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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 V

##### DEALING IN INVESTMENTS AS AGENT

###### *The activity*

#### **Dealing in investments as agent**

**21.**—<sup>[F1]</sup>(1) Buying, selling, subscribing for or underwriting securities or <sup>[F2]</sup>relevant investments] (other than investments of the kind specified by article 87, or article 89 so far as relevant to that article) as agent is a specified kind of activity.

<sup>[F3]</sup>(2) Paragraph (1) does not apply to a kind of activity to which article 25D applies.]

#### **Textual Amendments**

- F1** Art. 21(1): art. 21 renumbered as art. 21(1) (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **9(a)**
- F2** Words in art. 21 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), **4(1)**
- F3** Art. 21(2) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **9(b)**

#### *Exclusions*

#### **Deals with or through authorised persons**

**22.**—(1) A person who is not an authorised person does not carry on an activity of the kind specified by article 21 by entering into a transaction as agent for another person (“the client”) with or through an authorised person if—

- (a) the transaction is entered into on advice given to the client by an authorised person; or
- (b) it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from the agent as to the merits of the client’s entering

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into the transaction (or, if the client has sought such advice, the agent has declined to give it but has recommended that the client seek such advice from an authorised person).

- [<sup>F4</sup>(2) But the exclusion in paragraph (1) does not apply if—
- (a) the transaction relates to a contract of insurance; or
  - (b) the agent receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction.]

- [<sup>F5</sup>(3) This article is subject to article 4(4).]

#### Textual Amendments

- F4** Art. 22(2) 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), **4(2)**
- F5** Art. 22(3) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **10**

#### Modifications etc. (not altering text)

- C1** Art. 22 modified (31.10.2001) by [The Financial Services and Markets Act 2000 \(Interim Permissions\) Order 2001 \(S.I. 2001/3374\)](#), art. 1, **Sch. para. 10** (with Sch. para. 4)
- C2** Art. 22 modified (31.10.2004) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Mortgages\) Order 2004 \(S.I. 2004/2615\)](#), art. 1(2)(b), **Sch. para. 11** (with Sch. para. 4)
- C3** Art. 22 modified (14.1.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(General Insurance Intermediaries\) Order 2004 \(S.I. 2004/3351\)](#), art. 1(2)(b), **Sch. para. 10(1)** (with Sch. para. 4)
- C4** Art. 22 modified (6.4.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), art. 1(3), **Sch. para. 11** (with Sch. para. 4)

### Risk management

**23.—(1)** A person (“B”) does not carry on an activity of the kind specified by article 21 by entering as agent for a relevant person into a transaction with another person (“C”) if—

- (a) the transaction relates to investments of the kind specified by any of articles 83 to 85 (or article 89 so far as relevant to any of those articles);
- (b) neither B nor C is an individual;
- (c) the sole or main purpose for which B enters into the transaction (either by itself or in combination with other such transactions) is that of limiting the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of a regulated activity; and
- (d) the relevant business consists mainly of activities other than—
  - (i) regulated activities; or
  - (ii) activities which would be regulated activities but for any exclusion made by this Part.

(2) In paragraph (1), “relevant person” means—

- (a) a member of the same group as B; or
- (b) where B and another person are, or propose to become, participators in a joint enterprise, that other person;

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and "relevant business" means a business carried on by a relevant person.

[<sup>F6</sup>(3) This article is subject to article 4(4).]

#### Textual Amendments

**F6** Art. 23(3) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006](#) (S.I. 2006/3384), arts. 1(2), **11**

#### Other exclusions

**24.** Article 21 is also subject to the exclusions in articles 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes)]<sup>F7</sup>, 72 (overseas persons)]<sup>F8</sup>, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services)]<sup>F9</sup>, 72AA (managers of UCITS and AIFs)]<sup>F10</sup>, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)]].

#### Textual Amendments

- F7** Words in art. 24 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(5)**
- F8** Words in art. 24 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), **4(3)**
- F9** Words in art. 24 substituted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013](#) (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(7)**
- F10** Words in art. 24 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(5)**

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