
Status: Point in time view as at 01/10/2018.

Changes to legislation: The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Section 53 is up to date with all changes known to be in force on or before 04 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

STATUTORY INSTRUMENTS

2001 No. 544

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

PART II

SPECIFIED ACTIVITIES

CHAPTER XII

ADVISING ON INVESTMENTS

The activity

Advising on investments

53.—^[F1](1) Advising a person is a specified kind of activity if the advice is—

- (a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
- (b) advice on the merits of his doing any of the following (whether as principal or agent)—
 - (i) buying, selling, subscribing for^[F2], exchanging, redeeming, holding] or underwriting a particular investment which is a security^[F3], structured deposit] or a ^[F4]relevant investment], or
 - (ii) exercising ^[F5]or not exercising] any right conferred by such an investment to buy, sell, subscribe for^[F6], exchange or redeem] such an investment.

^[F7](1A) Paragraph (1) does not apply to a person who is appropriately authorised except to the extent that they are providing a personal recommendation.

(1B) A person is appropriately authorised when they are authorised for the purposes of the Act to carry on an activity of a kind specified by a provision of this Order which is not the activity specified by paragraph (1) and is not the activity of agreeing to carry on the activity specified by paragraph (1).

(1C) Subject to paragraph (1D), a personal recommendation is a recommendation—

- (a) made to a person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor;
- (b) which constitutes a recommendation to them to do any of the following (whether as principal or agent)—
 - (i) buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular investment which is a security^[F8], structured deposit] or a relevant investment; or
 - (ii) exercise or not exercise any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment; and
- (c) that is—

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- (i) presented as suitable for the person to whom it is made; or
 - (ii) based on a consideration of the circumstances of that person.
- (1D) A recommendation is not a personal recommendation if it is issued exclusively to the public.]

- [^{F9}(2) Advising a person is a specified kind of activity if the advice is—
- (a) given to the person in that person’s capacity as a lender or potential lender under a relevant article 36H agreement, or in that person’s capacity as an agent for a lender or potential lender under such an agreement; and
 - (b) advice on the merits of that person doing any of the following (whether as principal or agent)—
 - (i) entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law,
 - (ii) providing instructions to an operator with a view to entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve—
 - (aa) accepting particular parameters for the terms of the agreement presented by an operator,
 - (bb) choosing between options governing the parameters of the terms of the agreement presented by an operator, or
 - (cc) specifying the parameters of the terms of the agreement by other means,
 - (iii) enforcing or exercising the lender’s rights under a relevant article 36H agreement, or
 - (iv) assigning rights under a relevant article 36H agreement.
- (3) Paragraph (2) does not apply in so far as—
- (a) the advice is given in relation to a relevant article 36H agreement which has been facilitated by the person giving the advice, in the course of carrying on an activity of a kind specified by article 36H and is given by—
 - (i) an authorised person with permission to carry on a regulated activity of the kind specified by article 36H(1) (operating an electronic system in relation to lending),
 - (ii) an appointed representative in relation to that activity,
 - (iii) an exempt person in relation to that activity, or
 - (iv) a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity;
 - (b) the advice is given in the course of carrying on an activity of a kind specified by article 39F (debt-collecting) by a person carrying on that activity not in contravention of the general prohibition; or
 - (c) the advice is given in the course of carrying on an activity of a kind specified by article 39G (debt administration) by a person carrying on that activity not in contravention of the general prohibition.
- (4) In this article—
- “operator” means a person carrying on an activity of the kind specified by article 36H(1) or (2D), and
- “relevant article 36H agreement” means an article 36H agreement (within the meaning of article 36H (operating an electronic system in relation to lending)) which has been, or may be, entered into with the facilitation of a person carrying on an activity of the kind specified by article 36H(1) or (2D).

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(5) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by paragraph (2) of this article, article 88D (credit agreement), and article 73 (investments: general) in so far as it relates to that article, have effect as if the reference to a credit agreement in article 88D includes a reference to a relevant article 36H agreement.]

Textual Amendments

- F1** Art. 53(1): art. 53 renumbered as art. 53(1) (17.3.2016 for specified purposes, 6.4.2016 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), art. 1(2)(3)(d), **2(6)(a)** (with Pt. 5)
- F2** Words in art. 53(1)(b)(i) inserted (3.1.2018) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2017 \(S.I. 2017/500\)](#), arts. 1(1), **2(2)**
- F3** Words in art. 53(1)(b)(i) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **4(4)**
- F4** Words in art. 53(b)(i) substituted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **9(1)**
- F5** Words in art. 53(1)(b)(ii) inserted (3.1.2018) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2017 \(S.I. 2017/500\)](#), arts. 1(1), **2(3)(a)**
- F6** Words in art. 53(1)(b)(ii) substituted (3.1.2018) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2017 \(S.I. 2017/500\)](#), arts. 1(1), **2(3)(b)**
- F7** Art. 53(1A)-(1D) inserted (3.1.2018) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2017 \(S.I. 2017/500\)](#), arts. 1(1), **2(4)**
- F8** Words in art. 53(1C)(b)(i) inserted (3.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(6), **Sch. 3 para. 2** (with reg. 7)
- F9** Art. 53(2)-(5) inserted (17.3.2016 for specified purposes, 6.4.2016 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), art. 1(2)(3)(d), **2(6)(b)** (with Pt. 5)

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