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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.** 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 or underwriting a particular investment which is a security or a [^{F1}relevant investment], or
 - (ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

Textual Amendments

- F1** 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)**

[^{F2}Advising on regulated mortgage contracts

- 53A.—**(1) Advising a person is a specified kind of activity if the advice—
- (a) is given to the person in his capacity as a borrower or potential borrower; and
 - (b) is advice on the merits of his doing any of the following—
 - (i) entering into a particular regulated mortgage contract, or
 - (ii) varying the terms of a regulated mortgage contract entered into by him after the coming into force of article 61 in such a way as to vary his obligations under that contract.
- (2) In this article, “borrower” has the meaning given by article 61(3)(a)(i).]

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Textual Amendments

F2 Art. 53A inserted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\)](#), arts. 1(3), **13**

[^{F3} Advising on regulated home reversion plans

53B. Advising a person is a specified kind of activity if the advice—

- (a) is given to the person in his capacity as—
 - (i) a reversion seller or potential reversion seller, or
 - (ii) a plan provider or potential plan provider; and
- (b) is advice on the merits of his doing either of the following—
 - (i) entering into a particular regulated home reversion plan, or
 - (ii) varying the terms of a regulated home reversion plan, entered into on or after 6th April 2007 by him, in such a way as to vary his obligations under that plan.]

Textual Amendments

F3 Arts. 53B, 53C inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **13**

[^{F3} Advising on regulated home purchase plans

53C. Advising a person is a specified kind of activity if the advice—

- (a) is given to the person in his capacity as a home purchaser or potential home purchaser; and
- (b) is advice on the merits of his doing either of the following—
 - (i) entering into a particular regulated home purchase plan, or
 - (ii) varying the terms of a regulated home purchase plan, entered into on or after 6th April 2007 by him, in such a way as to vary his obligations under that plan.]

Textual Amendments

F3 Arts. 53B, 53C inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **13**

[^{F4} Advising on regulated sale and rent back agreements

53D. Advising a person is a specified kind of activity if the advice—

- (a) is given to the person (“A”) in A’s capacity as—
 - (i) an agreement seller or potential agreement seller, or
 - (ii) an agreement provider or potential agreement provider; and
- (b) is advice on the merits of A doing either of the following—
 - (i) entering into a particular regulated sale and rent back agreement; or

- (ii) varying the terms of a regulated sale and rent back agreement entered into on or after 1st July 2009 by A as agreement seller or agreement provider, in such a way so as to vary A's obligations under that agreement.]

Textual Amendments

- F4** Art. 53D inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **13**

[^{F5}Advising on conversion or transfer of pension benefits

53E.—(1) Advising a person (“P”) is a specified kind of activity if—

- (a) the advice is given to P in P's capacity as—
 - (i) a member of a pension scheme; or
 - (ii) a survivor of a member of a pension scheme;
- (b) P has subsisting rights in respect of any safeguarded benefits; and
- (c) the advice is advice on the merits of P requiring the trustee or manager of the pension scheme to—
 - (i) convert any of the safeguarded benefits into different benefits that are flexible benefits under the scheme;
 - (ii) make a transfer payment in respect of any of the safeguarded benefits with a view to acquiring a right or entitlement to flexible benefits for P under another pension scheme; or
 - (iii) pay a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the safeguarded benefits.

(2) In this article—

“flexible benefit” means—

- (a) a money purchase benefit;
- (b) a cash balance benefit; or
- (c) a benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor);

“pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993 or section 1(5) of the Pension Schemes (Northern Ireland) Act 1993;

“safeguarded benefits” means benefits other than—

- (a) money purchase benefits; and
- (b) cash balance benefits;

“subsisting right”—

- (a) in relation to a member of a pension scheme, means—
 - (i) any right which has accrued to or in respect of the member to future benefits under the scheme; or
 - (ii) any entitlement to benefits under the scheme; and

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- (b) in relation to a survivor of a member of a pension scheme means any right to future benefits, or entitlement to benefits, which the survivor has under the scheme in respect of the member;

“survivor”, in relation to a member of a pension scheme, means a person who has survived the member and has a right to future benefits, or is entitled to benefits, under the scheme in respect of the member;

“trustees or managers” means—

- (a) in relation to a scheme established under a trust, the trustees; and

- (b) in relation to any other scheme, the managers; and

“uncrystallised funds pension lump sum” has the meaning given by paragraph 4A of Schedule 29 to the Finance Act 2004.

(3) Paragraphs (4) to (9) apply for the interpretation of “flexible benefit” and “safeguarded benefits”.

(4) “Cash balance benefit”, in relation to a member of a pension scheme or a survivor of a member, means a benefit calculated by reference to an amount available for the provision of benefits to or in respect of the member (“the available amount”) where there is a promise about that amount.

(5) But a benefit is not a “cash balance benefit” if, under the scheme—

- (a) a pension may be provided from the available amount to or in respect of the member; and

- (b) there is a promise about the rate of that pension.

(6) The promise mentioned in paragraph (4) includes, in particular, a promise about the change in the value of, or the return from, payments made by the member or any other person in respect of the member.

(7) The promise mentioned in paragraph (5)(b) includes a promise that—

- (a) the available amount will be sufficient to provide a pension of a particular rate;

- (b) the rate of a pension will represent a particular proportion of the available amount.

(8) A benefit is not excluded from the definition of “cash balance benefit” by paragraph (5) merely because under the scheme there is a promise that—

- (a) the rate or amount of the benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of the benefit which was (or would have been) payable to the member; or

- (b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available amount.

(9) “Money purchase benefits”—

- (a) in relation to a pension scheme governed by the law of England and Wales or Scotland, has the meaning given by section 181 of the Pension Schemes Act 1993; and

- (b) in relation to a pensions scheme governed by the law of Northern Ireland, has the meaning given by section 176 of the Pension Schemes (Northern Ireland) Act 1993.]

Textual Amendments

- F5** Art. 53E inserted (6.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2015 \(S.I. 2015/731\)](#), arts. 1, **2(2)**

Exclusions

Advice given in newspapers etc.

54.—(1) There is excluded from [F6 articles 53, 53A, 53B [F7, 53C [F8, 53D and 53E]]] the giving of advice in writing or other legible form if the advice is contained in a newspaper, journal, magazine, or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any advertisements or other promotional material contained in it, is neither—

(a) that of giving advice of a kind mentioned in article 53 [F9, 53A, 53B [F10, 53C [F11, 53D or 53E],] as the case may be]; nor

[F12(b) that of leading or enabling persons—

(i) to buy, sell, subscribe for or underwrite securities or [F13 relevant investments], or (as the case may be),

(ii) to enter as borrower into regulated mortgage contracts, or vary the terms of regulated mortgage contracts entered into by them as borrower[F14];

(iii) to enter as reversion seller or plan provider into regulated home reversion plans, or vary the terms of regulated home reversion plans entered into by them as reversion seller or plan provider,

(iv) to enter as home purchaser into regulated home purchase plans, or vary the terms of regulated home purchase plans entered into by them as home purchaser[F15];

(v) to enter as agreement seller or agreement provider into regulated sale and rent back agreements, or vary the terms of regulated sale and rent back agreements entered into by them as agreement seller or agreement provider];]

[F16(vi) to require the trustee or manager of a pension scheme to take any of the actions referred to in article 53E(1)(c).]

(2) There is also excluded from [F17 articles 53, 53A, 53B [F18, 53C [F19, 53D and 53E]]] the giving of advice in any service consisting of the broadcast or transmission of television or radio programmes, if the principal purpose of the service, taken as a whole and including any advertisements or other promotional material contained in it, is neither of those mentioned in paragraph (1)(a) and (b).

(3) [F20 The FCA] may, on the application of the proprietor of any such publication or service as is mentioned in paragraph (1) or (2), certify that it is of the nature described in that paragraph, and may revoke any such certificate if it considers that it is no longer justified.

(4) A certificate given under paragraph (3) and not revoked is conclusive evidence of the matters certified.

Textual Amendments

F6 Words in art. 54(1) substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **14(a)(i)**

F7 Words in art. 54(1) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **14(a)**

F8 Words in art. 54(1) substituted (6.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2015 \(S.I. 2015/731\)](#), arts. 1, **2(3)(a)(i)**

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- F9** Words in art. 54(1)(a) substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **14(a)(ii)**
- F10** Words in art. 54(1)(a) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), **14(b)**
- F11** Words in art. 54(1)(a) substituted (6.4.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015 (S.I. 2015/731), arts. 1, **2(3)(a)(ii)**
- F12** Art. 54(1)(b) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **14(4)**
- F13** Words in art. 54(1)(b) 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(2)**
- F14** Art. 54(1)(b)(iii)(iv) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **14(a)(iii)**
- F15** Art. 54(1)(b)(v) inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), **14(c)**
- F16** Art. 54(1)(b)(vi) inserted (6.4.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015 (S.I. 2015/731), arts. 1, **2(3)(a)(iii)**
- F17** Words in art. 54(2) substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **14(b)**
- F18** Words in art. 54(2) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), **14(d)**
- F19** Words in art. 54(2) substituted (6.4.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015 (S.I. 2015/731), arts. 1, **2(3)(b)**
- F20** Words in art. 54(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

[^{F21} Advice given in the course of administration by authorised person

54A.—[

[^{F22}(1)] A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53A by reason of—

- (a) anything done by an authorised person (“B”) in relation to a regulated mortgage contract which B is administering pursuant to arrangements of the kind mentioned in article 62(a); or
- (b) anything A does in connection with the administration of a regulated mortgage contract in circumstances falling within article 62(b).

[^{F23}(2)] A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53B by reason of—

- (a) anything done by an authorised person (“B”) in relation to a regulated home reversion plan which B is administering pursuant to arrangements of the kind mentioned in article 63C(a); or
- (b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).

(3) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53C by reason of—

- (a) anything done by an authorised person (“B”) in relation to a regulated home purchase plan which B is administering pursuant to arrangements of the kind mentioned in article 63G(a); or
- (b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).]

[
F24(4) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53D by reason of

- (a) anything done by an authorised person (“B”) in relation to a regulated sale and rent back agreement which B is administering pursuant to arrangements of the kind mentioned in article 63K(a); or
- (b) anything A does in connection with the administration of a regulated sale and rent back agreement in circumstances falling within article 63K(b).]]

Textual Amendments

- F21** Art. 54A inserted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\)](#), arts. 1(3), **15**
- F22** Art. 54A(1): art. 54A renumbered as art. 54A(1) (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **15(a)**
- F23** Art. 54A(2)(3) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **15(b)**
- F24** Art. 54A(4) inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **15**

[F25] Advice given by reason of providing pensions guidance under Part 20A of the Act

54B.—(1) A person does not carry on an activity of the kind specified in article 53, 53A, 53B, 53C or 53D by reason of providing pensions guidance under arrangements made with the Treasury pursuant to section 333B of the Act.

(2) For the purposes of paragraph (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.]

Textual Amendments

- F25** Art. 54B inserted (26.3.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(Pensions Guidance Exclusions\) Order 2015 \(S.I. 2015/489\)](#), arts. 1, **2(6)**

Other exclusions

55.—[F26(1)] Article 53 is also subject to the exclusions in articles 66 (trustees etc.), 67, (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate) [F27, 72 (overseas persons)] [F28, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services) [F29, 72AA

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(managers of UCITS and AIFs)^[F30], 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)]].

[^{F31}(2) [^{F32}Articles 53A, 53B [^{F33}, 53C and 53D] are] also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business) [^{F34}, 72A (information society services)^[F35], 72AA (managers of UCITS and AIFs) and 72G (local authorities)]].

Textual Amendments

- F26** Art. 55(1): art. 55 renumbered as art. 55(1) (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\)](#), arts. 1(3), **16(a)**
- F27** Words in art. 55 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(12)**
- F28** Words in art. 55(1) 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(3)**
- F29** Words in art. 55(1) 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)**
- F30** Words in art. 55(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(23)(a)**
- F31** Art. 55(2) inserted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\)](#), arts. 1(3), **16(b)**
- F32** Words in art. 55(2) substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **16**
- F33** Words in art. 55(2) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **16**
- F34** Words in art. 55(2) substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(6)**
- F35** Words in art. 55(2) 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(23)(b)**

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