(1) and (5), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000^(a), hereby make the following Order:

PART I

GENERAL

Citation

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day on which section 19 of the Act comes into force.

(2) This Order comes into force—

- (a) for the purposes of articles 59, 60 and 87 (funeral plan contracts) on 1st January 2002; and
- (b) for the purposes of articles 61 to 63, 88, 90 and 91 (regulated mortgage contracts) nine months after section 19 of the Act comes into force.

Interpretation

3.—(1) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons;

“buying” includes acquiring for valuable consideration;

“close relative” in relation to a person means—

- (a) his spouse;
- (b) his children and step children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and
- (c) the spouse of any person within sub-paragraph (b);

“contract of general insurance” means any contract falling within Part I of Schedule 1;

“contract of insurance” means any contract of insurance which is a contract of long-term insurance or a contract of general insurance, and includes—

- (a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are—
 - (i) effected or carried out by a person not carrying on a banking business;
 - (ii) not effected merely incidentally to some other business carried on by the person effecting them; and
 - (iii) effected in return for the payment of one or more premiums;
- (b) tontines;
- (c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who—
 - (i) does not carry on a banking business; and
 - (ii) otherwise carries on a regulated activity of the kind specified by article 10(1) or (2);
- (d) contracts to pay annuities on human life;
- (e) contracts of a kind referred to in article 1(2)(e) of the first life insurance directive (collective insurance etc.); and

^(a) 2000 c. 8.

(f) contracts of a kind referred to in article 1(3) of the first life insurance directive (social insurance);

but does not include a funeral plan contract (or a contract which would be a funeral plan contract but for the exclusion in article 60);

“contract of long-term insurance” means any contract falling within Part II of Schedule 1;

“contractually based investment” means—

- (a) rights under a qualifying contract of insurance;
- (b) any investment of the kind specified by any of articles 83, 84, 85 and 87; or
- (c) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (b);

“deposit” has the meaning given by article 5;

“funeral plan contract” has the meaning given by article 59;

“instrument” includes any record whether or not in the form of a document;

“joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial purposes related to a business or businesses (other than the business of engaging in a regulated activity) carried on by them; and, where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the enterprise;

“local authority” means—

- (a) in England and Wales, a local authority within the meaning of the Local Government Act 1972(a), the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973(b);
- (c) in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972(c);

“managing agent” means a person who is permitted by the Council of Lloyd’s in the conduct of his business as an underwriting agent to perform for a member of Lloyd’s one or more of the following functions—

- (a) underwriting contracts of insurance at Lloyd’s;
- (b) reinsuring such contracts in whole or in part;
- (c) paying claims on such contracts;

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

“overseas person” means a person who—

- (a) carries 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 activities of a kind which would be so specified but for the exclusion in article 72); but
- (b) does not carry on any such activities, or offer to do so, from a permanent place of business maintained by him in the United Kingdom;

“pension fund management contract” means a contract to manage the investments of pension funds (other than funds solely for the benefit of the officers or employees of the person effecting or carrying out the contract and their dependants or, in the case of a company, partly for the benefit of officers and employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company); and for the

(a) 1972 c. 70. The definition of “local authority” in section 270 of the 1972 Act has been amended by Sch. 17 to the Local Government Act 1985 (c. 51); and by section 1(5) of the Local Government (Wales) Act 1994 (c. 19).

(b) 1973 c. 65. The definition of “local authority” in section 235 of the 1973 Act was substituted by para. 92(66) of Sch. 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

(c) 1972 c. 9 (N.I.).

purposes of this definition, “subsidiary” and “holding company” are to be construed in accordance with section 736 of the Companies Act 1985(a) or article 4 of the Companies (Northern Ireland) Order 1986(b);

“property” includes currency of the United Kingdom or any other country or territory;

“qualifying contract of insurance” means a contract of long-term insurance which is not—

- (a) a reinsurance contract; nor
- (b) a contract in respect of which the following conditions are met—
 - (i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (ii) the contract provides that benefits are payable on death (other than death due to an accident) only where the death occurs within ten years of the date on which the life of the person in question was first insured under the contract, or where the death occurs before that person attains a specified age not exceeding seventy years;
 - (iii) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (iv) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with any of the above conditions;

“regulated mortgage contract” has the meaning given by article 61(3);

“security” means (except where the context otherwise requires) any investment of the kind specified by any of articles 76 to 82 or, so far as relevant to any such investment, article 89;

“selling”, in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes “disposing” includes—

- (a) in the case of an investment consisting of rights under a contract—
 - (i) surrendering, assigning or converting those rights; or
 - (ii) assuming the corresponding liabilities under the contract;
- (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and
- (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

“stakeholder pension scheme” has the meaning given by section 1 of the Welfare Reform and Pensions Act 1999(c);

“syndicate” means one or more persons, to whom a particular syndicate number has been assigned by or under the authority of the Council of Lloyd’s, carrying out or effecting contracts of insurance written at Lloyd’s;

“voting shares”, in relation to a body corporate, means shares carrying voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of that body corporate.

(2) For the purposes of this Order, a transaction is entered into through a person if he enters into it as agent or arranges, in a manner constituting the carrying on of an activity of the kind specified by article 25(1), for it to be entered into by another person as agent or principal.

(3) For the purposes of this Order, a contract of insurance is to be treated as falling within Part II of Schedule 1, notwithstanding the fact that it contains related and subsidiary provisions such that it might also be regarded as falling within Part I of that Schedule, if its principal object is that of a contract falling within Part II and it is effected or carried out by an authorised person who has permission to effect or carry out contracts falling within paragraph I of Part II of Schedule 1.

(a) 1985 c. 6. Section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

(b) S.I. 1986/1032 (N.I. 6). Article 4 was substituted by article 62 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504) (N.I. 10).

(c) 1993 c. 30.

PART II

SPECIFIED ACTIVITIES

CHAPTER I

GENERAL

Specified activities: general

4.—(1) The following provisions of this Part specify kinds of activity for the purposes of section 22 of the Act (and accordingly any activity of one of those kinds, which is carried on by way of business^(a), and relates to an investment of a kind specified by any provision of Part III and applicable to that activity, is a regulated activity for the purposes of the Act).

(2) The kinds of activity specified by articles 51 and 52 are also specified for the purposes of section 22(1)(b) of the Act (and accordingly any activity of one of those kinds, when carried on by way of business, is a regulated activity when carried on in relation to property of any kind).

(3) Subject to paragraph (4), each provision specifying a kind of activity is subject to the exclusions applicable to that provision (and accordingly any reference in this Order to an activity of the kind specified by a particular provision is to be read subject to any such exclusions).

(4) Where an investment firm—

- (a) provides core investment services to third parties on a professional basis, and
- (b) in doing so would be treated as carrying on an activity of a kind specified by a provision of this Part but for an exclusion in any of articles 15, 68, 69 and 70,

that exclusion is to be disregarded (and accordingly the investment firm is to be treated as carrying on an activity of the kind specified by the provision in question).

(5) In this article—

“core investment service” means any service listed in section A of the Annex to the investment services directive, the text of which is set out in Schedule 2; and

“investment firm” means a person whose regular occupation or business is the provision of core investment services to third parties on a professional basis, other than—

- (a) a person to whom the investment services directive does not apply by virtue of Article 2.2 of that directive (the text of which is set out in Schedule 3); or
- (b) a person to whom (if he were incorporated in or formed under the law of an EEA State or, being an individual, had his head office in an EEA State) that directive would not apply by virtue of Article 2.2 of that directive.

CHAPTER II

ACCEPTING DEPOSITS

The activity

Accepting deposits

5.—(1) Accepting deposits is a specified kind of activity if—

- (a) money received by way of deposit is lent to others; or
- (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.

(2) In paragraph (1), “deposit” means a sum of money, other than one excluded by any of articles 6 to 9, paid on terms—

- (a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

^(a) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/), made under section 419 of the Act, makes provision as to the circumstances in which persons are, or are not, to be regarded as carrying on activities by way of business.

- (b) which are not referable to the provision of property (other than currency) or services or the giving of security.
- (3) For the purposes of paragraph (2), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if—
 - (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
 - (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
 - (c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

Exclusions

Sums paid by certain persons

- 6.—(1) A sum is not a deposit for the purposes of article 5 if it is—
- (a) paid by any of the following persons—
 - (i) the Bank of England, the central bank of an EEA State other than the United Kingdom, or the European Central Bank;
 - (ii) an authorised person who has permission to accept deposits, or to effect or carry out contracts of insurance;
 - (iii) an EEA firm falling within paragraph 5(b), (c) or (d) of Schedule 3 to the Act (other than one falling within paragraph (ii) above);
 - (iv) the National Savings Bank;
 - (v) a municipal bank, that is to say a company which was, immediately before the coming into force of this article, exempt from the prohibition in section 3 of the Banking Act 1987^(a) by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act;
 - (vi) Keesler Federal Credit Union;
 - (vii) a body of persons certified as a school bank by the National Savings Bank or by an authorised person who has permission to accept deposits;
 - (viii) a local authority;
 - (ix) any body which by virtue of any enactment has power to issue a precept to a local authority in England and Wales or a requisition to a local authority in Scotland, or to the expenses of which, by virtue of any enactment, a local authority in the United Kingdom is or can be required to contribute (and in this paragraph, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament);
 - (x) the European Community, the European Atomic Energy Community or the European Coal and Steel Community;
 - (xi) the European Investment Bank;
 - (xii) the International Bank for Reconstruction and Development;
 - (xiii) the International Finance Corporation;
 - (xiv) the International Monetary Fund;
 - (xv) the African Development Bank;
 - (xvi) the Asian Development Bank;
 - (xvii) the Caribbean Development Bank;
 - (xviii) the Inter-American Development Bank;
 - (xix) the European Bank for Reconstruction and Development;
 - (xx) the Council of Europe Resettlement Fund;
 - (b) paid by a person other than one mentioned in sub-paragraph (a) in the course of carrying on a business consisting wholly or to a significant extent of lending money;

^(a) 1987 c. 22. Section 3 was amended by the Bank of England Act 1998 (c. 11), Sch. 5, paras 1 and 3. “Municipal bank” is defined in section 103 of the Banking Act 1987, which was amended by the Local Government Act 1992 (c. 19), Sch. 3, para. 22, and by the Local Government and Rating Act 1997 (c. 29), Sch. 3, para. 21.

- (c) paid by one company to another at a time when both are members of the same group or when the same individual is a majority shareholder controller of both of them; or
- (d) paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director or manager of that person or who is, or is a close relative of, a controller of that person.

(2) For the purposes of paragraph (1)(c), an individual is a majority shareholder controller of a company if he is a controller of the company by virtue of paragraph (a), (c), (e) or (g) of section 422(2) of the Act, and if in his case the greatest percentage of those referred to in those paragraphs is 50 or more.

(3) In the application of sub-paragraph (d) of paragraph (1) to a sum paid by a partnership, that sub-paragraph is to have effect as if, for the reference to the person paying the sum, there were substituted a reference to each of the partners.

Sums received by solicitors etc.

7.—(1) A sum is not a deposit for the purposes of article 5 if it is received by a practising solicitor acting in the course of his profession.

(2) In paragraph (1), “practising solicitor” means—

- (a) a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974^(a), article 4 of the Solicitors (Northern Ireland) Order 1976^(b) or section 4 of the Solicitors (Scotland) Act 1980^(c);
- (b) a recognised body;
- (c) a registered foreign lawyer in the course of providing professional services as a member of a multi-national partnership;
- (d) a registered European lawyer; or
- (e) a partner of a registered European lawyer who is providing professional services in accordance with—
 - (i) rules made under section 31^(d) of the Solicitors Act 1974;
 - (ii) regulations made under article 26 of the Solicitors (Northern Ireland) Order 1976; or
 - (iii) rules made under section 34 of the Solicitors (Scotland) Act 1980^(e).

(3) In this article—

- (a) “a recognised body” means a body corporate recognised by—
 - (i) the Council of the Law Society under section 9 of the Administration of Justice Act 1985^(f);
 - (ii) the Incorporated Law Society of Northern Ireland under article 26A of the Solicitors (Northern Ireland) Order 1976^(g); or
 - (iii) the Council of the Law Society of Scotland under section 34 of the Solicitors (Scotland) Act 1980;
- (b) “registered foreign lawyer” has the meaning given by section 89 of the Courts and Legal Services Act 1990^(h) or, in Scotland, section 65 of the Solicitors (Scotland) Act 1980⁽ⁱ⁾;
- (c) “multi-national partnership” has the meaning given by section 89 of the Courts and Legal Services Act 1990 but, in Scotland, is a reference to a “multi-national practice” within the meaning of section 60A of the Solicitors (Scotland) Act 1980^(j); and

^(a) 1974 c. 47.

^(b) S.I. 1976/582 (N.I. 12); relevant amending instrument is S.I. 1989/1343 (N.I. 14).

^(c) 1980 c. 46.

^(d) Section 31 was amended by para. 10 of Sch. 17 to the Courts and Legal Services Act 1990 (c. 41), and by para. 3 of Sch. 6 to, and para. 1 of Sch. 7 to, the Access to Justice Act 1999 (c. 22).

^(e) Amended by section 31 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

^(f) 1985 c. 61; section 9 was amended by para. 54 of Sch. 18 to the Courts and Legal Services Act 1990, and by para. 1 of Sch. 4 to the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000/1119), and was repealed in part by Part II of Sch. 15 to the Access to Justice Act 1999.

^(g) Inserted by article 10 of the Solicitors (Amendment) (Northern Ireland) Order 1989 (S.I. 1989/1343) (N.I. 14).

^(h) 1990 c. 41; section 89 was amended by para. 14 of Sch. 4 to the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000/1119).

⁽ⁱ⁾ Amended by para. 29(15) of Sch. 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

^(j) Inserted by section 32 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

- (d) “registered European lawyer” has the meaning given by regulation 2(1) of the European Communities (Lawyer’s Practice) Regulations 2000^(a) or regulation 2(1) of the European Communities (Lawyer’s Practice) (Scotland) Regulation 2000^(b).

Sums received by persons authorised to deal etc.

8. A sum is not a deposit for the purposes of article 5 if it is received by a person who is—
- (a) an authorised person with permission to carry on an activity of the kind specified by any of articles 14, 21, 25, 37, 51 and 52, or
 - (b) an exempt person in relation to any such activity,
- in the course of, or for the purpose of, carrying on that activity with or on behalf of the person by or on behalf of whom the sum is paid.

Sums received in consideration for the issue of debt securities

9.—(1) Subject to paragraph (2), a sum is not a deposit for the purposes of article 5 if it is received by a person as consideration for the issue by him of any investment of the kind specified by article 77 or 78.

(2) The exclusion in paragraph (1) does not apply to the receipt by a person of a sum as consideration for the issue by him of commercial paper unless—

- (a) the commercial paper is issued to persons—
 - (i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or
 - (ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses; and
- (b) the redemption value of the commercial paper is not less than £100,000 (or an amount of equivalent value denominated wholly or partly in a currency other than sterling), and no part of the commercial paper may be transferred unless the redemption value of that part is not less than £100,000 (or such an equivalent amount).

(3) In paragraph (2), “commercial paper” means an investment of the kind specified by article 77 or 78 which must be redeemed before the first anniversary of the date of issue.

CHAPTER III

INSURANCE

The activities

Effecting and carrying out contracts of insurance

- 10.—(1) Effecting a contract of insurance as principal is a specified kind of activity.
- (2) Carrying out a contract of insurance as principal is a specified kind of activity.

Exclusions

Community co-insurers

11.—(1) There is excluded from article 10(1) or (2) the effecting or carrying out of a contract of insurance by an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act—

- (a) other than through a branch in the United Kingdom; and
- (b) pursuant to a Community co-insurance operation in which the firm is participating otherwise than as the leading insurer.

(2) In paragraph (1), “Community co-insurance operation” and “leading insurer” have the same meaning as in the Council Directive of 30 May 1978 on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance (No. 78/473/EEC)^(b).

^(a) S.I. 2000/1119.

^(b) Scottish Statutory Instruments 2000 No. 121.

Breakdown insurance

12.—(1) There is excluded from article 10(1) or (2) the effecting or carrying out, by a person who does not otherwise carry on an activity of the kind specified by that article, of a contract of insurance which—

- (a) is a contract under which the benefits provided by that person (“the provider”) are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle; and
- (b) contains the terms mentioned in paragraph (2).

(2) Those terms are that—

- (a) the assistance takes either or both of the forms mentioned in paragraph (3)(a) and (b);
- (b) the assistance is not available outside the United Kingdom and the Republic of Ireland except where it is provided without the payment of additional premium by a person in the country concerned with whom the provider has entered into a reciprocal agreement; and
- (c) assistance provided in the case of an accident or breakdown occurring in the United Kingdom or the Republic of Ireland is, in most circumstances, provided by the provider’s servants.

(3) The forms of assistance are—

- (a) repairs to the relevant vehicle at the place where the accident or breakdown has occurred; this assistance may also include the delivery of parts, fuel, oil, water or keys to the relevant vehicle;
- (b) removal of the relevant vehicle to the nearest or most appropriate place at which repairs may be carried out, or to—
 - (i) the home, point of departure or original destination within the United Kingdom of the driver and passengers, provided the accident or breakdown occurred within the United Kingdom;
 - (ii) the home, point of departure or original destination within the Republic of Ireland of the driver and passengers, provided the accident or breakdown occurred within the Republic of Ireland or within Northern Ireland;
 - (iii) the home, point of departure or original destination within Northern Ireland of the driver and passengers, provided the accident or breakdown occurred within the Republic of Ireland;

and this form of assistance may include the conveyance of the driver or passengers of the relevant vehicle, with the vehicle, or (where the vehicle is to be conveyed only to the nearest or most appropriate place at which repairs may be carried out) separately, to the nearest location from which they may continue their journey by other means.

(4) A contract does not fail to meet the condition in paragraph (1)(a) solely because the provider may reimburse the person entitled to the assistance for all or part of any sums paid by him in respect of assistance either because he failed to identify himself as a person entitled to the assistance or because he was unable to get in touch with the provider in order to claim the assistance.

(5) In this article—

“the assistance” means the benefits to be provided under a contract of the kind mentioned in paragraph (1);

“breakdown” means an event—

- (a) which causes the driver of the relevant vehicle to be unable to start a journey in the vehicle or involuntarily to bring the vehicle to a halt on a journey because of some malfunction of the vehicle or failure of it to function, and
- (b) after which the journey cannot reasonably be commenced or continued in the relevant vehicle;

“the relevant vehicle” means the vehicle (including a trailer or caravan) in respect of which the assistance is required.

Application of sections 327 and 332 of the Act to insurance market activities

13.—(1) In sections 327(5) and (7) and 332(3)(b) of the Act (exemption from the general prohibition for members of the professions, and rules in relation to such persons), the references to “a regulated activity” and “regulated activities” do not include—

- (a) any activity of the kind specified by article 10(1) or (2), where—
 - (i) P is a member of the Society; and
 - (ii) by virtue of section 316 of the Act (application of the Act to Lloyd’s underwriting), the general prohibition does not apply to the carrying on by P of that activity; or
- (b) any activity of the kind specified by article 10(2), where—
 - (i) P is a former underwriting member; and
 - (ii) the contract of insurance in question is one underwritten by P at Lloyd’s.

(2) In paragraph (1)—

“member of the Society” has the same meaning as in Lloyd’s Act 1982(a); and

“former underwriting member” has the meaning given by section 324(1) of the Act.

CHAPTER IV

DEALING IN INVESTMENTS AS PRINCIPAL

The activity

Dealing in investments as principal

14. Buying, selling, subscribing for or underwriting securities or contractually based investments (other than investments of the kind specified by article 87, or article 89 so far as relevant to that article) as principal is a specified kind of activity.

Exclusions

Absence of holding out etc.

15.—(1) Subject to paragraph (3), a person (“A”) does not carry on an activity of the kind specified by article 14 by entering into a transaction which relates to a security or is the assignment (or, in Scotland, the assignation) of a qualifying contract of insurance (or an investment of the kind specified by article 89, so far as relevant to such a contract), unless—

- (a) A holds himself out as willing, as principal, to buy, sell or subscribe for investments of the kind to which the transaction relates at prices determined by him generally and continuously rather than in respect of each particular transaction;
- (b) A holds himself out as engaging in the business of buying investments of the kind to which the transaction relates, with a view to selling them;
- (c) A holds himself out as engaging in the business of underwriting investments of the kind to which the transaction relates; or
- (d) A regularly solicits members of the public with the purpose of inducing them, as principals or agents, to enter into transactions constituting activities of the kind specified by article 14, and the transaction is entered into as a result of his having solicited members of the public in that manner.

(2) In paragraph (1)(d), “members of the public” means any persons other than—

- (a) authorised persons or persons who are exempt persons in relation to activities of the kind specified by article 14;
- (b) members of the same group as A;
- (c) persons who are or who propose to become participators with A in a joint enterprise;
- (d) any person who is solicited by A with a view to the acquisition by A of 20 per cent or more of the voting shares in a body corporate;

(a) 1982 c. 14.

- (e) if A (either alone or with members of the same group as himself) holds more than 20 per cent of the voting shares in a body corporate, any person who is solicited by A with a view to—
 - (i) the acquisition by A of further shares in the body corporate; or
 - (ii) the disposal by A of shares in the body corporate to the person solicited or to a member of the same group as the person solicited;
- (f) any person who—
 - (i) is solicited by A with a view to the disposal by A of shares in a body corporate to the person solicited or to a member of the same group as that person; and
 - (ii) either alone or with members of the same group holds 20 per cent or more of the voting shares in the body corporate;
- (g) any person whose head office is outside the United Kingdom, who is solicited by an approach made or directed to him at a place 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) This article does not apply where A enters into the transaction as bare trustee or, in Scotland, as nominee for another person and is acting on that other person's instructions (but the exclusion in article 66(1) applies if the conditions set out there are met).

Dealing in contractually based investments

16. A person who is not an authorised person does not carry on an activity of the kind specified by article 14 by entering into a transaction relating to a contractually based investment—

- (a) 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) 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).

Acceptance of instruments creating or acknowledging indebtedness

17.—(1) A person does not carry on an activity of the kind specified by article 14 by accepting an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.

(2) The reference in paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Issue by a company of its own shares etc.

18.—(1) There is excluded from article 14 the issue by a company of its own shares or share warrants, and the issue by any person of his own debentures or debenture warrants.

(2) In this article—

- (a) “company” means any body corporate other than an open-ended investment company;
- (b) “shares” and “debentures” include any investment of the kind specified by article 76 or 77;
- (c) “share warrants” and “debenture warrants” mean any investment of the kind specified by article 79 which relates to shares in the company concerned or, as the case may be, debentures issued by that company.

Risk management

19.—(1) A person (“B”) does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction with another person (“C”) if—

- (a) the transaction relates to investments of the kind specified by any of articles 83 to 85 (or article 89 so far as relevant to any of those articles);
- (b) neither B nor C is an individual;
- (c) the sole or main purpose for which B enters into the transaction (either by itself or in combination with other such transactions) is that of limiting the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of a regulated activity; and
- (d) the relevant business consists mainly of activities other than—
 - (i) regulated activities; or
 - (ii) activities which would be regulated activities but for any exclusion made by this Part.

(2) In paragraph (1), “relevant business” means a business carried on by—

- (a) B;
- (b) a member of the same group as B; or
- (c) where B and another person are, or propose to become, participators in a joint enterprise, that other person.

Other exclusions

20. Article 14 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes) and 72 (overseas persons).

CHAPTER V

DEALING IN INVESTMENTS AS AGENT

The activity

Dealing in investments as agent

21. Buying, selling, subscribing for or underwriting securities or contractually based investments (other than investments of the kind specified by article 87, or article 89 so far as relevant to that article) as agent is a specified kind of activity.

Exclusions

Deals with or through authorised persons

22.—(1) A person who is not an authorised person does not carry on an activity of the kind specified by article 21 by entering into a transaction as agent for another person (“the client”) with or through an authorised person if—

- (a) the transaction is entered into on advice given to the client by an authorised person; or
- (b) it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from the agent as to the merits of the client’s entering into the transaction (or, if the client has sought such advice, the agent has declined to give it but has recommended that the client seek such advice from an authorised person).

(2) But the exclusion in paragraph (1) does not apply if the agent receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction.

Risk management

23.—(1) A person (“B”) does not carry on an activity of the kind specified by article 21 by entering as agent for a relevant person into a transaction with another person (“C”) if—

- (a) the transaction relates to investments of the kind specified by any of articles 83 to 85 (or article 89 so far as relevant to any of those articles);
- (b) neither B nor C is an individual;
- (c) the sole or main purpose for which B enters into the transaction (either by itself or in combination with other such transactions) is that of limiting the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of a regulated activity; and
- (d) the relevant business consists mainly of activities other than—
 - (i) regulated activities; or
 - (ii) activities which would be regulated activities but for any exclusion made by this Part.

(2) In paragraph (1), “relevant person” means—

- (a) a member of the same group as B; or
- (b) where B and another person are, or propose to become, participators in a joint enterprise, that other person;

and “relevant business” means a business carried on by a relevant person.

Other exclusions

24. Article 21 is also subject to the exclusions in articles 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes) and 72 (overseas persons).

CHAPTER VI

ARRANGING DEALS IN INVESTMENTS

The activities

Arranging deals in investments

25.—(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

- (a) a security,
- (b) a contractually based investment, or
- (c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity.

Exclusions

Arrangements not causing a deal

26. There are excluded from article 25(1) arrangements which do not or would not bring about the transaction to which the arrangements relate.

Enabling parties to communicate

27. A person does not carry on an activity of the kind specified by article 25(2) merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

Arranging transactions to which the arranger is a party

28.—(1) There are excluded from article 25(1) any arrangements for a transaction into which the person making the arrangements enters or is to enter as principal or as agent for some other person.

(2) There are excluded from article 25(2) any arrangements which a person makes with a view to transactions into which he enters or is to enter as principal or as agent for some other person.

Arranging deals with or through authorised persons

29.—(1) There are excluded from article 25(1) and (2) arrangements made by a person (“A”) who is not an authorised person for or with a view to a transaction which is or is to be entered into by a person (“the client”) with or through an authorised person if—

- (a) the transaction is or is to be entered into on advice to the client by an authorised person; or
- (b) it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from A as to the merits of the client’s entering into the transaction (or, if the client has sought such advice, A has declined to give it but has recommended that the client seek such advice from an authorised person).

(2) But the exclusion in paragraph (1) does not apply if A receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his making the arrangements.

Arranging transactions in connection with lending on the security of insurance policies

30.—(1) There are excluded from article 25(1) and (2) arrangements made by a money-lender under which either—

- (a) a relevant authorised person or a person acting on his behalf will introduce to the money-lender persons with whom the relevant authorised person proposes to enter into a relevant transaction; or
- (b) a relevant authorised person gives an assurance to the money-lender as to the amount which, on the security of any contract effected pursuant to a relevant transaction, will or may be received by the money-lender should the money-lender lend money to a person introduced to him pursuant to the arrangements.

(2) In paragraph (1)—

“money-lender” means a person who is—

- (a) a money-lending company within the meaning of section 338 of the Companies Act 1985(a);
- (b) a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies; or
- (c) a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans;

“relevant authorised person” means an authorised person who has permission to effect qualifying contracts of insurance or to sell investments of the kind specified by article 89, so far as relevant to such contracts;

“relevant transaction” means the effecting of a qualifying contract of insurance or the sale of an investment of the kind specified by article 89, so far as relevant to such contracts.

Arranging the acceptance of debentures in connection with loans

31.—(1) There are excluded from article 25(1) and (2) arrangements under which a person accepts or is to accept, whether as principal or agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which is, or is to be, made, granted or provided by that person or his principal.

(2) The reference in paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

(a) 1985 c. 6. Section 338 was amended by section 138 of, and para. 10 of Sch. 10 to, the Companies Act 1989 (c. 40).

Provision of finance

32. There are excluded from article 25(2) arrangements having as their sole purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

Introducing

33. There are excluded from article 25(2) arrangements where—

- (a) they are arrangements under which persons (“clients”) will be introduced to another person;
- (b) the person to whom introductions are to be made is—
 - (i) an authorised person;
 - (ii) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
 - (iii) a person who is not unlawfully carrying on regulated activities in the United Kingdom and whose ordinary business involves him in engaging in an activity 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; and
- (c) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or in relation to any class of investments to which the arrangements relate.

Arrangements for the issue of shares etc.

34.—(1) There are excluded from article 25(1) and (2)—

- (a) arrangements made by a company for the purposes of issuing its own shares or share warrants; and
- (b) arrangements made by any person for the purposes of issuing his own debentures or debenture warrants;

and for the purposes of article 25(1) and (2), a company is not, by reason of issuing its own shares or share warrants, and a person is not, by reason of issuing his own debentures or debenture warrants, to be treated as selling them.

(2) In paragraph (1), “company”, “shares”, “debentures”, “share warrants” and “debenture warrants” have the meanings given by article 18(2).

International securities self-regulating organisations

35.—(1) There are excluded from article 25(1) and (2) any arrangements made for the purposes of carrying out the functions of a body or association which is approved under this article as an international securities self-regulating organisation, whether the arrangements are made by the organisation itself or by a person acting on its behalf.

(2) The Treasury may approve as an international securities self-regulating organisation any body corporate or unincorporated association with respect to which the conditions mentioned in paragraph (3) appear to them to be met if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as they consider relevant, it appears to them that to do so would be desirable and not result in any undue risk to investors.

(3) The conditions are that—

- (a) the body or association does not have its head office in the United Kingdom;

- (b) the body or association is not eligible for recognition under section 287 or 288 of the Act (applications by investment exchanges and clearing houses) on the ground that (whether or not it has applied, and whether or not it would be eligible on other grounds) it is unable to satisfy the requirements of one or both of paragraphs (a) and (b) of section 292(3) of the Act (requirements for overseas investment exchanges and overseas clearing houses);
- (c) the body or association is able and willing to co-operate with the Authority by the sharing of information and in other ways;
- (d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the body or association in the country or territory in which its head office is situated;
- (e) the body or association has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempt persons, and persons whose head offices are outside the United Kingdom and whose ordinary business involves them in engaging in activities which are activities of a kind specified by this Order (or would be apart from any exclusion made by this Part); and
- (f) the body or association facilitates and regulates the activity of its members in the conduct of international securities business.

(4) In paragraph (3)(f), “international securities business” means the business of buying, selling, subscribing for or underwriting investments (or agreeing to do so), either as principal or agent, where—

- (a) the investments are securities or contractually based investments and are of a kind which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand the risks involved; and
- (b) either the transaction is international or each of the parties may be expected to be indifferent to the location of the other;

and, for the purposes of this definition, it is irrelevant that the investments may ultimately be bought otherwise than in the course of such business by persons not so expert.

(5) Any approval under this article is to be given by notice in writing; and the Treasury may by a further notice in writing withdraw any such approval if for any reason it appears to them that it is not appropriate to it to continue in force.

Other exclusions

36. Article 25 is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes) and 72 (overseas persons).

CHAPTER VII

MANAGING INVESTMENTS

The activity

Managing investments

37. Managing assets belonging to another person, in circumstances involving the exercise of discretion, is a specified kind of activity if—

- (a) the assets consist of or include any investment which is a security or a contractually based investment; or
- (b) the arrangements for their management are such that the assets may consist of or include such investments, and either the assets have at any time since 29th April 1988 done so, or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.

Exclusions

Attorneys

- 38.** A person does not carry on an activity of the kind specified by article 37 if—
- (a) he is a person appointed to manage the assets in question under a power of attorney; and
 - (b) all routine or day-to-day decisions, so far as relating to investments of a kind mentioned in article 37(a), are taken on behalf of that person by—
 - (i) an authorised person with permission to carry on activities of the kind specified by article 37; or
 - (ii) a person who is an exempt person in relation to activities of that kind.

Other exclusions

39. Article 37 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services) and 69 (groups and joint enterprises).

CHAPTER VIII

SAFEGUARDING AND ADMINISTERING INVESTMENTS

The activity

Safeguarding and administering investments

- 40.—**(1) The activity consisting of both—
- (a) the safeguarding of assets belonging to another, and
 - (b) the administration of those assets,
- or arranging for one or more other persons to carry on that activity, is a specified kind of activity if the condition in sub-paragraph (a) or (b) of paragraph (2) is met.
- (2) The condition is that—
- (a) the assets consist of or include any investment which is a security or a contractually based investment; or
 - (b) the arrangements for their safeguarding and administration are such that the assets may consist of or include such investments, and either the assets have at any time since 1st June 1997 done so, or the arrangements have at any time (whether before or after that date) been held out as ones under which such investments would be safeguarded and administered.
- (3) For the purposes of this article—
- (a) it is immaterial that title to the assets safeguarded and administered is held in uncertificated form;
 - (b) it is immaterial that the assets safeguarded and administered may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

Exclusions

Acceptance of responsibility by third party

- 41.—**(1) There are excluded from article 40 any activities which a person carries on pursuant to arrangements which—
- (a) are ones under which a qualifying custodian undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the qualifying custodian would have if the qualifying custodian were safeguarding and administering the assets; and
 - (b) are operated by the qualifying custodian in the course of carrying on in the United Kingdom an activity of the kind specified by article 40.

- (2) In paragraph (1), “qualifying custodian” means a person who is—
- (a) an authorised person who has permission to carry on an activity of the kind specified by article 40, or
 - (b) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.

Introduction to qualifying custodians

42.—(1) There are excluded from article 40 any arrangements pursuant to which introductions are made by a person (“P”) to a qualifying custodian with a view to the qualifying custodian providing in the United Kingdom a service comprising an activity of the kind specified by article 40, where the qualifying person (or other person who is to safeguard and administer the assets in question) is not connected with P.

- (2) For the purposes of paragraph (1)—
- (a) “qualifying custodian” has the meaning given by article 41(2); and
 - (b) a person is connected with P if either he is a member of the same group as P, or P is remunerated by him.

Activities not constituting administration

43. The following activities do not constitute the administration of assets for the purposes of article 40—

- (a) providing information as to the number of units or the value of any assets safeguarded;
- (b) converting currency;
- (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

Other exclusions

44. Article 40 is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises) and 71 (employee share schemes).

CHAPTER IX

SENDING DEMATERIALISED INSTRUCTIONS

The activities

Sending dematerialised instructions

45.—(1) Sending, on behalf of another person, dematerialised instructions relating to a security is a specified kind of activity, where those instructions are sent by means of a relevant system in respect of which an Operator is approved under the 1995 Regulations.

(2) Causing dematerialised instructions relating to a security to be sent by means of such a system is also a specified kind of activity where the person causing them to be sent is a system-participant.

- (3) In this Chapter—
- (a) “the 1995 Regulations” means the Uncertified Securities Regulations 1995(a); and
 - (b) “dematerialised instruction”, “Operator”, “settlement bank” and “system-participant” have the meaning given by regulation 3 of the 1995 Regulations.

(a) S.I. 1995/3272, amended by S.I. 1996/2827, S.I. 1997/251, S.I. 1999/506, S.I. 2000/311 and S.I. 2000/1682.

Instructions on behalf of participating issuers

46. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a participating issuer within the meaning of the 1995 Regulations.

Instructions on behalf of settlement banks

47. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a settlement bank in its capacity as such.

Instructions in connection with takeover offers

48.—(1) There is excluded from article 45 of the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is an offeror making a takeover offer.

(2) In this article—

(a) “offeror” means, in the case of a takeover offer made by two or more persons jointly, the joint offers or any of them;

(b) “takeover offer” means—

(i) an offer to acquire shares (which in this sub-paragraph has the same meaning as in section 428(1) of the Companies Act 1985^(a)) in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of Part XIII A of that Act^(b) (or would be such an offer if that Part of that Act applied in relation to any body corporate);

(ii) an offer to acquire all or substantially all the shares, or all the shares of a particular class, in a body corporate incorporated outside the United Kingdom; or

(iii) an offer made to all the holders of shares, or shares of a particular class, in a body corporate to acquire a specified proportion of those shares;

but in determining whether an offer falls within paragraph (ii) there are to be disregarded any shares which the offeror or any associate of his (within the meaning of section 430E of the Companies Act 1985^(c)) holds or has contracted to acquire; and in determining whether an offer falls within paragraph (iii) the offeror, any such associate and any person whose shares the offeror or any such associate has contracted to acquire is not to be regarded as a holder of shares.

Instructions in the course of providing a network

49. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction as a necessary part of providing a network, the purpose of which is to carry dematerialised instructions which are at all time properly authenticated (within the meaning of the 1995 Regulations).

Other exclusions

50. Article 45 is also subject to the exclusions in articles 66 (trustees etc.) and 69 (groups and joint enterprises).

^(a) 1985 c. 6. Section 428 was substituted by the Financial Services Act 1986 (c. 60), Sch. 12.

^(b) Part XIII A was inserted by the Financial Services Act 1986, Sch. 12.

^(c) Section 430E was inserted by the Financial Services Act 1986, Sch. 12.

CHAPTER X
COLLECTIVE INVESTMENT SCHEMES

The activities

Establishing etc. a collective investment scheme

51.—(1) The following are specified kinds of activity—

- (a) establishing, operating or winding up a collective investment scheme;
- (b) acting as trustee of an authorised unit trust scheme;
- (c) acting as the depositary or sole director of an open-ended investment company.

(2) In this article, “trustee”, “authorised unit trust scheme” and “depositary” have the meaning given by section 237 of the Act.

CHAPTER XI
STAKEHOLDER PENSION SCHEMES

The activities

Establishing etc. a stakeholder pension scheme

52. Establishing, operating or winding up a stakeholder pension scheme is a specified kind of activity.

CHAPTER XII
ADVISING ON INVESTMENTS

The activity

Advising on investments

53. 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 or underwriting a particular investment which is a security or a contractually based investment, or
 - (ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

Exclusions

Advice given in newspapers etc.

54.—(1) There is excluded from article 53 the giving of advice in writing or other legible form if the advice is contained in a newspaper, journal, magazine, or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any advertisements or other promotional material contained in it, is neither—

- (a) that of giving advice of a kind mentioned in article 53; nor
- (b) that of leading or enabling persons to buy, sell, subscribe for or underwrite securities or contractually based investments.

(2) There is also excluded from article 53 the giving of advice in any service consisting of the broadcast or transmission of television or radio programmes, if the principal purpose of the service, taken as a whole and including any advertisements or other promotional material contained in it, is neither of those mentioned in paragraph (1)(a) and (b).

(3) The Authority may, on the application of the proprietor of any such publication or service as is mentioned in paragraph (1) or (2), certify that it is of the nature described in that paragraph, and may revoke any such certificate if it considers that it is no longer justified.

(4) A certificate given under paragraph (3) and not revoked is conclusive evidence of the matters certified.

Other exclusions

55. Article 53 is also subject to the exclusions in articles 66 (trustees etc.), 67, (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate) and 72 (overseas persons).

CHAPTER XIII

LLOYD'S

The activities

Advice on syndicate participation at Lloyd's

56. Advising a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate is a specified kind of activity.

Managing the underwriting capacity of a Lloyd's syndicate

57. Managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's is a specified kind of activity.

Arranging deals in contracts of insurance written at Lloyd's

58. The arranging, by the society incorporated by Lloyd's Act 1871(a) by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's, is a specified kind of activity.

CHAPTER XIV

FUNERAL PLAN CONTRACTS

The activity

Funeral plan contracts

59.—(1) Entering as provider into a funeral plan contract is a specified kind of activity.

(2) A "funeral plan contract" is a contract (other than one excluded by article 60) under which—

- (a) a person ("the customer") makes one or more payments to another person ("the provider"); and
- (b) the provider undertakes to provide, or secure that another person provides, a funeral in the United Kingdom for the customer (or some other person who is living at the date when the contract is entered into) on his death;

unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month.

Exclusion

Plans covered by insurance or trust arrangements

60.—(1) There is excluded from article 59 any contract under which—

- (a) the provider undertakes to secure that sums paid by the customer under the contract will be applied towards a contract of whole life insurance on the life of the customer

(a) 1871 c. 21.

- (or other person for whom the funeral is to be provided), effected and carried out by an authorised person who has permission to effect and carry out such contracts of insurance, for the purpose of providing the funeral; or
- (b) the provider undertakes to secure that sums paid by the customer under the contract will be held on trust for the purpose of providing the funeral, and that the following requirements are or will be met with respect to the trust—
- (i) the trust must be established by a written instrument;
 - (ii) more than half of the trustees must be unconnected with the provider;
 - (iii) the trustees must appoint, or have appointed, an independent fund manager who is an authorised person who has permission to carry on an activity of the kind specified by article 37, and who is a person who is unconnected with the provider, to manage the assets of the trust;
 - (iv) annual accounts must be prepared, and audited by a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989 (a), with respect to the assets and liabilities of the trust; and
 - (v) the assets and liabilities of the trust must, at least once every three years, be determined, calculated and verified by an actuary who is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.
- (2) For the purposes of paragraph (1)(b)(ii) and (iii), a person is unconnected with the provider if he is a person other than—
- (a) the provider;
 - (b) a member of the same group as the provider;
 - (c) a director, other officer or employee of the provider, or of any member of the same group as the provider;
 - (d) a partner of the provider;
 - (e) a close relative of a person falling within sub-paragraph (a), (c) or (d); or
 - (f) an agent of any person falling within sub-paragraphs (a) to (e).

CHAPTER XV

REGULATED MORTGAGE CONTRACTS

The activities

Regulated mortgage contracts

- 61.—**(1) Entering into a regulated mortgage contract as lender is a specified kind of activity.
- (2) Administering a regulated mortgage contract is also a specified kind of activity, where the contract was entered into after the coming into force of this article.
- (3) In this Chapter—
- (a) a “regulated mortgage contract” means a contract under which—
 - (i) a person (“the lender”) provides credit to an individual or to trustees (“the borrower”); and
 - (ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person;
 - (b) “administering” a regulated mortgage contract means either or both of—
 - (i) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and
 - (ii) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;

(a) 1989 c. 40.

but a person is not to be treated as administering a regulated mortgage contract merely because he has, or exercises, a right to take action for the purposes of enforcing the contract (or to require that such action is or is not taken);

- (c) “credit” includes a cash loan, and any other form of financial accommodation.
- (4) For the purposes of paragraph (3)(a)(ii)—
 - (a) a “first legal mortgage” means a legal mortgage ranking in priority ahead of all other mortgages (if any) affecting the land in question, where “mortgage” includes charge and (in Scotland) a heritable security;
 - (b) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;
 - (c) “related person”, in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—
 - (i) that person’s spouse;
 - (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
 - (iii) that person’s parent, brother, sister, child, grandparent or grandchild; and
 - (d) “timeshare accommodation” has the meaning given by section 1 of the Timeshare Act 1992 (a).

Exclusions

Arranging administration by authorised person

62. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he—

- (a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the contract; or
- (b) administers the contract himself during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

63. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he administers the contract pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

CHAPTER XVI

AGREEING TO CARRY ON ACTIVITIES

The activity

Agreeing to carry on specified kinds of activity

64. Agreeing to carry on an activity of the kind specified by any other provision of this Part (other than article 5, 10, 51 or 52) is a specified kind of activity.

Exclusion

Overseas persons

65. Article 64 is subject to the exclusion in article 72 (overseas persons).

(a) 1992 c. 35. The definition of “timeshare accommodation” in section 1 was amended by S.I. 1997/1081, reg. 2.

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 article 25(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 (a), he is to be treated as carrying on that activity by way of business.

(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.

(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 article 53 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.

(7) Paragraphs (2), (3), (4) and (6) 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.

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), 40 and 53 any activity which—

- (a) is carried on in the course of carrying on any profession or business which does not otherwise consist of regulated activities; 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.

(a) S.I. 2001/ .

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

68.—(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, 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 as agent 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, 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 qualifying 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 qualifying 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.

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 1995.

(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.

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).

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

Overseas persons

72.—(1) An overseas person does not carry on an activity of the kind specified by article 14 by—

- (a) entering into a transaction as principal 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 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 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) 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) 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.
- (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, 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.

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.

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(a); 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.
- (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).

Instruments creating or acknowledging indebtedness

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

(a) 1986 c. 53.

- (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—
 - (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^(a) 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^(b).

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.

^(a) 1968 c. 13.
^(b) 1972 c. 65.

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—

- (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.

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.

Regulated mortgage contracts

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

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.

PART IV

CONSEQUENTIAL PROVISIONS

Regulated mortgage contracts: consequential provisions

Consequential amendments of the Consumer Credit Act 1974

- 90.**—(1) The Consumer Credit Act 1974^(a) is amended as follows.
- (2) In section 16 (exempt agreements)^(b), after subsection (6B) insert—
- “(6C) This Act does not regulate a consumer credit agreement if—
- (a) it is secured by a land mortgage; and
- (b) entering into that agreement as lender is a regulated activity for the purposes of the Financial Services and Markets Act 2000.
- (6D) But section 126, and any other provision so far as it relates to section 126, applies to an agreement which would (but for subsection (6C)) be a regulated agreement.
- (6E) Subsection (6C) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000 (regulated activities: power to specify classes of activity and categories of investment);
- (b) any order for the time being in force under that section; and
- (c) Schedule 2 to that Act.”.
- (3) In section 43 (advertisements), after subsection (3) insert—
- “(3A) An advertisement does not fall within subsection (1)(a) in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication.
- (3B) An “exempt generic communication” is a communication to which subsection (1) of section 21 of the Financial Services and Markets Act 2000 does not apply, as a result of an order under subsection (5) of that section, because it does not identify a person as providing an investment or as carrying on an activity to which the communication relates.”.
- (4) In section 52 (quotations), after subsection (2) insert—
- “(3) In this section, “quotation” does not include—
- (a) any document which is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000; or
- (b) any document (other than one falling within paragraph (a)) provided by an authorised person (within the meaning of that Act) in connection with an agreement which would or might be an exempt agreement as a result of section 16(6C).”.
- (5) In section 53 (duty to display information), after “land” insert “(other than credit provided under an agreement which is an exempt agreement as a result of section 16(6C))”.
- (6) In section 137 (extortionate credit bargains), in subsection (2)(a), after “any agreement” insert “(other than an agreement which is an exempt agreement as a result of section 16(6C))”.
- (7) In section 151 (advertisements for the purposes of ancillary credit business), after subsection (2) insert—
- “(2A) An advertisement does not fall within subsection (1) or (2) in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication (as defined in section 43(3B)).”.

^(a) 1974 c. 39.

^(b) Subsection (6B) was inserted by s. 22(3) of the Housing and Planning Act 1986 (c. 63) and amended by the Housing Act 1988 (c. 50), Sch. 17, Part I, para. 20, and by the Government of Wales Act 1998 (c. 38), Sch. 18, Part VI.

Consequential amendments of subordinate legislation under the Consumer Credit Act 1974

91.—(1) In the Consumer Credit (Advertisements) Regulations 1989(a), after paragraph (2) of regulation 9 (application of Regulations) insert—

“(3) These Regulations do not apply to any advertisement in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication.

(4) An “exempt generic communication” is a communication to which subsection (1) of section 21 of the Financial Services and Markets Act 2000 does not apply, as a result of an order under subsection (5) of that section, because it does not identify a person as providing an investment or as carrying on an activity to which the communication relates.”.

(2) In the Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements) (Amendment) Regulations 1999(b), in the definition of “quotation” in paragraph (1) of regulation 2 (interpretation of Part II)—

(a) omit “or” at the end of sub-paragraph (c); and

(b) after sub-paragraph (d) insert—

“(e) any document which is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000; or

(f) any document (other than one falling within sub-paragraph (e)), provided by an authorised person (within the meaning of that Act) in connection with an agreement which would or might be an exempt agreement as a result of section 16(6C) of the Act.”.

Greg Pope

Jim Dowd

26th February 2001

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Subsection (6B) was inserted by s. 22(3) of the Housing and Planning Act 1986 (c. 63) and amended by the Housing Act 1988 (c. 50), Sch. 17, Part I, para. 20, and by the Government of Wales Act 1998 (c. 38), Sch. 18, Part VI.

(b) S.I. 1989/1125, amended by S.I. 1999/2725, S.I. 1999/3177 and S.I. 2000/1797, and modified by S.I. 1992/3218.

SCHEDULE 1
CONTRACTS OF INSURANCE

Article 3(1)

PART I
CONTRACTS OF GENERAL INSURANCE

Accident

1. Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured or, in the case of a contract made by virtue of section 140, 140A or 140B of the Local Government Act 1972(a) (or, in Scotland, section 86(1) of the Local Government (Scotland) Act 1973(b)), a person for whose benefit the contract is made—

- (a) sustaining injury as the result of an accident or of an accident of a specified class; or
- (b) dying as a result of an accident or of an accident of a specified class; or
- (c) becoming incapacitated in consequence of disease or of disease of a specified class,

including contracts relating to industrial injury and occupational disease but excluding contracts falling within paragraph 2 of Part I of, or paragraph IV of Part II of, this Schedule.

Sickness

2. Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of loss to the persons insured attributable to sickness or infirmity but excluding contracts falling within paragraph IV of Part II of this Schedule.

Land vehicles

3. Contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.

Railway rolling stock

4. Contract of insurance against loss of or damage to railway rolling stock.

Aircraft

5. Contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.

Ships

6. Contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels.

Goods in transit

7. Contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.

Fire and natural forces

8. Contracts of insurance against loss of or damage to property (other than property to which paragraphs 3 to 7 relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.

Damage to property

9. Contracts of insurance against loss of or damage to property (other than property to which paragraphs 3 to 7 relate) due to hail or frost or any other event (such as theft) other than those mentioned in paragraph 8.

(a) S.I. 1999/2725, amended by S.I. 2000/1797.

(b) 1972 c. 70. Section 140 was amended by the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), s. 39(1) and Sch. 7, Part XVI; by the Insurance Companies Act 1982 (c. 50), Sch. 5, para. 13; and by the London Regional Transport Act 1984 (c. 32), Sch. 7. Section 140A was inserted by s. 39(2) of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), and amended by the Planning (Consequential Provisions) Act 1990 (c. 10), Sch. 2, para. 28, and by the Environment Act 1995 (c. 25), Sch. 24. Section 140B was inserted by s. 39(2) of the Local Government (Miscellaneous Provisions) Act 1982, and amended by the Local Government Act 1985 (c. 51), Sch. 17, and by the Local Government (Wales) Act 1994 (c. 19), Sch. 15, para. 31.

Motor vehicle liability

10. Contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.

Aircraft liability

11. Contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.

Liability of ships

12. Contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third party risks and carrier's liability.

General liability

13. Contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which paragraph 10, 11 or 12 relates.

Credit

14. Contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.

Suretyship

15.—(1) Contracts of insurance against the risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them.

(2) Fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, where these are—

- (a) effected or carried out by a person not carrying on a banking business;
- (b) not effected merely incidentally to some other business carried on by the person effecting them; and
- (c) effected in return for the payment of one or more premiums.

Miscellaneous financial loss

16. Contracts of insurance against any of the following risks, namely—

- (a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;
- (b) risks of loss to the persons insured attributable to their incurring unforeseen expense (other than loss such as is covered by contracts falling within paragraph 18);
- (c) risks which do not fall within sub-paragraph (a) or (b) and which are not of a kind such that contracts of insurance against them fall within any other provision of this Schedule.

Legal expenses

17. Contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).

Assistance

18. Contracts of insurance providing either or both of the following benefits, namely—

- (a) assistance (whether in cash or in kind) for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; or
- (b) assistance (whether in cash or in kind) for persons who get into difficulties otherwise than as mentioned in sub-paragraph (a).

PART II**CONTRACTS OF LONG-TERM INSURANCE****Life and annuity**

I. Contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within paragraph III.

Marriage and birth

II. Contract of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

Linked long term

III. Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by references to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

Permanent health

IV. Contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that—

- (a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and
- (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Tontines

V. Tontines.

Capital redemption contracts

VI. Capital redemption contracts, where effected or carried out by a person who does not carry on a banking business, and otherwise carries on a regulated activity of the kind specified by article 10(1) or (2).

Pension fund management

VII. (a) Pension fund management contracts, and
(b) pension fund management contracts which are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest,
where effected or carried out by a person who does not carry on a banking business, and otherwise carries on a regulated activity of the kind specified by article 10(1) or (2).

Collective insurance etc.

VIII. Contracts of a kind referred to in article 1(2)(e) of the first life insurance directive.

Social insurance

IX. Contracts of a kind referred to in article 1(3) of the first life insurance directive.

SCHEDULE 2

Article 4

ANNEX TO THE INVESTMENT SERVICES DIRECTIVE

“ANNEX

SECTION A

Services

1. (a) Reception and transmission, on behalf of investors, of orders in relation to one or more instruments listed in Section B.
(b) Execution of such orders other than for own account.
2. Dealing in any of the instruments listed in Section B for own account.
3. Managing portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the instruments listed in Section B.

4. Underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues.

SECTION B

Investments

1. (a) Transferable securities.
(b) Units in collective investment undertakings.
2. Money-market instruments.
3. Financial-futures contracts, including equivalent cash-settled instruments.
4. Forward interest-rate agreements (FRAs).
5. Interest-rate, currency and equity swaps.
6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

SECTION C

Non-core services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.
2. Safe custody services.
3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.
4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.
5. Services related to underwriting.
6. Investment advice concerning one or more of the instruments listed in Section B.
7. Foreign-exchange services where these are connected with the provision of investment services.”

SCHEDULE 3

Article 4

ARTICLE 2.2 OF THE INVESTMENT SERVICES DIRECTIVE

“This Directive shall not apply to:

- (a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC or Article 1 of Directive 79/267/EEC or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC;
- (b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
- (d) firms that provide investment services consisting exclusively in the administration of employee participation schemes;
- (e) firms that provide investment services that consist in providing both the services referred to in (b) and those referred to in (d);
- (f) the central banks of Member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;
- (g) firms
 - which may not hold clients’ funds or securities and which for that reason may not at any time place themselves in debit with their clients, and
 - which may not provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings, and
 - which in the course of providing that service may transmit orders only to
- (i) investment firms authorised in accordance with this Directive;

- (ii) credit institutions authorised in accordance with Directives 77/80/EEC and 89/646/EEC^(a);
- (iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive 89/646/EEC or in Directive 93/6/EEC;
- (iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;
- (v) investment companies with fixed capital, as defined in Article 15(4) of Directive 79/91/EEC, the securities of which are listed or dealt in on a regulated market in a Member State;
 - the activities of which are governed at national level by rules or by a code of ethics;
- (h) collective investment undertakings whether coordinated at Community level or not and the depositaries and managers of such undertakings;
- (i) person whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment services only for such producers and professional users to the extent necessary for their main business;
- (j) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts entered into by such firms must be assumed by clearing members of the same markets;
- (k) associations set up by Danish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (l) “agenti di cambio” whose activities and functions are governed by Italian Royal Decree No. 222 of 7 March 1925 and subsequent provisions amending it, and who are authorised to carry on their activities under Article 19 of Italian Law No 1 of 2 January 1991.”

^(a) References to Directives 77/80/EEC and 89/646/EEC are now to be construed as references to Directive 2000/12/EC (O.J. L126, 26.5.2000, p.1), by virtue of Article 67(2) of that Directive.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies kinds of activities and investments for the purposes of the Financial Services and Markets Act 2000 (“the Act”). When an activity of a specified kind is carried on by way of business in relation to an investment of a specified kind, it is a “regulated activity” for the purposes of the Act. The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177) makes provision as to the circumstances in which a person is, or is not, to be regarded as carrying on a regulated activity by way of business. Section 19 of the Act prohibits person who are not authorised or exempt from carrying on any regulated activity in the United Kingdom. Contravention of that prohibition is a criminal offence.

Part I of this Order makes provision for the citation, commencement and interpretation of the Order.

Part II specifies types of activities. Those activities are accepting deposits; effecting and carrying out contracts of insurance; dealing in investments as principal, or as agent; arranging deals in investments; managing investments; safeguarding and administering investments; sending dematerialised instructions; establishing etc. a collective investment scheme, or a stakeholder pension scheme; advising on investments; certain activities in relation to Lloyd’s; entering into funeral plan contracts, or regulated mortgage contracts; and agreeing to carry on certain of the above activities.

Part II also sets out the exclusions (if any) applicable to each kind of specified activity.

Part III of the Order specifies the kinds of investment which are relevant for determining whether a person is carrying on a regulated activity for the purposes of the Act.

Part IV makes consequential amendments to the Consumer Credit Act 1974, and subordinate legislation under that Act, so as to exclude from its scope those categories of mortgage contract which are specified under this Order and which will therefore be regulated under the Act.

Schedule 1 to the Order lists the classes of insurance contract which are relevant to the scope of the activity specified by article 10.

Schedules 2 and 3 set out the text of certain provisions of Council Directive No. 93/22/EEC on investment services in the securities field which are relevant to the applicability of the exclusions contained in the Order (see article 4).

2001 No. 544

FINANCIAL SERVICES AND MARKETS

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