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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 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).