

1988 No. 318

FINANCIAL SERVICES

**The Financial Services Act 1986 (Restriction of
Scope of Act) Order 1988**

<i>Made</i> - - - -	<i>25th February 1988</i>
<i>Laid before Parliament</i>	<i>25th February 1988</i>
<i>Coming into force</i>	<i>27th February 1988</i>

The Secretary of State, in exercise of the powers conferred on him by section 2 of the Financial Services Act 1986(a), and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services Act 1986 (Restriction of Scope of Act) Order 1988 and shall come into force on 27th February 1988.

(2) In this Order “the Act” means the Financial Services Act 1986.

Arranging deals in investments

2. The following note shall be added to paragraph 13 of Schedule 1 to the Act—

“(3) This paragraph does not apply to a person (“the relevant person”) who is either a money-lending company within the meaning of section 338 of the Companies Act 1985(b) or a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies or a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans by reason of the relevant person making, or offering or agreeing to make, arrangements with a view to a person (“the authorised person”) who is either authorised under section 22 or 23 of this Act or who is authorised under section 31 of this Act and carries on insurance business which is investment business selling an investment which falls within paragraph 10 above or, so far as relevant to that paragraph, paragraph 11 above if the arrangements are either—

- (a) that the authorised person or a person on his behalf will introduce persons to whom the authorised person has sold or proposes to sell an investment of the kind described above, or will advise such persons to approach, the relevant person with a view to the relevant person lending money on the security of that investment; or
- (b) that the authorised person gives an assurance to the relevant person as to the amount which will or may be received by the relevant person, should that person lend money to a person to whom the authorised person has sold or proposes to sell an investment of the kind described above, on the surrender or maturity of that investment if it is taken as security for the loan.”.

(a) 1986 c.60.
(b) 1985 c.6.

Dealings as principal

3.—(1) Paragraph 17(3) of Schedule 1 to the Act shall be deleted and the following substituted—

“(3) Sub-paragraph (1) above applies only—

- (a) if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above; or
- (b) if the transaction is the assignment (or, in Scotland, the assignation) of an investment falling within paragraph 10 above or is the assignment (or, in Scotland, the assignation) of an investment falling within paragraph 11 above which confers rights to or interests in an investment falling within paragraph 10 above.”.

(2) Paragraph 17(4) of Schedule 1 to the Act shall be amended by substituting for the words from “a transaction” to the words “and which” the following words—

“any transaction, other than a transaction of a kind described in sub-paragraph (3)(a) or (b) above, which relates or is to relate to an investment which falls within paragraph 10 above or, so far as relevant to that paragraph, paragraph 11 above nor does it apply to a transaction which relates or is to relate to an investment which falls within any of paragraphs 7 to 9 above or, so far as relevant to any of those paragraphs, paragraph 11 above being a transaction which, in either case,”.

Sale of body corporate

4. Paragraph 21 of Schedule 1 to the Act shall be amended by—

- (a) deleting the heading to that paragraph and substituting the words “Sale of body corporate”;
- (b) deleting the words “private company” in paragraph 21(1) and substituting the words “body corporate other than an open-ended investment company”;
- (c) deleting the words from “private company” to “provision and” in paragraph 21(3); and
- (d) by substituting the words “body corporate” for the word “company” wherever it appears.

Advice given in sound or television broadcasts

5. The following paragraph shall be inserted after paragraph 25 of Schedule 1—

“Advice given in sound, television or cable programmes

25A.—(1) Paragraph 15 above does not apply to any advice given in any programme or teletext transmission—

- (a) broadcast, or made for broadcasting, by the British Broadcasting Corporation or by the Independent Broadcasting Authority in accordance with the provisions of the Broadcasting Act 1981(a); or
- (b) included, or made for inclusion, in a cable programme service which is, or does not require to be, licensed under the Cable and Broadcasting Act 1984(b).

(2) In this paragraph—

“programme”, in relation to a television or sound broadcasting service or a cable programme service, includes an advertisement and any other item included in that service; and

“teletext transmission” has the same meaning as in section 14(6) of the Broadcasting Act 1981 and includes any such transmission broadcast by a service which is an additional teletext service within the meaning of section 47(2) of the Cable and Broadcasting Act 1984.”.

(a) 1981 c.68.
(b) 1984 c.46.

International Securities Self-regulating organisations

6. The following paragraph shall be inserted after paragraph 25A of Schedule 1 to the Act—

“International Securities Self-regulating organisations

25B.—(1) An activity within paragraph 13 above engaged in for the purposes of carrying out the functions of a body or association which is approved under this paragraph as an international securities self-regulating organisation, whether by the organisation or by any person acting on its behalf, shall not constitute the carrying on of investment business in the United Kingdom for the purposes of Chapter II of Part I of this Act.

(2) In this paragraph—

“International securities business” means the business of buying, selling, subscribing for or underwriting investments (or offering or agreeing to do so, either as principal or agent) which fall within any of the paragraphs in Part I above other than paragraph 10 and, so far as relevant to paragraph 10, paragraph 11 and 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 any risks involved, where 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, the fact that the investments may ultimately be bought otherwise than in the course of international securities business by persons not so expert shall be disregarded; and

“international securities self-regulating organisation” means a body corporate or unincorporated association which

- (a) does not have its head office in the United Kingdom;
- (b) is not eligible for recognition under section 37 or section 39 of this Act 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 section 40(2)(a) or (c) of this Act;
- (c) has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempted persons, persons holding a permission under paragraph 23 above and persons whose head offices are outside the United Kingdom and whose ordinary business is such as is mentioned in paragraph 17(2)(e) above; and
- (d) which facilitates and regulates the activity of its members in the conduct of international securities business.

(3) The Secretary of State may approve as an international securities self-regulating organisation any body or association appearing to him to fall within sub-paragraph (2) above if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as he considers relevant, it appears to him that to do so would be desirable and not result in any undue risk to investors.

(4) Any approval under this paragraph shall be given by notice in writing; and the Secretary of State may by a further notice in writing withdraw any such approval if for any reason it appears to him that it is not appropriate for it to continue in force.

Francis Maude
Parliamentary Under Secretary of State
Department of Trade and Industry

25th February 1988

EXPLANATORY NOTE

(This note is not part of the Order)

This Order restricts the scope of the Financial Services Act 1986 in certain respects. Article 2 restricts the scope of paragraph 13 of Schedule 1 to the Act as it applies to certain arrangements made between insurance companies and persons whose ordinary business involves the lending of money. Article 3 restricts the scope of paragraph 12 of Schedule 1 to the Act as it applies to transactions involving the assignment of long term insurance contracts. Article 4 extends the scope of the exemption afforded by paragraph 21 of Schedule 1 to the Act. Article 5 makes provision as to the application of the Act to advice given in sound, television or cable programmes. Article 6 makes provision for the approval of international securities self-regulating organisations and the exclusion for certain purposes of their activities from activities which constitute the carrying on of investment business in the United Kingdom.

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