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STATUTORY INSTRUMENTS

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**1991 No. 489**

**FINANCIAL SERVICES**

**The Financial Services Act 1986 (Restriction  
of Right of Action) Regulations 1991**

<i>Made</i>	- - - -	<i>4th March 1991</i>
<i>Laid before Parliament</i>		<i>8th March 1991</i>
<i>Coming into force</i>	- -	<i>1st April 1991</i>

The Secretary of State, in exercise of his powers under section 62A of the Financial Services Act 1986<sup>(1)</sup> and of all other powers enabling him in that behalf, and having consulted those persons who have made rules or regulations the right to bring an action in respect of a contravention of which will be affected by these Regulations, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Financial Services Act 1986 (Restriction of Right of Action) Regulations 1991 and shall come into force on 1st April 1991.

(2) In these Regulations—

(a) “the Act” means the Financial Services Act 1986; and

(b) “investment business” includes—

(i) anything done by a person holding a permission granted under paragraph 23 of Schedule I to the Act being a thing to which paragraph 12 of that Schedule does not apply by virtue of paragraph 23(1); and

(ii) the activity of management mentioned in section 191 of the Act when engaged in by a person who is treated as carrying on investment business by virtue of that section.

**Definition of private investor**

2.—(1) For the purposes of section 62A(1) of the Act, the expression “private investor” means an investor whose cause of action arises as a result of anything he has done or suffered—

(a) in the case of an individual, otherwise than in the course of carrying on investment business; and

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(1) 1986 c. 60; section 62A was inserted into the Financial Services Act 1986 by section 193 of the Companies Act 1989 (c. 40).

- (b) in the case of any other person, otherwise than in the course of carrying on business of any kind,

but does not include a government, local authority or public authority.

(2) In paragraph (1) above, the expression “government, local authority or public authority” has the meaning given in Note (1) to paragraph 3 of Schedule 1 to the Act.

**Circumstances in which action may be brought at suit of person other than private investor**

3. The following circumstances are specified for the purposes of section 62A(1) as being circumstances in which action may be brought at the suit of a person other than a private investor—

- (a) circumstances in which the contravention in question is not a contravention of a kind mentioned in section 62(1) or (2) of the Act;
- (b) circumstances in which the contravention in question is a contravention of any rule, regulation, condition or requirement prohibiting a person from seeking to make provision excluding or restricting any duty or liability;
- (c) circumstances in which the contravention in question is a contravention of any rule, regulation, condition or requirement directed at ensuring that transactions in an investment are not effected with the benefit of unpublished information which, if made public, would be likely to affect the price of the investment; and
- (d) circumstances in which the action would be brought at the suit of a person in a fiduciary or representative capacity (“the representative”) and the following conditions are fulfilled—
  - (i) the cause of action arises as a result of anything done or suffered at a time when the person to whom the representative owed a duty or for whom he was acting was a person of a kind mentioned in sub-paragraph (a) or (b) of regulation (2)(1) above; and
  - (ii) any recovery would be exclusively for the benefit of such a person and could not be effected through action brought otherwise than at the suit of the representative.

4th March 1991

*John Redwood*  
Minister of State,  
Department of Trade and Industry

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Regulation 2 of the Regulations defines the expression “private investor” for the purposes of section 62A(1) of the Financial Services Act 1986. Section 62A was inserted into the Financial Services Act 1986 by the Companies Act 1989 so that, except in specified circumstances, only private investors could bring actions under section 62 of that Act. Section 62A(2) of the Financial Services Act 1986 gives the Secretary of State power to define the expression “private investor” for these purposes and section 62A(1) gives him power to specify circumstances in which actions under section 62 lie at the suit of a person who is not a private investor.

Regulation 3 of the Regulations specifies the circumstances in which a person who is not a private investor retains the right to bring an action under section 62.