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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

##### CHAPTER IX

##### SENDING DEMATERIALIZED INSTRUCTIONS

###### *The activities*

#### **Sending dematerialised instructions**

**45.**—(1) Sending, on behalf of another person, dematerialised instructions relating to a security [<sup>F1</sup>or a contractually based investment] is a specified kind of activity, where those instructions are sent by means of a relevant system [<sup>F2</sup>within the meaning of the 2001 Regulations].

(2) Causing dematerialised instructions relating to a security [<sup>F3</sup>or a contractually based investment] to be sent [<sup>F4</sup>on behalf of another person] by means of such a system is also a specified kind of activity where the person causing them to be sent is a system-participant.

(3) In this Chapter—

[<sup>F5</sup>(a) “the 2001 Regulations” means the Uncertificated Securities Regulations 2001;]

(b) “dematerialised instruction”, <sup>F6</sup>..., “settlement bank” and “system-participant” have the meaning given by regulation 3 of the [<sup>F7</sup>2001] Regulations.

#### **Textual Amendments**

- F1** Words in art. 45(1) inserted (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2)(b), **13(1)(a)**
- F2** Words in art. 45(1) substituted (27.3.2019) by [The Uncertificated Securities \(Amendment and EU Exit\) Regulations 2019 \(S.I. 2019/679\)](#), regs. 1(2), **6(a)** (with regs. 10-12)
- F3** Words in art. 45(2) inserted (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2)(b), **13(2)**
- F4** Words in art. 45(2) inserted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2001 \(S.I. 2001/3544\)](#), arts. 1(a), **7**
- F5** Art. 45(3)(a) substituted (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2)(b), **13(3)(a)**
- F6** Word in art. 45(3)(b) omitted (27.3.2019) by virtue of [The Uncertificated Securities \(Amendment and EU Exit\) Regulations 2019 \(S.I. 2019/679\)](#), regs. 1(2), **6(b)** (with regs. 10-12)

*Status: Point in time view as at 27/03/2019.*

*Changes to legislation: The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Chapter IX is up to date with all changes known to be in force on or before 23 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)*

**F7** Word in art. 45(3)(b) substituted (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2)(b), **13(3)(b)**

### *Exclusions*

#### **Instructions on behalf of participating issuers**

**46.** There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a participating issuer within the meaning of the [F<sup>8</sup>2001] Regulations.

#### **Textual Amendments**

**F8** Word in art. 46 substituted (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2)(b), **13(4)**

#### **Instructions on behalf of settlement banks**

**47.** There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a settlement bank in its capacity as such.

#### **Instructions in connection with takeover offers**

**48.—(1)** There is excluded from article 45 of the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is an offeror making a takeover offer.

(2) In this article—

- (a) “offeror” means, in the case of a takeover offer made by two or more persons jointly, the joint offers or any of them;
- (b) “takeover offer” means—
  - (i) an offer to acquire shares (which in this sub-paragraph has the same meaning as in [F<sup>9</sup>section 974 of the Companies Act 2006]) in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of [F<sup>10</sup>Chapter 3 of Part 28] of that Act (or would be such an offer if that Part of that Act applied in relation to any body corporate);
  - (ii) an offer to acquire all or substantially all the shares, or all the shares of a particular class, in a body corporate incorporated outside the United Kingdom; or
  - (iii) an offer made to all the holders of shares, or shares of a particular class, in a body corporate to acquire a specified proportion of those shares;

but in determining whether an offer falls within paragraph (ii) there are to be disregarded any shares which the offeror or any associate of his (within the meaning of [F<sup>11</sup>section 988 of the Companies Act 2006]) holds or has contracted to acquire; and in determining whether an offer falls within paragraph (iii) the offeror, any such associate and any person whose shares the offeror or any such associate has contracted to acquire is not to be regarded as a holder of shares.

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#### Textual Amendments

- F9** Words in art. 48(2)(b) substituted (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), art. 1(3), [Sch. 3 para. 8\(2\)](#)
- F10** Words in art. 48(2)(b) substituted (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), art. 1(3), [Sch. 3 para. 8\(3\)](#)
- F11** Words in art. 48(2)(b) substituted (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), art. 1(3), [Sch. 3 para. 8\(4\)](#)

#### Instructions in the course of providing a network

**49.** There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction as a necessary part of providing a network, the purpose of which is to carry dematerialised instructions which are at all time properly authenticated (within the meaning of the <sup>[F12]</sup>2001 Regulations).

#### Textual Amendments

- F12** Word in art. 49 substituted (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2)(b), [13\(4\)](#)

#### Other exclusions

**50.** Article 45 is also subject to the exclusions in articles 66 (trustees etc.)<sup>[F13]</sup>, 69 (groups and joint enterprises)<sup>[F14]</sup>, 72A (information society services)<sup>[F15]</sup>, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)]].

#### Textual Amendments

- F13** Words in art. 50 substituted (21.8.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2002 \(S.I. 2002/1776\)](#), arts. 1, [3\(9\)](#)
- F14** Words in art. 50 substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 2 para. 1\(6\)](#)
- F15** Words in art. 50 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\(18\)](#)

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