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STATUTORY INSTRUMENTS

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**2001 No. 2636**

The Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001

PART II

AUTHORISATION AND PERMISSION FOR  
PERSONS AUTHORISED ETC. UNDER OLD LAW

CHAPTER I

permissions under part iv of the act

*Persons authorised or exempted under the Financial Services Act*

**Authorisation under section 25 of the Financial Services Act**

3.—(1) Any person who immediately before commencement was authorised under section 25 of the Financial Services Act is to be treated as having, at commencement, a Part IV permission to carry on regulated activities of a kind which, and on a scale which, and in relation to persons for whom he was, immediately before commencement—

- (a) by reason of that authorisation, able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act; and
- (b) able to carry on there without contravening any rules made under section 48(2)(a) or (b) of that Act.

(2) The reference in paragraph (1) to the regulated activities which immediately before commencement the person was able to carry on “by reason of” his authorisation under section 25 of the Financial Services Act does not include a reference to any activity—

- (a) as respects which he was then also an exempted person; or
- (b) as respects which he was then also an authorised person by virtue of section 24 or 24A of that Act.

(3) Where immediately before commencement a person would have been authorised under section 25 of the Financial Services Act but for the suspension of his authorisation under section 28 of that Act, paragraph (1) applies as if the authorisation had not been suspended.

(4) Where paragraph (3) applies, the suspension has effect after commencement as if it were a requirement—

- (a) imposed under section 43; and
- (b) framed so as to expire when (but for the repeal of the Financial Services Act) the suspension would have expired,

that the person refrain from carrying on any activity which, under paragraphs (1) to (3), he has by virtue of the suspended authorisation a Part IV permission to carry on.

### **Authorisation under section 7 of the Financial Services Act**

4.—(1) Any person who immediately before commencement was authorised under section 7 of the Financial Services Act is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which he was, immediately before commencement—

- (a) by reason of that authorisation able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act; and
- (b) able to carry on there without contravening any rules of a recognised self-regulating organisation of the kind described in section 10(3) of that Act.

(2) The reference in paragraph (1) to the regulated activities which immediately before commencement the person was able to carry on “by reason of” his authorisation under section 7 of the Financial Services Act does not include a reference to any activity—

- (a) as respects which he was then also an exempted person; or
- (b) as respects which he was then also an authorised person by virtue of section 24 or 24A of that Act.

### **Persons certified by designated professional bodies**

5.—(1) Any person who immediately before commencement was authorised under section 15 of the Financial Services Act by virtue of holding a certificate issued by a designated professional body and who has given notice in accordance with paragraph (3) is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which he was, immediately before commencement—

- (a) by reason of that certificate, able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act; and
- (b) able to carry on there without contravening any rules of the recognised professional body of the kind described in section 18(3) of that Act.

(2) “Designated professional body” means a recognised professional body that at commencement was a body designated under section 326(1).

(3) The notice given by the person mentioned in paragraph (1) must—

- (a) state that the person wishes to have a Part IV permission by virtue of this article;
- (b) be in such form as the Authority may direct; and
- (c) be given by the person to the Authority at least one month before commencement or where the person is authorised under section 15 of the Financial Services Act within that period then within a reasonable period after he is so authorised.

(4) The reference in paragraph (1) to the activities which immediately before commencement the person was able to carry on “by reason of” his certificate does not include a reference to any activity as respects which he was then also an exempted person.

(5) The notice referred to in paragraph (3) may state that the person wishes to have a Part IV permission at commencement only for regulated activities of a kind specified in the notice, or only for regulated activities on a scale or in relation to a class of persons so specified.

### **Listed institutions**

6.—(1) Any person (“P1”) who immediately before commencement was—

- (a) a listed institution within the meaning of section 43 of the Financial Services Act;
- (b) an exempted person by reason of his inclusion in the list maintained under that section;

- (c) able, in accordance with any relevant conditions or arrangements applicable to him, to carry on the activities set out in Parts I, II and III of Schedule 5 to the Financial Services Act,

is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities mentioned in paragraph (2).

- (2) The regulated activities mentioned in this paragraph are—
  - (a) activities of the kind specified by articles 14, 21 and 25 of the Regulated Activities Order and the activity of the kind specified by article 64 of that Order, in so far as it relates to those activities;
  - (b) the activity of the kind specified by article 53 of the Regulated Activities Order (and by article 64 of that Order, in so far as it relates to article 53) where the advice given by P1—
    - (i) is given in connection with a transaction in the course of which the only regulated activities carried on by P1 are regulated activities of the kind mentioned in subparagraph (a); and
    - (ii) relates to the carrying on by P1 of those activities in the course of that transaction, when those activities are carried on in relation to investments specified by any of articles 77 to 80, 83, 84 and 85 of that Order or by article 89 of that Order as it relates to investments specified by those articles.

- (3) Any person (“P2”) who immediately before commencement was—
  - (a) a listed institution within the meaning of section 43 of the Financial Services Act;
  - (b) an exempted person by reason of his inclusion in the list maintained under that section;
  - (c) able, in accordance with any relevant conditions or arrangements applicable to him, to carry on only the activities set out in Part III of Schedule 5 to the Financial Services Act,

is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities mentioned in paragraph (4).

- (4) The regulated activities mentioned in this paragraph are—
  - (a) the activity of the kind specified by article 25 of the Regulated Activities Order and the activity of the kind specified by article 64 of that Order, in so far as it relates to that activity;
  - (b) the activity of the kind specified by article 53 of the Regulated Activities Order (and by article 64 of that Order in so far as it relates to article 53) where the advice given by P2—
    - (i) is given in connection with a transaction in the course of which the only regulated activities carried on by P2 are the activities of the kind mentioned in subparagraph (a); and
    - (ii) relates to the carrying on by P2 of those activities in the course of that transaction, when those activities are carried on in relation to investments specified by any of articles 77 to 80, 83, 84 and 85 of that Order or by article 89 of that Order as it relates to investments specified by those articles.

(5) “Relevant conditions or arrangements” in paragraphs (1) and (3) means conditions imposed or arrangements made under section 43(2) of the Financial Services Act.

### **Lloyd’s underwriting agents**

7. Any person who, immediately before commencement, was an underwriting agent within the meaning of section 2(1) of Lloyd’s Act 1982(1) is to be treated as having, at commencement, a Part

IV permission to carry on any regulated activities which immediately before commencement he was permitted under that Act to carry on.

### **Lloyd's members' advisers**

**8.**—(1) This article applies in the case of a person (“L”) where—

- (a) L does not have permission at commencement to carry on an article 56 activity;
- (b) L was, immediately before commencement, lawfully carrying on by way of business in the United Kingdom an article 56 activity; and
- (c) L has made before commencement, and has not withdrawn, an application for permission to carry on an article 56 activity in accordance with Part IV of the Act and that application has not been refused (or, if the application has been refused, L has referred the matter to the Tribunal within the period mentioned in section 133(1) of the Act and the reference has not been decided).

(2) The general prohibition does not apply to the carrying on by L of an article 56 activity until his application is decided and permission for him to carry on that activity is refused.

(3) For the purposes of this article an “article 56 activity” is a regulated activity of the kind specified by article 56 (advice on syndicate participation at Lloyd's) of the Regulated Activities Order.

(4) For the purposes of paragraph (2), an application is decided when it has been determined and there is no possibility (or further possibility) of the determination being reversed or varied on a reference to a tribunal or an appeal.

### **Appointed representatives**

**9.** Any person who—

- (a) immediately before commencement was an exempted person under section 44 of the Financial Services Act (appointed representatives); and
- (b) is at commencement an authorised person (and so excluded from the operation of section 39(1) (exemption of appointed representatives other than authorised persons)),

is to be treated as having, at commencement, a Part IV permission to carry on any regulated activity in respect of which he was, immediately before commencement, an exempted person by reason of section 44 of the Financial Services Act.

### **Investment business carried on overseas before commencement**

**10.**—(1) A person (“A”) who was, immediately before commencement—

- (a) authorised under the Financial Services Act; and
- (b) carrying on overseas investment business,

is to be treated as having, at commencement, a Part IV permission to carry on any corresponding overseas regulated activities in the country or territory where he carried on that overseas investment business.

(2) In this article—

“corresponding overseas regulated activities” means regulated activities which—

- (a) A carries on after commencement by virtue of continuing to carry on his overseas investment business; and
- (b) A is regarded as carrying on in the United Kingdom by virtue of section 418;

“overseas investment business” means business which—

- a) was investment business within the meaning of section 1(2) of the Financial Services Act;
- b) A was carrying on in a country or territory outside the United Kingdom without contravening regulation 20 of the ISD Regulations or any relevant rules.

(3) For the purposes of paragraph (2) “relevant rules” in relation to a person means such of the following rules as were applicable to him immediately before commencement—

- (a) rules under section 48(2)(a) or (b) of the Financial Services Act;
- (b) rules of a recognised self-regulating organisation made pursuant to section 10(3) of the Financial Services Act or of a kind falling within article 35(6);
- (c) rules of a recognised professional body of the kind described in section 18(3) of the Financial Services Act.