

2017 No. 500

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017

<i>Made</i> - - - -	<i>29th March 2017</i>
<i>Laid before Parliament</i>	<i>30th March 2017</i>
<i>Coming into force</i> - -	<i>3rd January 2018</i>

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

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 and comes into force on 3rd January 2018.

(2) In this Order “the Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b).

Amendment of article 53 of the Order

2.—(1) Article 53 of the Order(c) (advising on investments) is amended as follows.

(2) In paragraph (1)(b)(i), after “for”, insert “, exchanging, redeeming, holding”.

(3) In paragraph (1)(b)(ii)–

(a) after “exercising” insert “or not exercising”; and

(b) for “or underwrite” substitute “, exchange or redeem”.

(4) After paragraph (1) insert–

“(1A) Paragraph (1) does not apply to a person who is appropriately authorised except to the extent that they are providing a personal recommendation.

(1B) A person is appropriately authorised when they are authorised for the purposes of the Act to carry on an activity of a kind specified by a provision of this Order which is not the activity specified by paragraph (1) and is not the activity of agreeing to carry on the activity specified by paragraph (1).

(1C) Subject to paragraph (1D), a personal recommendation is a recommendation–

(a) made to a person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor;

(a) 2000 c.8. Paragraph 25 of Schedule 2 was amended by section 8 of the Financial Services Act 2012 (c.21).

(b) S.I. 2001/544.

(c) Article 53 was amended by S.I. 2003/1476 and 2016/392.

- (b) which constitutes a recommendation to them to do any of the following (whether as principal or agent)–
 - (i) buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular investment which is a security or a relevant investment; or
 - (ii) exercise or not exercise any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment; and
 - (c) that is–
 - (i) presented as suitable for the person to whom it is made; or
 - (ii) based on a consideration of the circumstances of that person.
- (1D) A recommendation is not a personal recommendation if it is issued exclusively to the public.”.

Amendment of article 54 of the Order

- 3.—(1) Article 54 of the Order(a) (advice given in newspapers) is amended as follows.
- (2) After paragraph (2) insert–
- “(2A) Paragraphs (1) and (2) do not apply to advice which is a personal recommendation falling within article 53(1A).”

*David Evennett
Andrew Griffiths*

Two of the Lords Commissioners of Her Majesty’s Treasury

29th March 2017

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b) (“the RAO”), which specifies advising on investments as a regulated activity. The effect of the amendments is that a person who is authorised to carry on a regulated activity which is not the activity specified by article 53(1) of the RAO and is not the activity of agreeing to carry on that activity as specified by article 64 of the RAO will give investment advice only when providing a personal recommendation. The definition of “personal recommendation” in article 53(1A) follows that in Article 9 of Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive(c). Article 54 of the RAO is also amended, so that the activity of advising on investments when giving a personal recommendation described in article 53(1A) of the RAO is outside the exclusion in article 54 for advice given in newspapers etc. from the kinds of activities specified by the articles listed there.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London, SW1A 2HQ or on www.gov.uk and is published alongside the Order on www.legislation.gov.uk.

(a) Article 54 was amended by S.I. 2003/1475, S.I. 2006/2383, S.I. 2009/1342, S.I. 2013/472, S.I. 2015/731, S.I. 2015/910 and S.I.2016/392.

(b) S.I. 2001/544.

(c) The Commission Delegated Regulation has been adopted but has not yet been published in the Official Journal of the European Union. A copy is available at <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF>.

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