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STATUTORY INSTRUMENTS

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**2001 No. 544**

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

PART II

SPECIFIED ACTIVITIES

CHAPTER XVII

Exclusions Applying to Several Specified Kinds of Activity

**Trustees, nominees and personal representatives**

**66.**—(1) A person (“X”) does not carry on an activity of the kind specified by article 14 where he enters into a transaction as bare trustee or, in Scotland, as nominee for another person (“Y”) and—

- (a) X is acting on Y’s instructions; and
- (b) X does not hold himself out as providing a service of buying and selling securities or contractually based investments.

(2) Subject to paragraph (7), there are excluded from 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 (1), 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.

#### **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.