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STATUTORY INSTRUMENTS

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**2003 No. 1476**

**The Financial Services and Markets Act 2000  
(Regulated Activities) (Amendment) (No. 2) Order 2003**

**PART 4**

**AMENDMENTS TO OTHER INSTRUMENTS MADE UNDER THE ACT**

**Amendment to the Appointed Representatives Regulations**

**14.**—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001<sup>(1)</sup> are amended as follows.

(2) In regulation 1(2) (interpretation), for “and “contractually based investment””, substitute, “; “contract of insurance”, “contract of general insurance” and “relevant investment””.

(3) In regulation 2(1) (descriptions of business for which appointed representatives are exempt)—

(a) before sub-paragraph (a), insert—

“(aa) an activity of the kind specified by article 21 of the Regulated Activities Order (dealing in investments as agent), where the transaction relates to a contract of general insurance;”;

(b) in sub-paragraph (a)—

(i) for “the Regulated Activities Order”, substitute “that Order”; and

(ii) for “contractually based investments”, substitute “relevant investments”;

(c) after sub-paragraph (ab)<sup>(2)</sup>, insert—

“(ac) an activity of the kind specified by article 39A of that Order (assisting in the administration and performance of a contract of insurance), where the activity relates to a contract of general insurance;”;

(d) in sub-paragraph (d), for “paragraph (a), (ab),”, substitute “sub-paragraph (aa), (a), (ab), (ac)”.

(4) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)—

(a) in paragraph (2)—

(i) before sub-paragraph (a), insert—

“(aa) he enters into investment transactions as agent (in circumstances constituting the carrying on of an activity of the kind specified by article 21 of the Regulated Activities Order) for other counterparties;”;

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(1) [S.I. 2001/1217](#); amended by [S.I. 2001/2508](#) and [S.I. 2003/1475](#).

(2) Inserted by [S.I. 2003/1475](#).

- (ii) in sub-paragraph (a), for “the Regulated Activities Order”, substitute “that Order”;
- (iii) after sub-paragraph (a), insert—

“(ab) he assists in the administration and performance of a contract of insurance (in circumstances constituting the carrying on of an activity of the kind specified by article 39A of that Order) for other counterparties;” and

- (iv) for “contractually based investment”, substitute “relevant investment”; and

- (b) after paragraph (3)(c), insert—

“(4) Where the contract between the principal and the representative permits or requires the representative to carry on business which includes an activity—

- (a) of the kind specified by article 21, 25, 39A or 53 of the Regulated Activities Order or an activity of the kind specified by article 64 of that Order, so far as relevant to any of those articles, and

- (b) which relates to a contract of insurance,

paragraph (5) applies.

(5) Where this paragraph applies, it is also a prescribed requirement for the purposes of subsection (1)(a)(ii) of section 39 of the Act that the contract between the principal and the representative contain a provision providing that the representative is not permitted or required to carry on business, so far as it comprises an activity of the kind specified by paragraph (4), unless he is included in the record maintained by the Authority under section 347 of the Act by virtue of article 93 of the Regulated Activities Order (recorded insurance intermediaries).”.

### **Amendment to the Compensation Scheme: Electing Participants Regulations**

**15.—**(1) The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001(3) are amended as follows.

(2) In regulation 1(2) (interpretation), after the definition of “home State investor-compensation scheme”, insert—

““insurance intermediary” means an insurance intermediary (within the meaning of Article 2(5) of the insurance mediation directive) or a reinsurance intermediary (within the meaning of Article 2(6) of that Directive);”.

(3) In regulation 2 (persons not to be regarded as relevant persons)—

- (a) at the end of paragraph (a), omit “and”; and

- (b) after paragraph (b), insert—

“; and

- (c) any insurance intermediary.”.

(4) In regulation 3(1) (persons who may elect to participate)—

- (a) at the end of sub-paragraph (a), omit “and”; and

- (b) after sub-paragraph (b), insert—

“; and

- (c) any insurance intermediary which is not an investment firm or a credit institution.”.

- (5) In regulation 4 (persons in respect of whom inspection under section 224 does not apply)—
- (a) at the end of paragraph (a), omit “and”; and
  - (b) after paragraph (b), insert—
    - “; and
    - (c) any insurance intermediary.”.

### **Amendment to the Non-Exempt Activities Order**

**16.**—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(4) is amended as follows.

- (2) In article 2(1) (interpretation)—
- (a) after the definition of “the Act”, insert—
    - ““contract of insurance” has the meaning given by article 3(1) of the Regulated Activities Order;”;
  - (b) after the definition of “occupational pension scheme”, insert—
    - ““record of insurance intermediaries” means the record maintained by the Authority under section 347 of the Act (the public record) by virtue of article 93 of the Regulated Activities Order (recorded insurance intermediaries);”;
  - (c) for the definition of “relevant investment”, substitute—
    - ““relevant investment” has the meaning given by article 3(1) of the Regulated Activities Order;”.
- (3) After article 4, insert—
- “**4A.** An activity of the kind specified by article 21 or 25 of the Regulated Activities Order (dealing in investments as agent or arranging deals in investments) in so far as it—
    - (a) relates to a transaction for the sale or purchase of rights under a contract of insurance; and
    - (b) is carried on by a person who is not included in the record of insurance intermediaries.”.
- (4) In article 5(1), for “relevant investment”, substitute “security or contractually based investment”.
- (5) After article 5, insert—
- “**5A.** An activity of the kind specified by article 39A of the Regulated Activities Order (assisting in the administration and performance of a contract of insurance) if it is carried on by a person who is not included in the record of insurance intermediaries.”.
- (6) In article 6—
- (a) in paragraph (1), for “either paragraph (2) or (3)”, substitute “paragraph (2), (3) or (5)”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (b), for “relevant investment” substitute “security or contractually based investment”;
    - (ii) in sub-paragraph (c)—
      - (aa) in sub-paragraph (i), for “relevant investment”, substitute “security or contractually based investment”; and

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(4) [S.I. 2001/1227](#); amended by [S.I. 2001/3650](#), [S.I. 2002/682](#), [S.I. 2002/1777](#) and [S.I. 2003/1475](#).

- (bb) in sub-paragraph (iii), for “a relevant investment”, substitute “such an investment”; and
- (c) after paragraph (4), insert—
  - “(5) Advice falls within this paragraph in so far as—
    - (a) it relates to a transaction for the sale or purchase of rights under a contract of insurance; and
    - (b) it is given by a person who is not included in the record of insurance intermediaries.”.

### **Misleading statements and practices**

**17.**—(1) The Financial Services and Markets Act 2000 (Misleading Statements and Practices) Order 2001(5) is amended as follows.

- (2) In article 2 (interpretation)—
  - (a) after the definition of “the Act”, insert—
    - ““contract of insurance” has the meaning given by article 3(1) of the Regulated Activities Order;”;
  - (b) after the definition of “the Financial Promotion Order”, insert—
    - ““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(6);”.
- (3) In article 3—
  - (a) in paragraph (d), for “the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”, substitute “the Regulated Activities Order”; and
  - (b) after paragraph (d), insert—
    - “;
  - (e) (so far as not already specified by paragraph (a)), an activity of the kind specified by—
    - (i) article 14 of the Regulated Activities Order (dealing in investments as principal),
    - (ii) article 21 of that Order (dealing in investments as agent),
    - (iii) article 25(1) or (2) of that Order (arranging deals in investments),
    - (iv) article 39A of that Order (assisting in the administration and performance of a contract of insurance),
    - (v) article 53 of that Order (advising on investments), or
    - (vi) so far as relevant to any of those articles, article 64 of that Order (agreeing),
 so far as it relates to a contract of insurance.”.

### **Amendment to the By Way of Business Order**

**18.**—(1) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(7) is amended as follows.

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(5) S.I. 2001/3645; amended by S.I. 2002/1777.

(6) S.I. 2001/544; amended by S.I. 2001/3544; S.I. 2002/682; S.I. 2002/1310; S.I. 2002/1776 and S.I. 2003/1475.

(7) S.I. 2001/1177; amended by S.I. 2003/1475.

(2) In article 1(2) (interpretation), at the beginning of sub-paragraph (b), insert ““contract of insurance””.

(3) In article 3 (investment business)—

(a) in paragraph (1), for “this article applies”, substitute “paragraph (2) applies”;

(b) in paragraph (2)—

(i) for “This article”, substitute “This paragraph”; and

(ii) for sub-paragraph (j), substitute—

“(j) article 64 (agreeing) so far as relevant to any of the articles mentioned in sub-paragraphs (a) to (i),

but does not apply to any insurance mediation activity.”;

(c) in paragraph (3), for “This article”, substitute “Paragraph (1)”;

(d) after paragraph (3), insert—

“(4) A person is not to be regarded as carrying on by way of business any insurance mediation activity unless he takes up or pursues that activity for remuneration.

(5) In this article, “insurance mediation activity” means any activity of the kind specified by article 21, 25(1) or (2), 39A or 53 of the Regulated Activities Order, or, so far as relevant to any of those articles, article 64 of that Order, which is carried on in relation to a contract of insurance.”.