

2001 No. 1217

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Appointed Representatives) Regulations 2001**

Made - - - - - 28th March 2001

Laid before Parliament 28th March 2001

Coming into force in accordance with article 1(1)

The Treasury, in exercise of the powers conferred on them by sections 39(1) and 417(1)(a) of the Financial Services and Markets Act 2000(b) (“the Act”), hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001, and come into force on the day on which section 19 of the Act comes into force.

(2) In these Regulations—

“buy”, “sell”, “security” and “contractually based investment” have the same meaning as in the Regulated Activities Order;

“other counterparties” means persons other than the principal;

“the principal”, in relation to a contract, means the party who is an authorised person, and “the representative” means the other party;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c).

Descriptions of business for which appointed representatives are exempt

2. Any business which comprises—

(a) an activity of the kind specified by article 25 of the Regulated Activities Order (arranging deals in investments), where the arrangements are for or with a view to transactions relating to securities or contractually based investments;

(b) an activity of the kind specified by article 40 of that Order (safeguarding and administering investments), where the activity consists of arranging for one or more other persons to safeguard and administer assets;

(c) an activity of the kind specified by article 53 of that Order (advising on investments); or

(d) an activity of the kind specified by article 64 of that Order (agreeing to carry on activities), so far as relevant to an activity falling within paragraph (a), (b) or (c);

is prescribed for the purposes of subsection (1)(a)(i) of section 39 of the Act (exemption of appointed representatives).

(a) See definition of “prescribed”.

(b) 2000 c. 8.

(c) S.I. 2001/544.

Requirements applying to contracts between authorised persons and appointed representatives

3.—(1) For the purposes of subsection (1)(a)(ii) of that section, it is a prescribed requirement that the contract between the principal and the representative must (unless it prohibits the representative from representing other counterparties) contain a provision enabling the principal to—

- (a) impose such a prohibition; or
- (b) impose restrictions as to the other counterparties which the representative may represent, or as to the types of investment in relation to which the representative may represent other counterparties.

(2) For the purposes of paragraph (1) a representative is to be treated as representing other counterparties where he—

- (a) makes arrangements (in circumstances constituting the carrying on of an activity of the kind specified by article 25 of the Regulated Activities Order) for persons to enter (or with a view to persons entering) into investment transactions with other counterparties;
- (b) arranges (in circumstances constituting the carrying on of an activity of the kind specified by article 40 of that Order) for other counterparties to safeguard and administer assets; or
- (c) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53 of that Order) on the merits of entering into investment transactions with other counterparties;

where an “investment transaction” means a transaction to buy, sell, subscribe for or underwrite an investment which is a security or a contractually based investment.

Greg Pope
Clive Betts

28th March 2001

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the descriptions of business which appointed representatives of authorised persons may carry on without themselves requiring authorisation under the Financial Services and Markets Act 2000 (“the Act”). Regulation 2 prescribes, for this purpose, any business comprising the regulated activity of arranging deals in certain investments, arranging for the safeguarding and administration of assets, or advising on investments (or agreeing to do any of those things).

The Regulations also prescribe the requirements with which a contract between an authorised person and his representative must comply if the representative is to benefit from exemption as an appointed representative under the Act. Under regulation 3, those requirements are that, if the contract does not prohibit the representative from acting for persons other than his principal, it must contain provision allowing the principal to prohibit him from doing so, or to restrict the extent to which he can do so.

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