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STATUTORY INSTRUMENTS

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**2001 No. 544**

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

PART II

SPECIFIED ACTIVITIES

[<sup>F1</sup>CHAPTER 6B

OPERATING AN ELECTRONIC SYSTEM IN RELATION TO LENDING

**Textual Amendments**

- F1** Pt. II Ch. 6A, 6B inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), 4

*The activity*

**Operating an electronic system in relation to lending**

**36H.**—(1) Where the [<sup>F2</sup>conditions in paragraphs (2), (2A) and (2C) are] satisfied, operating an electronic system which enables the operator (“A”) to facilitate persons (“B” and “C”) becoming the lender and borrower under an article 36H agreement is a specified kind of activity.

(2) The condition [<sup>F3</sup>in this paragraph] is that the system operated by A is capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise).

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<sup>F4</sup>(2A) The condition in this paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to—

- (a) receive payments in respect of interest and capital due under the article 36H agreement from C, and
- (b) make payments in respect of interest and capital due under the article 36H agreement to B.

(2B) For the purposes of paragraph (2A)—

- (a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that paragraph;
- (b) it is immaterial that—
  - (i) payments may be subject to conditions;
  - (ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Chapter 6B is up to date with all changes known to be in force on or before 17 June 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)*

(2C) The condition in this paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another person to perform either or both of the following activities—

- (a) taking steps to procure the payment of a debt under the article 36H agreement;
- (b) exercising or enforcing rights under the article 36H agreement on behalf of B.]

(3) The following are specified kinds of activities if carried on by A in the course of, or in connection with, the carrying on by A of the activity specified by paragraph (1)—

- (a) presenting or offering article 36H agreements to B and C with a view to B becoming the lender under the article 36H agreement and C becoming the borrower under the article 36H agreement,
- (b) furnishing information relevant to the financial standing of a person (“Y”) with a view to assisting in the determination as to whether another person should—
  - (i) enter into, as the lender, an article 36H agreement with Y, or
  - (ii) assume the rights of the lender under an article 36H agreement under which Y is the borrower,
- (c) taking steps to procure the payment of a debt due under an article 36H agreement,
- (d) performing duties, or exercising or enforcing rights under an article 36H agreement on behalf of the lender,
- (e) ascertaining whether a credit information agency (within the meaning given by article 89A(6)) holds information relevant to the financial standing of an individual or relevant person,
- (f) ascertaining the contents of such information,
- (g) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information, or
- (h) securing that a credit information agency which holds such information—
  - (i) stops holding the information, or
  - (ii) does not provide it to any other person.

(4) An “article 36H agreement” is an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning given by article 60L) and in relation to which the condition in either paragraph (5) or (6) is satisfied.

(5) The condition in this paragraph is that the lender is an individual or relevant person.

(6) The condition in this paragraph is that the borrower is an individual or relevant person and—

- (a) the lender provides the borrower with credit less than or equal to £25,000, or
- (b) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(7) Paragraphs (5) and (6) of article 60C (exempt agreements: exemptions relating to the nature of the agreement) apply for the purposes of paragraph (6)(b).

(8) It is immaterial for the purposes of this article whether the lender is carrying on a regulated activity.

(9) In this article, “relevant person” means—

- (a) a partnership consisting of two or three persons not all of whom are bodies corporate, or
- (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.

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<sup>F5</sup>(10) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by this article, article 88D (credit agreement), and article 73 (investments: general) in so far as it relates to that article, has effect as if the reference to a credit agreement in article 88D includes a reference to an article 36H agreement.]

#### Textual Amendments

- F2** Words in art. 36H(1) substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(9)(a)**
- F3** Words in art. 36H(2) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(9)(b)**
- F4** Arts. 36H(2A)-(2C) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(9)(c)**
- F5** Art. 36H(10) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(9)(d)**

#### Exclusion

#### Information society services

**36I.** Article 36H is subject to the exclusion in article 72A (information society services).

#### [<sup>F6</sup>Activities in relation to debentures and bonds

**36IA.** There is excluded from article 36H (operating an electronic system in relation to lending) any activity of a kind specified by article 14 (dealing in investments as principal), 25 (arranging deals in investments), 37 (managing investments) or 53 (advising on investments).]

#### Textual Amendments

- F6** Art. 36IA inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(10)**

#### Supplemental

#### Meaning of “consumer”

**36J.—(1)** For the purposes of sections 1G, 404E and 425A of the Act (meaning of “consumer”), a person (“C”) is only to be regarded as a person who uses, may use, has, may have used or has or may have contemplated using, services provided by authorised persons in carrying on a regulated activity of the kind specified by article 36H or article 64 in so far as relevant to that activity if—

- (a) C is, may be, has been or may have been the lender under a relevant agreement and is an individual or relevant person, or
- (b) C is, may be, has been or may have been the borrower under a relevant agreement, C is an individual or relevant person and one of the conditions in paragraph (2) is satisfied, or

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- (c) C meets the following conditions—
  - (i) C is, was or would be the lender under a relevant agreement, and
  - (ii) C is not, was not or would not be, as a result, carrying on a regulated activity.
- (2) The conditions in this paragraph are that—
  - (a) the lender provides, provided or would provide the borrower with credit (within the meaning given by article 60L) less than or equal to £25,000, or
  - (b) the agreement is not, was not or would not be entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.
- (3) Paragraphs (5) and (6) of article 60C (exempt agreements: exemptions relating to the nature of the agreement) apply for the purposes of paragraph (2)(b).
- (4) In paragraph (1)—
  - “relevant agreement” means an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning given by article 60L);
  - “relevant person” has the meaning given in article 36H.]

**Status:**

Point in time view as at 01/04/2014.

**Changes to legislation:**

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