
STATUTORY INSTRUMENTS

2001 No. 544

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

PART II

SPECIFIED ACTIVITIES

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(1); and
- (b) “dematerialised instruction”, “Operator”, “settlement bank” and “system-participant” have the meaning given by regulation 3 of the 1995 Regulations.

Exclusions

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.

(1) 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 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⁽²⁾) in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of Part XIII A of that Act⁽³⁾ (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⁽⁴⁾) 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).

(2) 1985 c. 6. Section 428 was substituted by the Financial Services Act 1986 (c. 60), Sch. 12.

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

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