

2001 No. 3771

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Scope of Permission Notices) Order 2001**

Made - - - - - 26th November 2001

Laid before Parliament 26th November 2001

Coming into force on 1st December 2001

The Treasury in the exercise of the powers conferred on them by sections 426 to 428 of the Financial Services and Markets Act 2000(a) and of all other powers enabling them in that behalf hereby make the following Order:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Scope of Permission Notices) Order 2001 and comes into force on 1st December 2001.

(2) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“the Authorised Persons Order” means the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001(b);

“commencement” means the beginning of 1st December 2001;

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

Revision of scope of permission notices

2.—(1) This article applies where—

(a) the Authority has given, before commencement, a scope of permission notice under article 55 of the Authorised Persons Order;

(b) that notice falls within one of the cases specified in article 3;

(c) the recipient of the notice has, before commencement, notified the Authority in accordance with article 56(1)(a) of the Authorised Persons Order that he agrees with the matters stated in the notice;

(d) the Authority has, before commencement, given that recipient a notice (“the revision notice”) revising the scope of permission notice in a permitted manner.

(2) If the recipient of the scope of permission notice does not, on or before 4 January 2002, notify the Authority that he objects to the revision notice, then article 57(1) of the Authorised Persons Order applies as if—

(a) the reference to the scope of permission notice in that article were to the scope of permission notice as revised by the revision notice; and

(b) the person has agreed to that notice as so revised.

(a) 2000 c. 8.

(b) S.I. 2001/2636. This Order was amended by S.I. 2001/3650, articles 6 to 10.

(c) S.I. 2001/544. This Order was amended by S.I. 2001/3544.

(3) If the recipient of the scope of permission notice notifies the Authority on or before 4 January 2002 that he objects to the revision notice, then article 57(1) of the Authorised Persons Order applies as if the revision notice had not been sent.

Cases in which scope of permission notices may be revised

3. The cases specified in this article are as follows:

CASE 1

Where—

- (a) the recipient of the scope of permission notice was, at the time the notice was sent, an authorised person within the meaning of the Financial Services Act 1986(a);
- (b) that person is to be treated, by virtue of Part II of the Authorised Persons Order, as having a Part IV permission to carry on a regulated activity of the kind specified by article 14 of the Regulated Activities Order (dealing in investments as principal) in so far as the activity consists of his entering into a transaction relating to contractually based investments;
- (c) the person is not subject, by virtue of Part III of the Authorised Persons Order, to a requirement imposed under section 43 of the Act preventing him from carrying on the regulated activity in paragraph (b); and
- (d) the scope of permission notice did not specify that the person had a Part IV permission to carry on the regulated activity in paragraph (b).

CASE 2

Where—

- (a) the recipient of the scope of permission notice was, at the time the notice was sent, a member of the Personal Investment Authority Limited;
- (b) the scope of permission notice specified that he had a Part IV permission to carry on a regulated activity of the kind specified by article 53 of the Regulated Activities Order (advising on investments) in relation to a particular specified kind of investment (“investment A”);
- (c) the person is to be treated, by virtue of Part II of the Authorised Persons Order, as having a Part IV permission to carry on that regulated activity also in relation to rights to or interests in (within the meaning of activity 89 of the Regulated Activities Order) investment A;
- (d) the person is not subject, by virtue of Part III of the Authorised Persons Order, to a requirement imposed under section 43 of the Act preventing him from carrying on that regulated activity in relation to rights to or interests in investment A; and
- (e) the scope of permission notice did not specify that he had a Part IV permission to carry on that regulated activity in relation to rights to or interests in investment A.

CASE 3

Where—

- (a) the scope of permission notice specified that the recipient of the notice has a Part IV permission to carry on a regulated activity in relation to a particular specified kind of investment (“investment B”); and
- (b) the scope of permission notice purported also to specify that he had permission to carry on that regulated activity in relation to rights to and interests in investments generally rather than only in relation to rights to or interests in investment B.

CASE 4

Where—

- (a) the recipient of the scope of permission notice was, at the time the notice was sent, a member of either the Investment Management Regulatory Organisation Limited or the Personal Investment Authority Limited;

(a) 1986 c. 40.

- (b) the scope of permission notice specified that he had a Part IV permission to carry on a regulated activity of the kind specified by article 40 of the Regulated Activities Order (safeguarding and administering investments);
- (c) the scope of permission notice also specified that he was subject to a requirement under section 43 of the Act that he should not hold or control client money; and
- (d) the person is not subject, by virtue of Part III of the Authorised Persons Order, to that requirement.

CASE 5

Where—

- (a) the recipient of the scope of permission notice was, at the time the notice was sent, a member of either the Investment Management Regulatory Organisation Limited or the Personal Investment Authority Limited;
- (b) the scope of permission notice specified that he had a Part IV permission to carry on a regulated activity of the kind specified by either article 51 of the Regulated Activities Order (establishing etc. a collective investment scheme) or article 52 of that Order (establishing etc. a stakeholder pension scheme);
- (c) the scope of permission notice purported to limit that permission to carrying on the activity in relation to a specified kind of investment; and
- (d) the Part IV permission that the person is to be treated as having by virtue of Parts II and III of the Authorised Persons Order is not subject to that limitation.

CASE 6

Where—

- (a) the recipient of the scope of permission notice was, at the time the notice was sent, a member of the Investment Management Regulatory Organisation Limited;
- (b) the scope of permission notice specified that he had a Part IV permission to carry on a regulated activity of the kind specified by article 21 of the Regulated Activities Order (dealing in investments as agent) for the purpose of stock lending activities;
- (c) the scope of permission notice purported further to limit his permission so that he could not carry on that activity in relation to investments of the kind specified by article 78 of the Regulated Activities Order (government and public securities); and
- (d) the Part IV permission that the person is to be treated as having by virtue of Parts II and III of the Authorised Persons Order is not subject to that limitation.

Permitted revisions

4. For the purposes of article 2(1)(d), a revision notice revises the scope of permission notice in a permitted manner if—

- (a) in Case 1 in article 3, it results in the scope of permission notice specifying that the recipient has a Part IV permission to carry on the regulated activities described in paragraph (b) of that Case;
- (b) in Case 2 in article 3, it results in the scope of permission notice specifying that the recipient has a Part IV permission to carry on the regulated activity described in paragraph (c) of that Case;
- (c) in Case 3 in article 3, it results in the scope of permission notice specifying that his Part IV permission to carry on a particular regulated activity in relation to rights to or interests in investments is limited to rights to or interests in investment B (as defined in that Case);
- (d) in Case 4 in article 3, it results either in the lifting of the requirement that the recipient should not control client money or in the lifting of the requirement that he should not hold or control client money;
- (e) in Case 5 in article 3, it results in the removal of the limitation described in paragraph (c) of that Case;
- (f) in Case 6 in article 3, it results in the removal of the limitation described in paragraph (c) of that Case;

- (g) in any Case in article 3, it results in the scope of permission notice specifying that the recipient has a Part IV permission to carry on a regulated activity of the kind specified by article 64 of the Regulated Activities Order (agreeing to carry on specified kinds of activity) to the extent appropriate having regard to paragraphs (a) to (f) above.

Amendment of earlier provisions

5.—(1) The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001(a) is amended as follows.

(2) In article 29 for paragraphs (2) and (3) substitute—

“(2) Where this article applies if the person does not, on or before 4 January 2002, notify the Authority that he objects to the revision notice, then article 57(1) of the Authorised Persons Order applies as if—

- (a) the reference to the scope of permission notice in that article were to the scope of permission notice as revised by the revision notice; and
- (b) the person had agreed to that notice as so revised.

(3) If the person notifies the Authority on or before 4 January 2002 that he objects to the revision notice, then article 57(1) of the Authorised Persons Order applies as if the revision notice had not been sent.”.

(3) In article 30 for paragraphs (2) and (3) substitute—

“(2) Where this article applies if the person does not, on or before 4 January 2002, notify the Authority that he objects to the revision notice, then article 57(1) of the Authorised Persons Order applies as if—

- (a) the reference to the scope of permission notice in that article were to the scope of permission notice as revised by the revision notice; and
- (b) the person had agreed to that notice as so revised.

(3) If the person notifies the Authority on or before 4 January 2002 that he objects to the revision notice, then article 57(1) of the Authorised Persons Order applies as if the revision notice had not been sent”.

Tony McNulty
John Heppell

26th November 2001

Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 2001/3650.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order enables the Financial Services Authority to correct some of the scope of permission notices given under Part IV of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (S.I. 2001/2636) (“the Authorised Persons Order”). The Authorised Persons Order confers on a person who was authorised under one of the regulatory enactments replaced by the Financial Services and Markets Act 2000 a permission to carry on the regulated activities for which he was previously authorised. A duty was imposed on the Authority by article 55 of the Authorised Persons Order to give each such person a scope of permission notice describing the activities for which he had permission by virtue of that Order. The recipient of the notice may either agree or dispute the content of the notice. If he notifies the Authority that he agrees with the matters stated in the notice, then that notice becomes the conclusive source of his new permission from the commencement of the new regime on 1st December 2001. Some firms have notified their agreement to scope of permission notices which contain errors in the specification of the permission the firm is to be treated as having or in the requirements to which the firm is treated as subject. This Order allows those notices to be revised to ensure that the permission having effect as from 1st December 2001 by virtue of the operation of article 57(1) of the Authorised Persons Order properly reflects the permission conferred on the person by that Order. These corrections are in addition to those provided for in articles 29 and 30 of the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (S.I. 2001/3650). Those articles are amended by article 5 of this Order to ensure that the date by which the firm has to respond, if it objects to the revision notice, is the same for all the corrections made under both Orders.

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