

2001 No. 1177

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Carrying on Regulated Activities by Way of Business)
Order 2001**

Made - - - - - 26th March 2001

Coming into force in accordance with article 1

Whereas a draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 429(1) of the Financial Services and Markets Act 2000(a);

Now, therefore, the Treasury, in exercise of the powers conferred on them by sections 419 and 428(3) of that Act, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001, and comes into force on the day on which section 19 of the Financial Services and Markets Act 2000 comes into force.

(2) In this Order—

- (a) the “Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);
- (b) “contractually based investment”, “deposit”, “overseas person” and “security” have the same meaning as in that Order;
- (c) “shares” and “debentures” mean any investment of the kind specified by article 76 or 77 of that Order;
- (d) “units in a collective investment scheme” means any investment of the kind specified by article 81 of that Order;
- (e) “warrants” means any investment of the kind specified by article 79 of that Order.

Deposit taking business

2.—(1) A person who carries on an activity of the kind specified by article 5 of the Regulated Activities Order (accepting deposits) is not to be regarded as doing so by way of business if—

- (a) he does not hold himself out as accepting deposits on a day to day basis; and
- (b) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of securities.

(2) In determining for the purposes of paragraph (1)(b) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(a) 2000 c. 8.
(b) S.I. 2001/544.

Investment business

3.—(1) A person is not to be regarded as carrying on by way of business an activity to which this article applies, unless he carries on the business of engaging in one or more such activities.

(2) This article applies to an activity of the kind specified by any of the following provisions of the Regulated Activities Order, namely—

- (a) article 14 (dealing in investments as principal);
- (b) article 21 (dealing in investments as agent);
- (c) article 25 (arranging deals in investments), except in so far as that activity relates to an investment of the kind specified by article 86 of that Order (Lloyd's syndicate capacity and syndicate membership), or article 89 of that Order (rights and interests) so far as relevant to that article;
- (d) article 37 (managing investments);
- (e) article 40 (safeguarding and administering investments);
- (f) article 45 (sending dematerialised instructions);
- (g) article 51 (establishing etc. a collective investment scheme);
- (h) article 52 (establishing etc. a stakeholder pension scheme);
- (i) article 53 (advising on investments); and
- (j) article 64 (agreeing), so far as relevant to any of the articles mentioned in subparagraphs (a) to (i).

(3) This article is without prejudice to article 4 of this Order.

Managing investments: occupational pension schemes

4.—(1) A person who carries on an activity of the kind specified by article 37 of the Regulated Activities Order (managing investments), where the assets in question are held for the purposes of an occupational pension scheme, is to be regarded as carrying on that activity by way of business, except where—

- (a) he is a person to whom paragraph (2) applies; or
- (b) all routine or day to day decisions in the carrying on of that activity (other than decisions falling within paragraph (6)), so far as relating to relevant assets, are taken on his behalf by—
 - (i) an authorised person who has permission to carry on activities of the kind specified by article 37 of the Regulated Activities Order;
 - (ii) a person who is an exempt person in relation to activities of that kind; or
 - (iii) an overseas person.

(2) This paragraph applies to—

- (a) any trustee of a relevant scheme who is a beneficiary or potential beneficiary under the scheme; and
- (b) any other trustee of a relevant scheme who takes no routine or day to day decisions relating to the management of any relevant assets.

(3) In this article—

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

“relevant assets” means assets of the scheme in question which are securities or contractually based investments;

“relevant scheme” means any occupational pension scheme of a kind falling within paragraph (4) or (5).

(4) A scheme falls within this paragraph if—

- (a) it is constituted under an irrevocable trust;
- (b) it has no more than twelve relevant members;
- (c) all relevant members, other than any relevant member who is unfit to act, or is incapable of acting, as trustee of the scheme, are trustees of it; and

- (d) all routine or day to day decisions relating to the management of the assets of the scheme which are relevant assets are required to be taken by all, or a majority of, relevant members who are trustees of the scheme or by a person of a kind falling within paragraph (1)(b)(i) or (ii) acting alone or jointly with all, or a majority of, such relevant members;

and for these purposes a person is a relevant member of a scheme if he is an employee or former employee by or in respect of whom contributions to the scheme are being or have been made and to or in respect of whom benefits are or may become payable under the scheme.

- (5) A scheme falls within this paragraph if—
 - (a) it has no more than fifty members;
 - (b) the contributions made by or in respect of each member of the scheme are used in the acquisition of a contract of insurance on the life of that member or in the acquisition of a contract to pay an annuity on that life;
 - (c) the only decision of a kind described in paragraph (1)(b) which may be taken in relation to the scheme is the selection of such contracts; and
 - (d) each member is given the opportunity to select the contract which the contributions made by or in respect of him will be used to acquire.
- (6) A decision falls within this paragraph if—
 - (a) it is a decision by the trustees of an occupational pension scheme to buy, sell or subscribe for units in a collective investment scheme or shares or debentures of a body corporate (or warrants relating to such shares or debentures); or debentures);
 - (b) the decision is in accordance with advice given by—
 - (i) an authorised person who has permission to carry on activities of the kind specified by article 53 of the Regulated Activities Order;
 - (ii) a person who is an exempt person in relation to activities of that kind; or
 - (iii) an overseas person;
 - (c) the collective investment scheme or body corporate has as its primary purpose—
 - (i) the acquisition and holding of relevant investments; or
 - (ii) the acquisition and holding of units in a collective investment scheme or shares or debentures of a body corporate (or warrants relating to such shares or debentures), which (in either case) has as its primary purpose the acquisition and holding of relevant investments; and
 - (d) the property of the collective investment scheme or body corporate mentioned in sub-paragraph (a) (and, where applicable, the property of the collective investment scheme or body corporate mentioned in sub-paragraph (c)(ii)) is managed by—
 - (i) an authorised person who has permission to carry on an activity of the kind specified by article 37 of the Regulated Activities Order;
 - (ii) a person who is an exempt person in relation to activities of that kind; or
 - (iii) an overseas person.

(7) In paragraph (6), “relevant investments” means shares or debentures which are not traded on any investment exchange, or on any public market, in the United Kingdom or in any country or territory outside the United Kingdom, or warrants relating to such shares or debentures.

Greg Pope
Jim Dowd

26th March 2001

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision as to circumstances in which persons are, or are not, to be regarded as carrying on regulated activities by way of business for the purposes of the Financial Services and Markets Act 2000 (“the Act”). An activity is a “regulated activity” for the purposes of the Act if it is an activity of a specified kind, and is carried on by way of business in relation to an investment of a specified kind. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) specifies kinds of activity and kinds of investment for these purposes. Section 19 of the Act prohibits persons who are not authorised or exempt from carrying on any regulated activity in the United Kingdom. Contravention of that prohibition is a criminal offence.

Articles 2 and 3 make provision as to the circumstances in which a person who accepts deposits, or carries on certain kinds of dealing and other investment activities, is not to be regarded as doing so by way of business. Article 4 provides that a person who manages the assets of an occupational pension scheme is to be regarded as doing so by way of business except in certain specified circumstances.

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