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PART II
THE TRIBUNAL
President

2.—(1) The Lord Chancellor must appoint one of the members of the panel of chairmen to preside over the discharge of the Tribunal's functions.

(2) The member so appointed is to be known as the President of the Financial Services and Markets Tribunal (but is referred to in this Act as "the President").

(3) The Lord Chancellor may appoint one of the members of the panel of chairmen to be Deputy President.

(4) The Deputy President is to have such functions in relation to the Tribunal as the President may assign to him.

(5) The Lord Chancellor may not appoint a person to be the President or Deputy President unless that person—

- (a) has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
- (b) is an advocate or solicitor in Scotland of at least ten years' standing; or
- (c) is—
- (i) a member of the Bar of Northern Ireland of at least ten years' standing; or
 - (ii) a solicitor of the Supreme Court of Northern Ireland of at least ten years' standing.

(6) If the President (or Deputy President) ceases to be a member of the panel of chairmen, he also ceases to be the President (or Deputy President).

(7) The functions of the President may, if he is absent or is otherwise unable to act, be discharged—

- (a) by the Deputy President; or
- (b) if there is no Deputy President or he too is absent or otherwise unable to act, by a person appointed for that purpose from the panel of chairmen by the Lord Chancellor.

Panels

3.—(1) The Lord Chancellor must appoint a panel of persons for the purposes of serving as chairmen of the Tribunal.

(2) A person is qualified for membership of the panel of chairmen if—

- (a) he has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
- (b) he is an advocate or solicitor in Scotland of at least seven years' standing; or
- (c) he is—
- (i) a member of the Bar of Northern Ireland of at least seven years' standing; or
 - (ii) a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing.

(3) The panel of chairmen must include at least one member who is a person of the kind mentioned in sub-paragraph (2)(b).

(4) The Lord Chancellor must also appoint a panel of persons who appear to him to be qualified by experience or otherwise to deal with matters of the kind that may be referred to the Tribunal.

1990 c. 41.

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Terms of office etc

4.—(1) Subject to the provisions of this Schedule, each member of the panel of chairmen and the lay panel is to hold and vacate office in accordance with the terms of his appointment.

(2) The Lord Chancellor may remove a member of either panel (including the President) on the ground of incapacity or misbehaviour.

(3) A member of either panel—

- (a) may at any time resign office by notice in writing to the Lord Chancellor;
- (b) is eligible for re-appointment if he ceases to hold office.

Remuneration and expenses

5. The Lord Chancellor may pay to any person, in respect of his service—

- (a) as a member of the Tribunal (including service as the President or Deputy President), or
- (b) as a person appointed under paragraph 7(4),

such remuneration and allowances as he may determine.

Staff

6.—(1) The Lord Chancellor may appoint such staff for the Tribunal as he may determine.

(2) The remuneration of the Tribunal's staff is to be defrayed by the Lord Chancellor.

(3) Such expenses of the Tribunal as the Lord Chancellor may determine are to be defrayed by the Lord Chancellor.

PART III

CONSTITUTION OF TRIBUNAL

7.—(1) On a reference to the Tribunal, the persons to act as members of the Tribunal for the purposes of the reference are to be selected from the panel of chairmen or the lay panel in accordance with arrangements made by the President for the purposes of this paragraph ("the standing arrangements").

(2) The standing arrangements must provide for at least one member to be selected from the panel of chairmen.

(3) If while a reference is being dealt with, a person serving as member of the Tribunal in respect of the reference becomes unable to act, the reference may be dealt with by—

- (a) the other members selected in respect of that reference; or
- (b) if it is being dealt with by a single member, such other member of the panel of chairmen as may be selected in accordance with the standing arrangements for the purposes of the reference.

(4) If it appears to the Tribunal that a matter before it involves a question of fact of special difficulty, it may appoint one or more experts to provide assistance.

PART IV

TRIBUNAL PROCEDURE

8. For the purpose of dealing with references, or any matter preliminary or incidental to a reference, the Tribunal must sit at such times and in such place or places as the Lord Chancellor may direct.

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9. Rules made by the Lord Chancellor under section 132 may, in particular, include provision—

- (a) as to the manner in which references are to be instituted;
- (b) for the holding of hearings in private in such circumstances as may be specified in the rules;
- (c) as to the persons who may appear on behalf of the parties;
- (d) for a member of the panel of chairmen to hear and determine interlocutory matters arising on a reference;
- (e) for the suspension of decisions of the Authority which have taken effect;
- (f) as to the withdrawal of references;
- (g) as to the registration, publication and proof of decisions and orders.

Practice directions

10. The President of the Tribunal may give directions as to the practice and procedure to be followed by the Tribunal in relation to references to it.

Evidence

11.—(1) The Tribunal may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any document in his custody or under his control which the Tribunal considers it necessary to examine.

(2) The Tribunal may—

- (a) take evidence on oath and for that purpose administer oaths; or
- (b) instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matters in respect of which he is examined.

(3) A person who without reasonable excuse—

- (a) refuses or fails—
 - (i) to attend following the issue of a summons by the Tribunal, or
 - (ii) to give evidence, or
- (b) alters, suppresses, conceals or destroys, or refuses to produce a document which he may be required to produce for the purposes of proceedings before the Tribunal,

is guilty of an offence.

(4) A person guilty of an offence under sub-paragraph (3)(a) is liable on summary conviction to a fine not exceeding the statutory maximum.

(5) A person guilty of an offence under sub-paragraph (3)(b) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

Decisions of Tribunal

12.—(1) A decision of the Tribunal may be taken by a majority.

(2) The decision must—

- (a) state whether it was unanimous or taken by a majority;
- (b) be recorded in a document which—
 - (i) contains a statement of the reasons for the decision; and
 - (ii) is signed and dated by the member of the panel of chairmen dealing with the reference.

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- (3) The Tribunal must—
- (a) inform each party of its decision; and
 - (b) as soon as reasonably practicable, send to each party and, if different, to any authorised person concerned, a copy of the document mentioned in sub-paragraph (2).
- (4) The Tribunal must send the Treasury a copy of its decision.

Costs

13.—(1) If the Tribunal considers that a party to any proceedings on a reference has acted vexatiously, frivolously or unreasonably it may order that party to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings.

(2) If, in any proceedings on a reference, the Tribunal considers that a decision of the Authority which is the subject of the reference was unreasonable it may order the Authority to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings.

SCHEDULE 14

Section 162.

ROLE OF THE COMPETITION COMMISSION

Provision of information by Treasury

1.—(1) The Treasury's powers under this paragraph are to be exercised only for the purpose of assisting the Commission in carrying out an investigation under section 162.

- (2) The Treasury may give to the Commission—
- (a) any information in their possession which relates to matters falling within the scope of the investigation; and
 - (b) other assistance in relation to any such matters.
- (3) In carrying out an investigation under section 162, the Commission must have regard to any information given to it under this paragraph.

Consideration of matters arising on a report

2. In considering any matter arising from a report made by the Director under section 160, the Commission must have regard to—

- (a) any representations made to it in connection with the matter by any person appearing to the Commission to have a substantial interest in the matter; and
- (b) any cost benefit analysis prepared by the Authority (at any time) in connection with the regulatory provision or practice, or any of the regulatory provisions or practices, which are the subject of the report.

Applied provisions

3.—(1) The provisions mentioned in sub-paragraph (2) are to apply in relation to the functions of the Commission under section 162 as they apply in relation to the functions of the Commission in relation to a reference to the Commission under the Fair Trading Act 1973.

1973 c. 41.

- (2) The provisions are—
- (a) section 82(2), (3) and (4) of the Fair Trading Act 1973 (general provisions about reports);

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- (b) section 85 of that Act (attendance of witnesses and production of documents);
- (c) section 93B of that Act (false or misleading information);
- 1980 c. 21. (d) section 24 of the Competition Act 1980 (modifications of provisions about the performance of the Commission's functions);
- 1998 c. 41. (d) Part II of Schedule 7 to the Competition Act 1998 (performance by the Commission of its general functions).

(3) But the reference in paragraph 15(7)(b) in Schedule 7 to the 1998 Act to section 75(5) of that Act is to be read as a reference to the power of the Commission to decide not to make a report in accordance with section 162(2).

Publication of reports

4.—(1) If the Commission makes a report under section 162, it must publish it in such a way as appears to it to be best calculated to bring it to the attention of the public.

(2) Before publishing the report the Commission must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the Commission, would or might seriously and prejudicially affect his interests.

(3) Before publishing the report the Commission must, so far as practicable, also exclude any matter which relates to the affairs of a particular body the publication of which, in the opinion of the Commission, would or might seriously and prejudicially affect its interests.

(4) Sub-paragraphs (2) and (3) do not apply in relation to copies of a report which the Commission is required to send under section 162(10).

Sections 165(11)
and 171(4).

SCHEDULE 15

INFORMATION AND INVESTIGATIONS: CONNECTED PERSONS

PART I

RULES FOR SPECIFIC BODIES

Corporate bodies

1. If the authorised person ("BC") is a body corporate, a person who is or has been—

- (a) an officer or manager of BC or of a parent undertaking of BC;
- (b) an employee of BC;
- (c) an agent of BC or of a parent undertaking of BC.

Partnerships

2. If the authorised person ("PP") is a partnership, a person who is or has been a member, manager, employee or agent of PP.

Unincorporated associations

3. If the authorised person ("UA") is an unincorporated association of persons which is neither a partnership nor an unincorporated friendly society, a person who is or has been an officer, manager, employee or agent of UA.

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Friendly societies

4.—(1) If the authorised person (“FS”) is a friendly society, a person who is or has been an officer, manager or employee of FS.

(2) In relation to FS, “officer” and “manager” have the same meaning as in section 119(1) of the Friendly Societies Act 1992. 1992 c. 40.

Building societies

5.—(1) If the authorised person (“BS”) is a building society, a person who is or has been an officer or employee of BS.

(2) In relation to BS, “officer” has the same meaning as it has in section 119(1) of the Building Societies Act 1986. 1986 c. 53.

Individuals

6. If the authorised person (“IP”) is an individual, a person who is or has been an employee or agent of IP.

Application to sections 171 and 172

7. For the purposes of sections 171 and 172, if the person under investigation is not an authorised person the references in this Part of this Schedule to an authorised person are to be taken to be references to the person under investigation.

PART II

ADDITIONAL RULES

8. A person who is, or at the relevant time was, the partner, manager, employee, agent, appointed representative, banker, auditor, actuary or solicitor of—

- (a) the person under investigation (“A”);
- (b) a parent undertaking of A;
- (c) a subsidiary undertaking of A;
- (d) a subsidiary undertaking of a parent undertaking of A; or
- (e) a parent undertaking of a subsidiary undertaking of A.

SCHEDULE 16

Section 203(8).

PROHIBITIONS AND RESTRICTIONS IMPOSED BY DIRECTOR GENERAL OF FAIR TRADING

Preliminary

1. In this Schedule—

“appeal period” has the same meaning as in the Consumer Credit Act 1974; 1974 c. 39.

“prohibition” means a consumer credit prohibition under section 203;

“restriction” means a restriction under section 204.

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Notice of prohibition or restriction

- 2.—(1) This paragraph applies if the Director proposes, in relation to a firm—
- (a) to impose a prohibition;
 - (b) to impose a restriction; or
 - (c) to vary a restriction otherwise than with the agreement of the firm.
- (2) The Director must by notice—
- (a) inform the firm of his proposal, stating his reasons; and
 - (b) invite the firm to submit representations in accordance with paragraph 4.
- (3) If he imposes the prohibition or restriction or varies the restriction, the Director may give directions authorising the firm to carry into effect agreements made before the coming into force of the prohibition, restriction or variation.
- (4) A prohibition, restriction or variation is not to come into force before the end of the appeal period.
- (5) If the Director imposes a prohibition or restriction or varies a restriction, he must serve a copy of the prohibition, restriction or variation—
- (a) on the Authority; and
 - (b) on the firm's home state regulator.

Application to revoke prohibition or restriction

- 3.—(1) This paragraph applies if the Director proposes to refuse an application made by a firm for the revocation of a prohibition or restriction.
- (2) The Director must by notice—
- (a) inform the firm of the proposed refusal, stating his reasons; and
 - (b) invite the firm to submit representations in accordance with paragraph 4.

Representations to Director

- 4.—(1) If this paragraph applies to an invitation to submit representations, the Director must invite the firm, within 21 days after the notice containing the invitation is given to it or such longer period as he may allow—
- (a) to submit its representations in writing to him; and
 - (b) to give notice to him, if the firm thinks fit, that it wishes to make representations orally.
- (2) If notice is given under sub-paragraph (1)(b), the Director must arrange for the oral representations to be heard.
- (3) The Director must give the firm notice of his determination.

Appeals

1974 c. 39.

5. Section 41 of the Consumer Credit Act 1974 (appeals to the Secretary of State) has effect as if—
- (a) the following determinations were mentioned in column 1 of the table set out at the end of that section—
 - (i) imposition of a prohibition or restriction or the variation of a restriction; and
 - (ii) refusal of an application for the revocation of a prohibition or restriction; and
 - (b) the firm concerned were mentioned in column 2 of that table in relation to those determinations.

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SCHEDULE 17

Section 225(4).

THE OMBUDSMAN SCHEME

PART I

GENERAL

Interpretation

1. In this Schedule—

- “ombudsman” means a person who is a member of the panel; and
“the panel” means the panel established under paragraph 4.

PART II

THE SCHEME OPERATOR

Establishment by the Authority

2.—(1) The Authority must establish a body corporate to exercise the functions conferred on the scheme operator by or under this Act.

(2) The Authority must take such steps as are necessary to ensure that the scheme operator is, at all times, capable of exercising those functions.

Constitution

3.—(1) The constitution of the scheme operator must provide for it to have—

- (a) a chairman; and
- (b) a board (which must include the chairman) whose members are the scheme operator’s directors.

(2) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the Authority (acting, in the case of the chairman, with the approval of the Treasury).

(3) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the Authority in the operation of the scheme.

(4) The function of making voluntary jurisdiction rules under section 227 and the functions conferred by paragraphs 4, 5, 7, 9 or 14 may be exercised only by the board.

(5) The validity of any act of the scheme operator is unaffected by—

- (a) a vacancy in the office of chairman; or
- (b) a defect in the appointment of a person as chairman or as a member of the board.

The panel of ombudsmen

4.—(1) The scheme operator must appoint and maintain a panel of persons, appearing to it to have appropriate qualifications and experience, to act as ombudsmen for the purposes of the scheme.

(2) A person’s appointment to the panel is to be on such terms (including terms as to the duration and termination of his appointment and as to remuneration) as the scheme operator considers—

- (a) consistent with the independence of the person appointed; and
- (b) otherwise appropriate.

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The Chief Ombudsman

5.—(1) The scheme operator must appoint one member of the panel to act as Chief Ombudsman.

(2) The Chief Ombudsman is to be appointed on such terms (including terms as to the duration and termination of his appointment) as the scheme operator considers appropriate.

Status

6.—(1) The scheme operator is not to be regarded as exercising functions on behalf of the Crown.

(2) The scheme operator's board members, officers and staff are not to be regarded as Crown servants.

(3) Appointment as Chief Ombudsman or to the panel or as a deputy ombudsman does not confer the status of Crown servant.

Annual reports

7.—(1) At least once a year—

(a) the scheme operator must make a report to the Authority on the discharge of its functions; and

(b) the Chief Ombudsman must make a report to the Authority on the discharge of his functions.

(2) Each report must distinguish between functions in relation to the scheme's compulsory jurisdiction and functions in relation to its voluntary jurisdiction.

(3) Each report must also comply with any requirements specified in rules made by the Authority.

(4) The scheme operator must publish each report in the way it considers appropriate.

Guidance

8. The scheme operator may publish guidance consisting of such information and advice as it considers appropriate and may charge for it or distribute it free of charge.

Budget

9.—(1) The scheme operator must, before the start of each of its financial years, adopt an annual budget which has been approved by the Authority.

(2) The scheme operator may, with the approval of the Authority, vary the budget for a financial year at any time after its adoption.

(3) The annual budget must include an indication of—

(a) the distribution of resources deployed in the operation of the scheme, and

(b) the amounts of income of the scheme operator arising or expected to arise from the operation of the scheme,

distinguishing between the scheme's compulsory and voluntary jurisdiction.

Exemption from liability in damages

10.—(1) No person is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions under this Act in relation to the compulsory jurisdiction.

(2) Sub-paragraph (1) does not apply—

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- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

1998 c. 42.

Privilege

11. For the purposes of the law relating to defamation, proceedings in relation to a complaint which is subject to the compulsory jurisdiction are to be treated as if they were proceedings before a court.

PART III

THE COMPULSORY JURISDICTION

Introduction

12. This Part of this Schedule applies only in relation to the compulsory jurisdiction.

Authority's procedural rules

13.—(1) The Authority must make rules providing that a complaint is not to be entertained unless the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired.

(2) The rules may provide that an ombudsman may extend that time limit in specified circumstances.

(3) The Authority may make rules providing that a complaint is not to be entertained (except in specified circumstances) if the complainant has not previously communicated its substance to the respondent and given him a reasonable opportunity to deal with it.

(4) The Authority may make rules requiring an authorised person who may become subject to the compulsory jurisdiction as a respondent to establish such procedures as the Authority considers appropriate for the resolution of complaints which—

- (a) may be referred to the scheme; and
- (b) arise out of activity to which the Authority's powers under Part X do not apply.

The scheme operator's rules

14.—(1) The scheme operator must make rules, to be known as "scheme rules", which are to set out the procedure for reference of complaints and for their investigation, consideration and determination by an ombudsman.

(2) Scheme rules may, among other things—

- (a) specify matters which are to be taken into account in determining whether an act or omission was fair and reasonable;
- (b) provide that a complaint may, in specified circumstances, be dismissed without consideration of its merits;
- (c) provide for the reference of a complaint, in specified circumstances and with the consent of the complainant, to another body with a view to its being determined by that body instead of by an ombudsman;
- (d) make provision as to the evidence which may be required or admitted, the extent to which it should be oral or written and the consequences of a person's failure to produce any information or document which he has been required (under section 231 or otherwise) to produce;

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- (e) allow an ombudsman to fix time limits for any aspect of the proceedings and to extend a time limit;
 - (f) provide for certain things in relation to the reference, investigation or consideration (but not determination) of a complaint to be done by a member of the scheme operator's staff instead of by an ombudsman;
 - (g) make different provision in relation to different kinds of complaint.
- (3) The circumstances specified under sub-paragraph (2)(b) may include the following—
- (a) the ombudsman considers the complaint frivolous or vexatious;
 - (b) legal proceedings have been brought concerning the subject-matter of the complaint and the ombudsman considers that the complaint is best dealt with in those proceedings; or
 - (c) the ombudsman is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the ombudsman scheme.
- (4) If the scheme operator proposes to make any scheme rules it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of persons appearing to it to be likely to be affected.
- (5) The draft must be accompanied by a statement that representations about the proposals may be made to the scheme operator within a time specified in the statement.
- (6) Before making the proposed scheme rules, the scheme operator must have regard to any representations made to it under sub-paragraph (5).
- (7) The consent of the Authority is required before any scheme rules may be made.

Fees

- 15.—(1) Scheme rules may require a respondent to pay to the scheme operator such fees as may be specified in the rules.
- (2) The rules may, among other things—
- (a) provide for the scheme operator to reduce or waive a fee in a particular case;
 - (b) set different fees for different stages of the proceedings on a complaint;
 - (c) provide for fees to be refunded in specified circumstances;
 - (d) make different provision for different kinds of complaint.

Enforcement of money awards

16. A money award, including interest, which has been registered in accordance with scheme rules may—
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court;
 - (b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981;
 - (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

S.I. 1981/226
(N.I.6).

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PART IV

THE VOLUNTARY JURISDICTION

Introduction

17. This Part of this Schedule applies only in relation to the voluntary jurisdiction.

Terms of reference to the scheme

18.—(1) Complaints are to be dealt with and determined under the voluntary jurisdiction on standard terms fixed by the scheme operator with the approval of the Authority.

(2) Different standard terms may be fixed with respect to different matters or in relation to different cases.

(3) The standard terms may, in particular—

(a) require the making of payments to the scheme operator by participants in the scheme of such amounts, and at such times, as may be determined by the scheme operator;

(b) make provision as to the award of costs on the determination of a complaint.

(4) The scheme operator may not vary any of the standard terms or add or remove terms without the approval of the Authority.

(5) The standard terms may include provision to the effect that (unless acting in bad faith) none of the following is to be liable in damages for anything done or omitted in the discharge or purported discharge of functions in connection with the voluntary jurisdiction—

(a) the scheme operator;

(b) any member of its governing body;

(c) any member of its staff;

(d) any person acting as an ombudsman for the purposes of the scheme.

Delegation by and to other schemes

19.—(1) The scheme operator may make arrangements with a relevant body—

(a) for the exercise by that body of any part of the voluntary jurisdiction of the ombudsman scheme on behalf of the scheme; or

(b) for the exercise by the scheme of any function of that body as if it were part of the voluntary jurisdiction of the scheme.

(2) A “relevant body” is one which the scheme operator is satisfied—

(a) is responsible for the operation of a broadly comparable scheme (whether or not established by statute) for the resolution of disputes; and

(b) in the case of arrangements under sub-paragraph (1)(a), will exercise the jurisdiction in question in a way compatible with the requirements imposed by or under this Act in relation to complaints of the kind concerned.

(3) Such arrangements require the approval of the Authority.

Voluntary jurisdiction rules: procedure

20.—(1) If the scheme operator makes voluntary jurisdiction rules, it must give a copy to the Authority without delay.

(2) If the scheme operator revokes any such rules, it must give written notice to the Authority without delay.

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(3) The power to make voluntary jurisdiction rules is exercisable in writing.

(4) Immediately after making voluntary jurisdiction rules, the scheme operator must arrange for them to be printed and made available to the public.

(5) The scheme operator may charge a reasonable fee for providing a person with a copy of any voluntary jurisdiction rules.

Verification of the rules

21.—(1) The production of a printed copy of voluntary jurisdiction rules purporting to be made by the scheme operator—

(a) on which is endorsed a certificate signed by a member of the scheme operator's staff authorised by the scheme operator for that purpose, and

(b) which contains the required statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(2) The required statements are—

(a) that the rules were made by the scheme operator;

(b) that the copy is a true copy of the rules; and

(c) that on a specified date the rules were made available to the public in accordance with paragraph 20(4).

(3) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be taken to have been duly signed unless the contrary is shown.

Consultation

22.—(1) If the scheme operator proposes to make voluntary jurisdiction rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of the public.

(2) The draft must be accompanied by—

(a) an explanation of the proposed rules; and

(b) a statement that representations about the proposals may be made to the scheme operator within a specified time.

(3) Before making any voluntary jurisdiction rules, the scheme operator must have regard to any representations made to it in accordance with sub-paragraph (2)(b).

(4) If voluntary jurisdiction rules made by the scheme operator differ from the draft published under sub-paragraph (1) in a way which the scheme operator considers significant, the scheme operator must publish a statement of the difference.

Sections 334, 336
and 338.

SCHEDULE 18

MUTUALS

PART I

FRIENDLY SOCIETIES

The Friendly Societies Act 1974 (c.46)

1. Omit sections 4 (provision for separate registration areas) and 10 (societies registered in one registration area carrying on business in another).

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2. In section 7 (societies which may be registered), in subsection (2)(b), for “in the central registration area or in Scotland” substitute “in the United Kingdom, the Channel Islands or the Isle of Man”.

3. In section 11 (additional registration requirements for societies with branches), omit “and where any such society has branches in more than one registration area, section 10 above shall apply to that society”.

4. In section 99(4) (punishment of fraud etc and recovery of property misapplied), omit “in the central registration area”.

The Friendly Societies Act 1992 (c.40)

5. Omit sections 31 to 36A (authorisation of friendly societies business).

6. In section 37 (restrictions on combinations of business), omit subsections (1), (1A) and (7A) to (9).

7. Omit sections 38 to 43 (restrictions on business of certain authorised societies).

8. Omit sections 44 to 50 (regulation of friendly societies business).

PART II

FRIENDLY SOCIETIES: SUBSIDIARIES AND CONTROLLED BODIES

Interpretation

9. In this Part of this Schedule—

“the 1992 Act” means the Friendly Societies Act 1992; and

1992 c. 40.

“section 13” means section 13 of that Act.

Qualifying bodies

10.—(1) Subsections (2) to (5) of section 13 (incorporated friendly societies allowed to form or acquire control or joint control only of qualifying bodies) cease to have effect.

(2) As a result, omit—

(a) subsections (8) and (11) of that section, and

(b) Schedule 7 to the 1992 Act (activities which may be carried on by a subsidiary of, or body jointly controlled by, an incorporated friendly society).

Bodies controlled by societies

11. In section 13(9) (defined terms), after paragraph (a) insert—

“(aa) an incorporated friendly society also has control of a body corporate if the body corporate is itself a body controlled in one of the ways mentioned in paragraph (a)(i), (ii) or (iii) by a body corporate of which the society has control;”.

Joint control by societies

12. In section 13(9), after paragraph (c) insert—

“(cc) an incorporated friendly society also has joint control of a body corporate if—

(i) a subsidiary of the society has joint control of the body corporate in a way mentioned in paragraph (c)(i), (ii) or (iii);

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(ii) a body corporate of which the society has joint control has joint control of the body corporate in such a way; or

(iii) the body corporate is controlled in a way mentioned in paragraph (a)(i), (ii) or (iii) by a body corporate of which the society has joint control;”.

Acquisition of joint control

13. In section 13(9), in the words following paragraph (d), after “paragraph (c)” insert “or (cc)”.

Amendment of Schedule 8 to the 1992 Act

14.—(1) Schedule 8 to the 1992 Act (provisions supplementing section 13) is amended as follows.

(2) Omit paragraph 3(2).

(3) After paragraph 3 insert—

“3A.—(1) A body is to be treated for the purposes of section 13(9) as having the right to appoint to a directorship if—

(a) a person’s appointment to the directorship follows necessarily from his appointment as an officer of that body; or

(b) the directorship is held by the body itself.

(2) A body (“B”) and some other person (“P”) together are to be treated, for the purposes of section 13(9), as having the right to appoint to a directorship if—

(a) P is a body corporate which has directors and a person’s appointment to the directorship follows necessarily from his appointment both as an officer of B and a director of P;

(b) P is a body corporate which does not have directors and a person’s appointment to the directorship follows necessarily from his appointment both as an officer of B and as a member of P’s managing body; or

(c) the directorship is held jointly by B and P.

(3) For the purposes of section 13(9), a right to appoint (or remove) which is exercisable only with the consent or agreement of another person must be left out of account unless no other person has a right to appoint (or remove) in relation to that directorship.

(4) Nothing in this paragraph is to be read as restricting the effect of section 13(9).”

(4) In paragraph 9 (exercise of certain rights under instruction by, or in the interests of, incorporated friendly society) insert at the end “or in the interests of any body over which the society has joint control”.

Consequential amendments

15.—(1) Section 52 of the 1992 Act is amended as follows.

(2) In subsection (2), omit paragraph (d).

(3) In subsection (3), for “(4) below” substitute “(2)”.

(4) For subsection (4) substitute—

“(4) A court may not make an order under subsection (5) unless it is satisfied that one or more of the conditions mentioned in subsection (2) are satisfied.

(5) In subsection (5), omit the words from “or, where” to the end.

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References in other enactments

16. References in any provision of, or made under, any enactment to subsidiaries of, or bodies jointly controlled by, an incorporated friendly society are to be read as including references to bodies which are such subsidiaries or bodies as a result of any provision of this Part of this Schedule.

PART III

BUILDING SOCIETIES

The Building Societies Act 1986 (c.53)

17. Omit section 9 (initial authorisation to raise funds and borrow money).
18. Omit Schedule 3 (supplementary provisions about authorisation).

PART IV

INDUSTRIAL AND PROVIDENT SOCIETIES

The Industrial and Provident Societies Act 1965 (c.12)

19. Omit section 8 (provision for separate registration areas for Scotland and for England, Wales and the Channel Islands).
20. Omit section 70 (scale of fees to be paid in respect of transactions and inspection of documents).

PART V

CREDIT UNIONS

The Credit Unions Act 1979 (c.34)

21. In section 6 (minimum and maximum number of members), omit subsections (2) to (6).
22. In section 11 (loans), omit subsections (2) and (6).
23. Omit sections 11B (loans approved by credit unions), 11C (grant of certificates of approval) and 11D (withdrawal of certificates of approval).
24. In section 12, omit subsections (4) and (5).
25. In section 14, omit subsections (2), (3), (5) and (6).
26. In section 28 (offences), omit subsection (2).

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Section 351.

SCHEDULE 19
COMPETITION INFORMATION

PART I

PERSONS AND FUNCTIONS FOR THE PURPOSES OF SECTION 351

1. The Table set out after this paragraph has effect for the purposes of section 351(3)(b).

TABLE

<i>Person</i>	<i>Function</i>
1. The Commission.	Any function of the Commission under Community law relating to competition.
2. The Comptroller and Auditor General.	Any function of his.
3. A Minister of the Crown.	Any function of his under a specified enactment.
4. Director General of Telecommunications.	Any function of his under a specified enactment.
5. Director General of Gas Supply	Any function of his under a specified enactment
6. The Director General of Gas for Northern Ireland.	Any function of his under a specified enactment.
7. The Director General of Electricity Supply.	Any function of his under a specified enactment.
8. The Director General of Electricity Supply for Northern Ireland.	Any function of his under a specified enactment.
9. The Director General of Water Services.	Any function of his under a specified enactment.
10. The Civil Aviation Authority.	Any function of that authority under a specified enactment.
11. The Rail Regulator.	Any function of his under a specified enactment.
12. The Director General of Fair Trading.	Any function of his under a specified enactment.
13. The Competition Commission.	Any function of the Competition Commission under a specified enactment.
14. The Authority.	Any function of the Authority under a specified enactment.
15. A person of a description specified in an order made by the Treasury.	Any function of his which is specified in the order.

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1973 c. 41.	1. The Fair Trading Act 1973
1974 c. 39.	2. The Consumer Credit Act 1974
1979 c. 38.	3. The Estate Agents Act 1979
1980 c. 21.	4. The Competition Act 1980
1984 c. 12.	5. The Telecommunications Act 1984

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6. The Airports Act 1986	1986 c. 31.
7. The Gas Act 1986	1986 c. 45.
8. The Control of Misleading Advertisements Regulations 1988	S.I. 1988/915.
9. The Electricity Act 1989	1989 c. 29.
10. The Broadcasting Act 1990	1990 c. 42.
11. The Water Industry Act 1991	1991 c. 56.
12. The Electricity (Northern Ireland) Order 1992	S.I. 1992/231 (N.I. 1).
13. The Railways Act 1993	1993 c. 43.
14. Part IV of the Airports (Northern Ireland) Order 1994	S.I. 1994/426 (N.I. 1).
15. The Gas (Northern Ireland) Order 1996	S.I. 1996/275 (N.I. 2).
16. The EC Competition (Articles 88 and 89) Enforcement Regulations 1996	S.I. 1996/2199.
17. The Unfair Terms in Consumer Contracts Regulations 1999	S.I. 1999/2083.
18. This Act.	
19. An enactment specified for the purposes of this paragraph in an order made by the Treasury.	

SCHEDULE 20

Section 432(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

The House of Commons Disqualification Act 1975 (c. 24)

1. In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices)—

(a) omit—

“Any member of the Financial Services Tribunal in receipt of remuneration”; and

(b) at the appropriate place, insert—

“Any member, in receipt of remuneration, of a panel of persons who may be selected to act as members of the Financial Services and Markets Tribunal”.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

2. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices)—

(a) omit—

“Any member of the Financial Services Tribunal in receipt of remuneration”; and

(b) at the appropriate place, insert—

“Any member, in receipt of remuneration, of a panel of persons who may be selected to act as members of the Financial Services and Markets Tribunal”.

The Civil Jurisdiction and Judgments Act 1982 (c. 27)

3. In paragraph 10 of Schedule 5 to the Civil Jurisdiction and Judgments Act 1982 (proceedings excluded from the operation of Schedule 4 to that Act), for “section 188 of the Financial Services Act 1986” substitute “section 415 of the Financial Services and Markets Act 2000”.

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The Income and Corporation Taxes Act 1988 (c. 1)

4.—(1) The Income and Corporation Taxes Act 1988 is amended as follows.

(2) In section 76 (expenses of management: insurance companies), in subsection (8), omit the definitions of—

- “the 1986 Act”;
- “authorised person”;
- “investment business”;
- “investor”;
- “investor protection scheme”;
- “prescribed”; and
- “recognised self-regulating organisation”.

(3) In section 468 (authorised unit trusts), in subsections (6) and (8), for “78 of the Financial Services Act 1986” substitute “243 of the Financial Services and Markets Act 2000”.

(4) In section 469(7) (other unit trust schemes), for “Financial Services Act 1986” substitute “Financial Services and Markets Act 2000”.

(5) In section 728 (information in relation to transfers of securities), in subsection (7)(a), for “Financial Services Act 1986” substitute “Financial Services and Markets Act 2000”.

(6) In section 841(3) (power to apply certain provisions of the Tax Acts to recognised investment exchange), for “Financial Services Act 1986” substitute “Financial Services and Markets Act 2000”.

The Finance Act 1991 (c. 31)

5.—(1) The Finance Act 1991 is amended as follows.

(2) In section 47 (investor protection schemes), omit subsections (1), (2) and (4).

(3) In section 116 (investment exchanges and clearing houses: stamp duty), in subsection (4)(b), for “Financial Services Act 1986” substitute “Financial Services and Markets Act 2000”.

The Tribunals and Inquiries Act 1992 (c. 53)

6.—(1) The Tribunals and Inquiries Act 1992 is amended as follows.

(2) In Schedule 1 (tribunals under supervision of the Council on Tribunals), for the entry relating to financial services and paragraph 18, substitute—

“Financial services and markets	18. The Financial Services and Markets Tribunal.”
------------------------------------	--

The Judicial Pensions and Retirement Act 1993 (c. 8)

7.—(1) The Judicial Pensions and Retirement Act 1993 is amended as follows.

(2) In Schedule 1 (offices which may be qualifying offices), in Part II, after the entry relating to the President or chairman of the Transport Tribunal insert—

“President or Deputy President of the Financial Services and Markets Tribunal”

(3) In Schedule 5 (relevant offices in relation to retirement provisions)—

(a) omit the entry—

“Member of the Financial Services Tribunal appointed by the Lord Chancellor”; and

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(b) at the end insert—

“Member of the Financial Services and Markets Tribunal”.

SCHEDULE 21

Section 432(2).

TRANSITIONAL PROVISIONS AND SAVINGS

Self-regulating organisations

1.—(1) No new application under section 9 of the 1986 Act (application for recognition) may be entertained.

(2) No outstanding application made under that section before the passing of this Act may continue to be entertained.

(3) After the date which is the designated date for a recognised self-regulating organisation—

(a) the recognition order for that organisation may not be revoked under section 11 of the 1986 Act (revocation of recognition);

(b) no application may be made to the court under section 12 of the 1986 Act (compliance orders) with respect to that organisation.

(4) The powers conferred by section 13 of the 1986 Act (alteration of rules for protection of investors) may not be exercised.

(5) “Designated date” means such date as the Treasury may by order designate.

(6) Sub-paragraph (3) does not apply to a recognised self-regulating organisation in respect of which a notice of intention to revoke its recognition order was given under section 11(3) of the 1986 Act before the passing of this Act if that notice has not been withdrawn.

(7) Expenditure incurred by the Authority in connection with the winding up of any body which was, immediately before the passing of this Act, a recognised self-regulating organisation is to be treated as having been incurred in connection with the discharge by the Authority of functions under this Act.

(8) “Recognised self-regulating organisation” means an organisation which, immediately before the passing of this Act, was such an organisation for the purposes of the 1986 Act.

(9) “The 1986 Act” means the Financial Services Act 1986.

1986 c. 60.

Self-regulating organisations for friendly societies

2.—(1) No new application under paragraph 2 of Schedule 11 to the 1986 Act (application for recognition) may be entertained.

(2) No outstanding application made under that paragraph before the passing of this Act may continue to be entertained.

(3) After the date which is the designated date for a recognised self-regulating organisation for friendly societies—

(a) the recognition order for that organisation may not be revoked under paragraph 5 of Schedule 11 to the 1986 Act (revocation of recognition);

(b) no application may be made to the court under paragraph 6 of that Schedule (compliance orders) with respect to that organisation.

(4) “Designated date” means such date as the Treasury may by order designate.

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(5) Sub-paragraph (3) does not apply to a recognised self-regulating organisation for friendly societies in respect of which a notice of intention to revoke its recognition order was given under section 11(3) of the 1986 Act (as applied by paragraph 5(2) of that Schedule) before the passing of this Act if that notice has not been withdrawn.

(6) Expenditure incurred by the Authority in connection with the winding up of any body which was, immediately before the passing of this Act, a recognised self-regulating organisation for friendly societies is to be treated as having been incurred in connection with the discharge by the Authority of functions under this Act.

(7) "Recognised self-regulating organisation for friendly societies" means an organisation which, immediately before the passing of this Act, was such an organisation for the purposes of the 1986 Act.

1986 c. 60.

(8) "The 1986 Act" means the Financial Services Act 1986.

Section 432(3).

SCHEDULE 22

REPEALS

Chapter	Short title	Extent of repeal
1923 c. 8.	The Industrial Assurance Act 1923.	The whole Act.
1948 c. 39.	The Industrial Assurance and Friendly Societies Act 1948.	The whole Act.
1965 c. 12.	The Industrial and Provident Societies Act 1965.	Section 8. Section 70.
1974 c. 46.	The Friendly Societies Act 1974.	Section 4. Section 10. In section 11, from "and where" to "that society". In section 99(4), "in the central registration area".
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III, "Any member of the Financial Services Tribunal in receipt of remuneration".
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part III, "Any member of the Financial Services Tribunal in receipt of remuneration".
1977 c. 46.	The Insurance Brokers (Registration) Act 1977.	The whole Act.
1979 c. 34.	The Credit Unions Act 1979.	Section 6(2) to (6). Section 11(2) and (6). Sections 11B, 11C and 11D. Section 12(4) and (5). In section 14, subsections (2), (3), (5) and (6). Section 28(2).

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Chapter	Short title	Extent of repeal
1986 c. 53.	The Building Societies Act 1986.	Section 9. Schedule 3.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 76, in subsection (8), the definitions of "the 1986 Act", "authorised person", "investment business", "investor", "investor protection scheme", "prescribed" and "recognised self-regulating organisation".
1991 c. 31.	The Finance Act 1991.	In section 47, subsections (1), (2) and (4).
1992 c. 40.	The Friendly Societies Act 1992.	In section 13, subsections (2) to (5), (8) and (11). Sections 31 to 36. In section 37, subsections (1), (1A) and (7A) to (9). Sections 38 to 50. In section 52, subsection (2)(d) and, in subsection (5), the words from "or where" to the end. Schedule 7. In Schedule 8, paragraph 3(2).
1993 c. 8.	The Judicial Pensions and Retirement Act 1993.	In Schedule 5, "Member of the Financial Services Tribunal appointed by the Lord Chancellor".

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2001 No. 544

FINANCIAL SERVICES AND MARKETS

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

Approved by both Houses of Parliament

Made - - - - - 26th February 2001

Laid before Parliament 27th February 2001

Coming into force in accordance with article 2

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ARTICLE 2.2 OF THE INVESTMENT SERVICES DIRECTIVE

The Treasury, in exercise of the powers conferred on them by sections 22(1) and (5), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(a), hereby make the following Order:

PART I GENERAL

Citation

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day on which section 19 of the Act comes into force.

(2) This Order comes into force—

- (a) for the purposes of articles 59, 60 and 87 (funeral plan contracts) on 1st January 2002; and
- (b) for the purposes of articles 61 to 63, 88, 90 and 91 (regulated mortgage contracts) nine months after section 19 of the Act comes into force.

Interpretation

3.—(1) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons;

“buying” includes acquiring for valuable consideration;

“close relative” in relation to a person means—

- (a) his spouse;
- (b) his children and step children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and
- (c) the spouse of any person within sub-paragraph (b);

“contract of general insurance” means any contract falling within Part I of Schedule 1;

“contract of insurance” means any contract of insurance which is a contract of long-term insurance or a contract of general insurance, and includes—

- (a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are—
 - (i) effected or carried out by a person not carrying on a banking business;
 - (ii) not effected merely incidentally to some other business carried on by the person effecting them; and
 - (iii) effected in return for the payment of one or more premiums;
- (b) tontines;
- (c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who—
 - (i) does not carry on a banking business; and
 - (ii) otherwise carries on a regulated activity of the kind specified by article 10(1) or (2);
- (d) contracts to pay annuities on human life;
- (e) contracts of a kind referred to in article 1(2)(e) of the first life insurance directive (collective insurance etc.); and

(a) 2000 c. 8.

(f) contracts of a kind referred to in article 1(3) of the first life insurance directive (social insurance);

but does not include a funeral plan contract (or a contract which would be a funeral plan contract but for the exclusion in article 60);

“contract of long-term insurance” means any contract falling within Part II of Schedule 1;

“contractually based investment” means—

- (a) rights under a qualifying contract of insurance;
- (b) any investment of the kind specified by any of articles 83, 84, 85 and 87; or
- (c) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (b);

“deposit” has the meaning given by article 5;

“funeral plan contract” has the meaning given by article 59;

“instrument” includes any record whether or not in the form of a document;

“joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial purposes related to a business or businesses (other than the business of engaging in a regulated activity) carried on by them; and, where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the enterprise;

“local authority” means—

- (a) in England and Wales, a local authority within the meaning of the Local Government Act 1972(a), the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973(b);
- (c) in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972(c);

“managing agent” means a person who is permitted by the Council of Lloyd’s in the conduct of his business as an underwriting agent to perform for a member of Lloyd’s one or more of the following functions—

- (a) underwriting contracts of insurance at Lloyd’s;
- (b) reinsuring such contracts in whole or in part;
- (c) paying claims on such contracts;

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

“overseas person” means a person who—

- (a) carries on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or, so far as relevant to any of those articles, article 64 (or activities of a kind which would be so specified but for the exclusion in article 72); but
- (b) does not carry on any such activities, or offer to do so, from a permanent place of business maintained by him in the United Kingdom;

“pension fund management contract” means a contract to manage the investments of pension funds (other than funds solely for the benefit of the officers or employees of the person effecting or carrying out the contract and their dependants or, in the case of a company, partly for the benefit of officers and employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company); and for the

(a) 1972 c. 70. The definition of “local authority” in section 270 of the 1972 Act has been amended by Sch. 17 to the Local Government Act 1985 (c. 51); and by section 1(5) of the Local Government (Wales) Act 1994 (c. 19).

(b) 1973 c. 65. The definition of “local authority” in section 235 of the 1973 Act was substituted by para. 92(66) of Sch. 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

(c) 1972 c. 9 (N.I.).

purposes of this definition, “subsidiary” and “holding company” are to be construed in accordance with section 736 of the Companies Act 1985(a) or article 4 of the Companies (Northern Ireland) Order 1986(b);

“property” includes currency of the United Kingdom or any other country or territory;

“qualifying contract of insurance” means a contract of long-term insurance which is not—

- (a) a reinsurance contract; nor
- (b) a contract in respect of which the following conditions are met—
 - (i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (ii) the contract provides that benefits are payable on death (other than death due to an accident) only where the death occurs within ten years of the date on which the life of the person in question was first insured under the contract, or where the death occurs before that person attains a specified age not exceeding seventy years;
 - (iii) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (iv) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with any of the above conditions;

“regulated mortgage contract” has the meaning given by article 61(3);

“security” means (except where the context otherwise requires) any investment of the kind specified by any of articles 76 to 82 or, so far as relevant to any such investment, article 89;

“selling”, in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes “disposing” includes—

- (a) in the case of an investment consisting of rights under a contract—
 - (i) surrendering, assigning or converting those rights; or
 - (ii) assuming the corresponding liabilities under the contract;
- (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and
- (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

“stakeholder pension scheme” has the meaning given by section 1 of the Welfare Reform and Pensions Act 1999(c);

“syndicate” means one or more persons, to whom a particular syndicate number has been assigned by or under the authority of the Council of Lloyd’s, carrying out or effecting contracts of insurance written at Lloyd’s;

“voting shares”, in relation to a body corporate, means shares carrying voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of that body corporate.

(2) For the purposes of this Order, a transaction is entered into through a person if he enters into it as agent or arranges, in a manner constituting the carrying on of an activity of the kind specified by article 25(1), for it to be entered into by another person as agent or principal.

(3) For the purposes of this Order, a contract of insurance is to be treated as falling within Part II of Schedule I, notwithstanding the fact that it contains related and subsidiary provisions such that it might also be regarded as falling within Part I of that Schedule, if its principal object is that of a contract falling within Part II and it is effected or carried out by an authorised person who has permission to effect or carry out contracts falling within paragraph I of Part II of Schedule I.

(a) 1985 c. 6. Section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

(b) S.I. 1986/1032 (N.I. 6). Article 4 was substituted by article 62 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504) (N.I. 10).

(c) 1993 c. 30.

PART II SPECIFIED ACTIVITIES

CHAPTER I

GENERAL

Specified activities: general

4.—(1) The following provisions of this Part specify kinds of activity for the purposes of section 22 of the Act (and accordingly any activity of one of those kinds, which is carried on by way of business(a), and relates to an investment of a kind specified by any provision of Part III and applicable to that activity, is a regulated activity for the purposes of the Act).

(2) The kinds of activity specified by articles 51 and 52 are also specified for the purposes of section 22(1)(b) of the Act (and accordingly any activity of one of those kinds, when carried on by way of business, is a regulated activity when carried on in relation to property of any kind).

(3) Subject to paragraph (4), each provision specifying a kind of activity is subject to the exclusions applicable to that provision (and accordingly any reference in this Order to an activity of the kind specified by a particular provision is to be read subject to any such exclusions).

(4) Where an investment firm—

- (a) provides core investment services to third parties on a professional basis, and
- (b) in doing so would be treated as carrying on an activity of a kind specified by a provision of this Part but for an exclusion in any of articles 15, 68, 69 and 70,

that exclusion is to be disregarded (and accordingly the investment firm is to be treated as carrying on an activity of the kind specified by the provision in question).

(5) In this article—

“core investment service” means any service listed in section A of the Annex to the investment services directive, the text of which is set out in Schedule 2; and

“investment firm” means a person whose regular occupation or business is the provision of core investment services to third parties on a professional basis, other than—

- (a) a person to whom the investment services directive does not apply by virtue of Article 2.2 of that directive (the text of which is set out in Schedule 3); or
- (b) a person to whom (if he were incorporated in or formed under the law of an EEA State or, being an individual, had his head office in an EEA State) that directive would not apply by virtue of Article 2.2 of that directive.

CHAPTER II

ACCEPTING DEPOSITS

The activity

Accepting deposits

5.—(1) Accepting deposits is a specified kind of activity if—

- (a) money received by way of deposit is lent to others; or
- (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.

(2) In paragraph (1), “deposit” means a sum of money, other than one excluded by any of articles 6 to 9, paid on terms—

- (a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(a) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/), made under section 419 of the Act, makes provision as to the circumstances in which persons are, or are not, to be regarded as carrying on activities by way of business.

- (b) which are not referable to the provision of property (other than currency) or services or the giving of security.
- (3) For the purposes of paragraph (2), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if—
 - (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
 - (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
 - (c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

Exclusions

Sums paid by certain persons

- 6.—(1) A sum is not a deposit for the purposes of article 5 if it is—
- (a) paid by any of the following persons—
 - (i) the Bank of England, the central bank of an EEA State other than the United Kingdom, or the European Central Bank;
 - (ii) an authorised person who has permission to accept deposits, or to effect or carry out contracts of insurance;
 - (iii) an EEA firm falling within paragraph 5(b), (c) or (d) of Schedule 3 to the Act (other than one falling within paragraph (ii) above);
 - (iv) the National Savings Bank;
 - (v) a municipal bank, that is to say a company which was, immediately before the coming into force of this article, exempt from the prohibition in section 3 of the Banking Act 1987(a) by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act;
 - (vi) Keesler Federal Credit Union;
 - (vii) a body of persons certified as a school bank by the National Savings Bank or by an authorised person who has permission to accept deposits;
 - (viii) a local authority;
 - (xi) any body which by virtue of any enactment has power to issue a precept to a local authority in England and Wales or a requisition to a local authority in Scotland, or to the expenses of which, by virtue of any enactment, a local authority in the United Kingdom is or can be required to contribute (and in this paragraph, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament);
 - (x) the European Community, the European Atomic Energy Community or the European Coal and Steel Community;
 - (xi) the European Investment Bank;
 - (xii) the International Bank for Reconstruction and Development;
 - (xiii) the International Finance Corporation;
 - (xiv) the International Monetary Fund;
 - (xv) the African Development Bank;
 - (xvi) the Asian Development Bank;
 - (xvii) the Caribbean Development Bank;
 - (xviii) the Inter-American Development Bank;
 - (xix) the European Bank for Reconstruction and Development;
 - (xx) the Council of Europe Resettlement Fund;
 - (b) paid by a person other than one mentioned in sub-paragraph (a) in the course of carrying on a business consisting wholly or to a significant extent of lending money;

(a) 1987 c. 22. Section 3 was amended by the Bank of England Act 1998 (c. 11), Sch. 5, paras 1 and 3. “Municipal bank” is defined in section 103 of the Banking Act 1987, which was amended by the Local Government Act 1992 (c. 19), Sch. 3, para. 22, and by the Local Government and Rating Act 1997 (c. 29), Sch. 3, para. 21.

- (c) paid by one company to another at a time when both are members of the same group or when the same individual is a majority shareholder controller of both of them; or
- (d) paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director or manager of that person or who is, or is a close relative of, a controller of that person.

(2) For the purposes of paragraph (1)(c), an individual is a majority shareholder controller of a company if he is a controller of the company by virtue of paragraph (a), (c), (e) or (g) of section 422(2) of the Act, and if in his case the greatest percentage of those referred to in those paragraphs is 50 or more.

(3) In the application of sub-paragraph (d) of paragraph (1) to a sum paid by a partnership, that sub-paragraph is to have effect as if, for the reference to the person paying the sum, there were substituted a reference to each of the partners.

Sums received by solicitors etc.

7.—(1) A sum is not a deposit for the purposes of article 5 if it is received by a practising solicitor acting in the course of his profession.

(2) In paragraph (1), “practising solicitor” means—

- (a) a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974(a), article 4 of the Solicitors (Northern Ireland) Order 1976(b) or section 4 of the Solicitors (Scotland) Act 1980(c);
- (b) a recognised body;
- (c) a registered foreign lawyer in the course of providing professional services as a member of a multi-national partnership;
- (d) a registered European lawyer; or
- (e) a partner of a registered European lawyer who is providing professional services in accordance with—
 - (i) rules made under section 31(d) of the Solicitors Act 1974;
 - (ii) regulations made under article 26 of the Solicitors (Northern Ireland) Order 1976; or
 - (iii) rules made under section 34 of the Solicitors (Scotland) Act 1980(e).

(3) In this article—

- (a) “a recognised body” means a body corporate recognised by—
 - (i) the Council of the Law Society under section 9 of the Administration of Justice Act 1985(f);
 - (ii) the Incorporated Law Society of Northern Ireland under article 26A of the Solicitors (Northern Ireland) Order 1976(g); or
 - (iii) the Council of the Law Society of Scotland under section 34 of the Solicitors (Scotland) Act 1980;
- (b) “registered foreign lawyer” has the meaning given by section 89 of the Courts and Legal Services Act 1990(h) or, in Scotland, section 65 of the Solicitors (Scotland) Act 1980(i);
- (c) “multi-national partnership” has the meaning given by section 89 of the Courts and Legal Services Act 1990 but, in Scotland, is a reference to a “multi-national practice” within the meaning of section 60A of the Solicitors (Scotland) Act 1980(j); and

(a) 1974 c. 47.

(b) S.I. 1976/582 (N.I. 12); relevant amending instrument is S.I. 1989/1343 (N.I. 14).

(c) 1980 c. 46.

(d) Section 31 was amended by para. 10 of Sch. 17 to the Courts and Legal Services Act 1990 (c. 41), and by para. 3 of Sch. 6 to, and para. 1 of Sch. 7 to, the Access to Justice Act 1999 (c. 22).

(e) Amended by section 31 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

(f) 1985 c. 61; section 9 was amended by para. 54 of Sch. 18 to the Courts and Legal Services Act 1990, and by para. 1 of Sch. 4 to the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119), and was repealed in part by Part II of Sch. 15 to the Access to Justice Act 1999.

(g) Inserted by article 10 of the Solicitors (Amendment) (Northern Ireland) Order 1989 (S.I. 1989/1343) (N.I. 14).

(h) 1990 c. 41; section 89 was amended by para. 14 of Sch. 4 to the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119).

(i) Amended by para. 29(15) of Sch. 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

(j) Inserted by section 32 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

- (d) “registered European lawyer” has the meaning given by regulation 2(1) of the European Communities (Lawyer’s Practice) Regulations 2000(a) or regulation 2(1) of the European Communities (Lawyer’s Practice) (Scotland) Regulation 2000(b).

Sums received by persons authorised to deal etc.

8. A sum is not a deposit for the purposes of article 5 if it is received by a person who is—
- (a) an authorised person with permission to carry on an activity of the kind specified by any of articles 14, 21, 25, 37, 51 and 52, or
 - (b) an exempt person in relation to any such activity,
- in the course of, or for the purpose of, carrying on that activity with or on behalf of the person by or on behalf of whom the sum is paid.

Sums received in consideration for the issue of debt securities

9.—(1) Subject to paragraph (2), a sum is not a deposit for the purposes of article 5 if it is received by a person as consideration for the issue by him of any investment of the kind specified by article 77 or 78.

(2) The exclusion in paragraph (1) does not apply to the receipt by a person of a sum as consideration for the issue by him of commercial paper unless—

- (a) the commercial paper is issued to persons—
 - (i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or
 - (ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses; and
- (b) the redemption value of the commercial paper is not less than £100,000 (or an amount of equivalent value denominated wholly or partly in a currency other than sterling), and no part of the commercial paper may be transferred unless the redemption value of that part is not less than £100,000 (or such an equivalent amount).

(3) In paragraph (2), “commercial paper” means an investment of the kind specified by article 77 or 78 which must be redeemed before the first anniversary of the date of issue.

CHAPTER III

INSURANCE

The activities

Effecting and carrying out contracts of insurance

- 10.—(1) Effecting a contract of insurance as principal is a specified kind of activity.
- (2) Carrying out a contract of insurance as principal is a specified kind of activity.

Exclusions

Community co-insurers

11.—(1) There is excluded from article 10(1) or (2) the effecting or carrying out of a contract of insurance by an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act—

- (a) other than through a branch in the United Kingdom; and
- (b) pursuant to a Community co-insurance operation in which the firm is participating otherwise than as the leading insurer.

(2) In paragraph (1), “Community co-insurance operation” and “leading insurer” have the same meaning as in the Council Directive of 30 May 1978 on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance (No. 78/473/EEC)(b).

(a) S.I. 2000/1119.

(b) Scottish Statutory Instruments 2000 No. 121.

Breakdown insurance

12.—(1) There is excluded from article 10(1) or (2) the effecting or carrying out, by a person who does not otherwise carry on an activity of the kind specified by that article, of a contract of insurance which—

- (a) is a contract under which the benefits provided by that person (“the provider”) are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle; and
- (b) contains the terms mentioned in paragraph (2).

(2) Those terms are that—

- (a) the assistance takes either or both of the forms mentioned in paragraph (3)(a) and (b);
- (b) the assistance is not available outside the United Kingdom and the Republic of Ireland except where it is provided without the payment of additional premium by a person in the country concerned with whom the provider has entered into a reciprocal agreement; and
- (c) assistance provided in the case of an accident or breakdown occurring in the United Kingdom or the Republic of Ireland is, in most circumstances, provided by the provider’s servants.

(3) The forms of assistance are—

- (a) repairs to the relevant vehicle at the place where the accident or breakdown has occurred; this assistance may also include the delivery of parts, fuel, oil, water or keys to the relevant vehicle;
- (b) removal of the relevant vehicle to the nearest or most appropriate place at which repairs may be carried out, or to—
 - (i) the home, point of departure or original destination within the United Kingdom of the driver and passengers, provided the accident or breakdown occurred within the United Kingdom;
 - (ii) the home, point of departure or original destination within the Republic of Ireland of the driver and passengers, provided the accident or breakdown occurred within the Republic of Ireland or within Northern Ireland;
 - (iii) the home, point of departure or original destination within Northern Ireland of the driver and passengers, provided the accident or breakdown occurred within the Republic of Ireland;

and this form of assistance may include the conveyance of the driver or passengers of the relevant vehicle, with the vehicle, or (where the vehicle is to be conveyed only to the nearest or most appropriate place at which repairs may be carried out) separately, to the nearest location from which they may continue their journey by other means.

(4) A contract does not fail to meet the condition in paragraph (1)(a) solely because the provider may reimburse the person entitled to the assistance for all or part of any sums paid by him in respect of assistance either because he failed to identify himself as a person entitled to the assistance or because he was unable to get in touch with the provider in order to claim the assistance.

(5) In this article—

“the assistance” means the benefits to be provided under a contract of the kind mentioned in paragraph (1);

“breakdown” means an event—

- (a) which causes the driver of the relevant vehicle to be unable to start a journey in the vehicle or involuntarily to bring the vehicle to a halt on a journey because of some malfunction of the vehicle or failure of it to function, and
- (b) after which the journey cannot reasonably be commenced or continued in the relevant vehicle;

“the relevant vehicle” means the vehicle (including a trailer or caravan) in respect of which the assistance is required.

Supplemental

Application of sections 327 and 332 of the Act to insurance market activities

13.—(1) In sections 327(5) and (7) and 332(3)(b) of the Act (exemption from the general prohibition for members of the professions, and rules in relation to such persons), the references to “a regulated activity” and “regulated activities” do not include—

- (a) any activity of the kind specified by article 10(1) or (2), where—
 - (i) P is a member of the Society; and
 - (ii) by virtue of section 316 of the Act (application of the Act to Lloyd’s underwriting), the general prohibition does not apply to the carrying on by P of that activity; or
 - (b) any activity of the kind specified by article 10(2), where—
 - (i) P is a former underwriting member; and
 - (ii) the contract of insurance in question is one underwritten by P at Lloyd’s.
- (2) In paragraph (1)—
“member of the Society” has the same meaning as in Lloyd’s Act 1982(a); and
“former underwriting member” has the meaning given by section 324(1) of the Act.

CHAPTER IV

DEALING IN INVESTMENTS AS PRINCIPAL

The activity

Dealing in investments as principal

14. Buying, selling, subscribing for or underwriting securities or contractually based investments (other than investments of the kind specified by article 87, or article 89 so far as relevant to that article) as principal is a specified kind of activity.

Exclusions

Absence of holding out etc.

15.—(1) Subject to paragraph (3), a person (“A”) does not carry on an activity of the kind specified by article 14 by entering into a transaction which relates to a security or is the assignment (or, in Scotland, the assignation) of a qualifying contract of insurance (or an investment of the kind specified by article 89, so far as relevant to such a contract), unless—

- (a) A holds himself out as willing, as principal, to buy, sell or subscribe for investments of the kind to which the transaction relates at prices determined by him generally and continuously rather than in respect of each particular transaction;
 - (b) A holds himself out as engaging in the business of buying investments of the kind to which the transaction relates, with a view to selling them;
 - (c) A holds himself out as engaging in the business of underwriting investments of the kind to which the transaction relates; or
 - (d) A regularly solicits members of the public with the purpose of inducing them, as principals or agents, to enter into transactions constituting activities of the kind specified by article 14, and the transaction is entered into as a result of his having solicited members of the public in that manner.
- (2) In paragraph (1)(d), “members of the public” means any persons other than—
(a) authorised persons or persons who are exempt persons in relation to activities of the kind specified by article 14;
(b) members of the same group as A;
(c) persons who are or who propose to become participators with A in a joint enterprise;
(d) any person who is solicited by A with a view to the acquisition by A of 20 per cent or more of the voting shares in a body corporate;

(a) 1982 c. 14.

- (e) if A (either alone or with members of the same group as himself) holds more than 20 per cent of the voting shares in a body corporate, any person who is solicited by A with a view to—
 - (i) the acquisition by A of further shares in the body corporate; or
 - (ii) the disposal by A of shares in the body corporate to the person solicited or to a member of the same group as the person solicited;
- (f) any person who—
 - (i) is solicited by A with a view to the disposal by A of shares in a body corporate to the person solicited or to a member of the same group as that person; and
 - (ii) either alone or with members of the same group holds 20 per cent or more of the voting shares in the body corporate;
- (g) any person whose head office is outside the United Kingdom, who is solicited by an approach made or directed to him at a place outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or (so far as relevant to any of those articles) article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(3) This article does not apply where A enters into the transaction as bare trustee or, in Scotland, as nominee for another person and is acting on that other person's instructions (but the exclusion in article 66(1) applies if the conditions set out there are met).

Dealing in contractually based investments

16. A person who is not an authorised person does not carry on an activity of the kind specified by article 14 by entering into a transaction relating to a contractually based investment—

- (a) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
- (b) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or, so far as relevant to any of those articles, article 64 (or would do so apart from any exclusion from any of those articles made by this Order).

Acceptance of instruments creating or acknowledging indebtedness

17.—(1) A person does not carry on an activity of the kind specified by article 14 by accepting an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.

(2) The reference in paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Issue by a company of its own shares etc.

18.—(1) There is excluded from article 14 the issue by a company of its own shares or share warrants, and the issue by any person of his own debentures or debenture warrants.

- (2) In this article—
 - (a) “company” means any body corporate other than an open-ended investment company;
 - (b) “shares” and “debentures” include any investment of the kind specified by article 76 or 77;
 - (c) “share warrants” and “debenture warrants” mean any investment of the kind specified by article 79 which relates to shares in the company concerned or, as the case may be, debentures issued by that company.

Risk management

19.—(1) A person (“B”) does not carry on an activity of the kind specified by article 14 by entering as principal 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 business” means a business carried on by—

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

Other exclusions

20. Article 14 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes) and 72 (overseas persons).

CHAPTER V

DEALING IN INVESTMENTS AS AGENT

The activity

Dealing in investments as agent

21. Buying, selling, subscribing for or underwriting securities or contractually based 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.

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 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).

(2) But the exclusion in paragraph (1) does not apply if 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.

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;

and “relevant business” means a business carried on by a relevant person.

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) and 72 (overseas persons).

CHAPTER VI

ARRANGING DEALS IN INVESTMENTS

The activities

Arranging deals in investments

25.—(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

- (a) a security,
- (b) a contractually based investment, or
- (c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity.

Exclusions

Arrangements not causing a deal

26. There are excluded from article 25(1) arrangements which do not or would not bring about the transaction to which the arrangements relate.

Enabling parties to communicate

27. A person does not carry on an activity of the kind specified by article 25(2) merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

Arranging transactions to which the arranger is a party

28.—(1) There are excluded from article 25(1) any arrangements for a transaction into which the person making the arrangements enters or is to enter as principal or as agent for some other person.

(2) There are excluded from article 25(2) any arrangements which a person makes with a view to transactions into which he enters or is to enter as principal or as agent for some other person.

Arranging deals with or through authorised persons

29.—(1) There are excluded from article 25(1) and (2) arrangements made by a person (“A”) who is not an authorised person for or with a view to a transaction which is or is to be entered into by a person (“the client”) with or through an authorised person if—

- (a) the transaction is or is to be entered into on advice 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 A as to the merits of the client’s entering into the transaction (or, if the client has sought such advice, A has declined to give it but has recommended that the client seek such advice from an authorised person).

(2) But the exclusion in paragraph (1) does not apply if A 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 making the arrangements.

Arranging transactions in connection with lending on the security of insurance policies

30.—(1) There are excluded from article 25(1) and (2) arrangements made by a money-lender under which either—

- (a) a relevant authorised person or a person acting on his behalf will introduce to the money-lender persons with whom the relevant authorised person proposes to enter into a relevant transaction; or
- (b) a relevant authorised person gives an assurance to the money-lender as to the amount which, on the security of any contract effected pursuant to a relevant transaction, will or may be received by the money-lender should the money-lender lend money to a person introduced to him pursuant to the arrangements.

(2) In paragraph (1)—

“money-lender” means a person who is—

- (a) a money-lending company within the meaning of section 338 of the Companies Act 1985(a);
- (b) a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies; or
- (c) a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans;

“relevant authorised person” means an authorised person who has permission to effect qualifying contracts of insurance or to sell investments of the kind specified by article 89, so far as relevant to such contracts;

“relevant transaction” means the effecting of a qualifying contract of insurance or the sale of an investment of the kind specified by article 89, so far as relevant to such contracts.

Arranging the acceptance of debentures in connection with loans

31.—(1) There are excluded from article 25(1) and (2) arrangements under which a person accepts or is to accept, whether as principal or agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which is, or is to be, made, granted or provided by that person or his principal.

(2) The reference in paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

(a) 1985 c. 6. Section 338 was amended by section 138 of, and para. 10 of Sch. 10 to, the Companies Act 1989 (c. 40).

Provision of finance

32. There are excluded from article 25(2) arrangements having as their sole purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

Introducing

33. There are excluded from article 25(2) arrangements where—

- (a) they are arrangements under which persons (“clients”) will be introduced to another person;
- (b) the person to whom introductions are to be made is—
 - (i) an authorised person;
 - (ii) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
 - (iii) a person who is not unlawfully carrying on regulated activities in the United Kingdom and whose ordinary business involves him in engaging in an activity of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 (or, so far as relevant to any of those articles, article 64), or would do so apart from any exclusion from any of those articles made by this Order; and
- (c) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or in relation to any class of investments to which the arrangements relate.

Arrangements for the issue of shares etc.

34.—(1) There are excluded from article 25(1) and (2)—

- (a) arrangements made by a company for the purposes of issuing its own shares or share warrants; and
- (b) arrangements made by any person for the purposes of issuing his own debentures or debenture warrants;

and for the purposes of article 25(1) and (2), a company is not, by reason of issuing its own shares or share warrants, and a person is not, by reason of issuing his own debentures or debenture warrants, to be treated as selling them.

(2) In paragraph (1), “company”, “shares”, “debentures”, “share warrants” and “debenture warrants” have the meanings given by article 18(2).

International securities self-regulating organisations

35.—(1) There are excluded from article 25(1) and (2) any arrangements made for the purposes of carrying out the functions of a body or association which is approved under this article as an international securities self-regulating organisation, whether the arrangements are made by the organisation itself or by a person acting on its behalf.

(2) The Treasury may approve as an international securities self-regulating organisation any body corporate or unincorporated association with respect to which the conditions mentioned in paragraph (3) appear to them to be met if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as they consider relevant, it appears to them that to do so would be desirable and not result in any undue risk to investors.

(3) The conditions are that—

- (a) the body or association does not have its head office in the United Kingdom;

- (b) the body or association is not eligible for recognition under section 287 or 288 of the Act (applications by investment exchanges and clearing houses) on the ground that (whether or not it has applied, and whether or not it would be eligible on other grounds) it is unable to satisfy the requirements of one or both of paragraphs (a) and (b) of section 292(3) of the Act (requirements for overseas investment exchanges and overseas clearing houses);
- (c) the body or association is able and willing to co-operate with the Authority by the sharing of information and in other ways;
- (d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the body or association in the country or territory in which its head office is situated;
- (e) the body or association has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempt persons, and persons whose head offices are outside the United Kingdom and whose ordinary business involves them in engaging in activities which are activities of a kind specified by this Order (or would be apart from any exclusion made by this Part); and
- (f) the body or association facilitates and regulates the activity of its members in the conduct of international securities business.

(4) In paragraph (3)(f), “international securities business” means the business of buying, selling, subscribing for or underwriting investments (or agreeing to do so), either as principal or agent, where—

- (a) the investments are securities or contractually based investments and are of a kind which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand the risks involved; and
- (b) either the transaction is international or each of the parties may be expected to be indifferent to the location of the other;

and, for the purposes of this definition, it is irrelevant that the investments may ultimately be bought otherwise than in the course of such business by persons not so expert.

(5) Any approval under this article is to be given by notice in writing; and the Treasury may by a further notice in writing withdraw any such approval if for any reason it appears to them that it is not appropriate to it to continue in force.

Other exclusions

36. Article 25 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), 71 (employee share schemes) and 72 (overseas persons).

CHAPTER VII

MANAGING INVESTMENTS

The activity

Managing investments

37. Managing assets belonging to another person, in circumstances involving the exercise of discretion, is a specified kind of activity if—

- (a) the assets consist of or include any investment which is a security or a contractually based investment; or
- (b) the arrangements for their management are such that the assets may consist of or include such investments, and either the assets have at any time since 29th April 1988 done so, or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.

Exclusions

Attorneys

38. A person does not carry on an activity of the kind specified by article 37 if—
- (a) he is a person appointed to manage the assets in question under a power of attorney; and
 - (b) all routine or day-to-day decisions, so far as relating to investments of a kind mentioned in article 37(a), are taken on behalf of that person by—
 - (i) an authorised person with permission to carry on activities of the kind specified by article 37; or
 - (ii) a person who is an exempt person in relation to activities of that kind.

Other exclusions

39. Article 37 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services) and 69 (groups and joint enterprises).

CHAPTER VIII

SAFEGUARDING AND ADMINISTERING INVESTMENTS

The activity

Safeguarding and administering investments

- 40.—(1) The activity consisting of both—
- (a) the safeguarding of assets belonging to another, and
 - (b) the administration of those assets,
- or arranging for one or more other persons to carry on that activity, is a specified kind of activity if the condition in sub-paragraph (a) or (b) of paragraph (2) is met.
- (2) The condition is that—
- (a) the assets consist of or include any investment which is a security or a contractually based investment; or
 - (b) the arrangements for their safeguarding and administration are such that the assets may consist of or include such investments, and either the assets have at any time since 1st June 1997 done so, or the arrangements have at any time (whether before or after that date) been held out as ones under which such investments would be safeguarded and administered.
- (3) For the purposes of this article—
- (a) it is immaterial that title to the assets safeguarded and administered is held in uncertificated form;
 - (b) it is immaterial that the assets safeguarded and administered may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

Exclusions

Acceptance of responsibility by third party

- 41.—(1) There are excluded from article 40 any activities which a person carries on pursuant to arrangements which—
- (a) are ones under which a qualifying custodian undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the qualifying custodian would have if the qualifying custodian were safeguarding and administering the assets; and
 - (b) are operated by the qualifying custodian in the course of carrying on in the United Kingdom an activity of the kind specified by article 40.

- (2) In paragraph (1), “qualifying custodian” means a person who is—
- (a) an authorised person who has permission to carry on an activity of the kind specified by article 40, or
 - (b) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.

Introduction to qualifying custodians

42.—(1) There are excluded from article 40 any arrangements pursuant to which introductions are made by a person (“P”) to a qualifying custodian with a view to the qualifying custodian providing in the United Kingdom a service comprising an activity of the kind specified by article 40, where the qualifying person (or other person who is to safeguard and administer the assets in question) is not connected with P.

- (2) For the purposes of paragraph (1)—
- (a) “qualifying custodian” has the meaning given by article 41(2); and
 - (b) a person is connected with P if either he is a member of the same group as P, or P is remunerated by him.

Activities not constituting administration

43. The following activities do not constitute the administration of assets for the purposes of article 40—

- (a) providing information as to the number of units or the value of any assets safeguarded;
- (b) converting currency;
- (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

Other exclusions

44. Article 40 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) and 71 (employee share schemes).

CHAPTER IX

SENDING DEMATERIALIZED INSTRUCTIONS

The activities

Sending dematerialised instructions

45.—(1) Sending, on behalf of another person, dematerialised instructions relating to a security is a specified kind of activity, where those instructions are sent by means of a relevant system in respect of which an Operator is approved under the 1995 Regulations.

(2) Causing dematerialised instructions relating to a security to be sent 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—
- (a) “the 1995 Regulations” means the Uncertified Securities Regulations 1995(a); and
 - (b) “dematerialised instruction”, “Operator”, “settlement bank” and “system-participant” have the meaning given by regulation 3 of the 1995 Regulations.

(a) S.I. 1995/3272, amended by S.I. 1996/2827, S.I. 1997/251, S.I. 1999/506, S.I. 2000/311 and S.I. 2000/1682.

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 1995 Regulations.

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 section 428(1) of the Companies Act 1985(a)) in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of Part XIII A of that Act (b) (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 section 430E of the Companies Act 1985(c)) 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.

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 1995 Regulations).

Other exclusions

50. Article 45 is also subject to the exclusions in articles 66 (trustees etc.) and 69 (groups and joint enterprises).

(a) 1985 c. 6. Section 428 was substituted by the Financial Services Act 1986 (c. 60), Sch. 12.

(b) Part XIII A was inserted by the Financial Services Act 1986, Sch. 12.

(c) Section 430E was inserted by the Financial Services Act 1986, Sch. 12.

CHAPTER X
COLLECTIVE INVESTMENT SCHEMES

The activities

Establishing etc. a collective investment scheme

51.—(1) The following are specified kinds of activity—

- (a) establishing, operating or winding up a collective investment scheme;
- (b) acting as trustee of an authorised unit trust scheme;
- (c) acting as the depository or sole director of an open-ended investment company.

(2) In this article, “trustee”, “authorised unit trust scheme” and “depository” have the meaning given by section 237 of the Act.

CHAPTER XI
STAKEHOLDER PENSION SCHEMES

The activities

Establishing etc. a stakeholder pension scheme

52. Establishing, operating or winding up a stakeholder pension scheme is a specified kind of activity.

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 contractually based investment, or
 - (ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

Exclusions

Advice given in newspapers etc.

54.—(1) There is excluded from article 53 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; nor
- (b) that of leading or enabling persons to buy, sell, subscribe for or underwrite securities or contractually based investments.

(2) There is also excluded from article 53 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) The Authority 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.

Other exclusions

55. 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) and 72 (overseas persons).

CHAPTER XIII

LLOYD'S

The activities

Advice on syndicate participation at Lloyd's

56. Advising a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate is a specified kind of activity.

Managing the underwriting capacity of a Lloyd's syndicate

57. Managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's is a specified kind of activity.

Arranging deals in contracts of insurance written at Lloyd's

58. The arranging, by the society incorporated by Lloyd's Act 1871(a) by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's, is a specified kind of activity.

CHAPTER XIV

FUNERAL PLAN CONTRACTS

The activity

Funeral plan contracts

59.—(1) Entering as provider into a funeral plan contract is a specified kind of activity.

(2) A "funeral plan contract" is a contract (other than one excluded by article 60) under which—

- (a) a person ("the customer") makes one or more payments to another person ("the provider"); and
- (b) the provider undertakes to provide, or secure that another person provides, a funeral in the United Kingdom for the customer (or some other person who is living at the date when the contract is entered into) on his death;

unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month.

Exclusion

Plans covered by insurance or trust arrangements

60.—(1) There is excluded from article 59 any contract under which—

- (a) the provider undertakes to secure that sums paid by the customer under the contract will be applied towards a contract of whole life insurance on the life of the customer

(a) 1871 c. 21.

(or other person for whom the funeral is to be provided), effected and carried out by an authorised person who has permission to effect and carry out such contracts of insurance, for the purpose of providing the funeral; or

- (b) the provider undertakes to secure that sums paid by the customer under the contract will be held on trust for the purpose of providing the funeral, and that the following requirements are or will be met with respect to the trust—
- (i) the trust must be established by a written instrument;
 - (ii) more than half of the trustees must be unconnected with the provider;
 - (iii) the trustees must appoint, or have appointed, an independent fund manager who is an authorised person who has permission to carry on an activity of the kind specified by article 37, and who is a person who is unconnected with the provider, to manage the assets of the trust;
 - (iv) annual accounts must be prepared, and audited by a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989 (a), with respect to the assets and liabilities of the trust; and
 - (v) the assets and liabilities of the trust must, at least once every three years, be determined, calculated and verified by an actuary who is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.

(2) For the purposes of paragraph (1)(b)(ii) and (iii), a person is unconnected with the provider if he is a person other than—

- (a) the provider;
- (b) a member of the same group as the provider;
- (c) a director, other officer or employee of the provider, or of any member of the same group as the provider;
- (d) a partner of the provider;
- (e) a close relative of a person falling within sub-paragraph (a), (c) or (d); or
- (f) an agent of any person falling within sub-paragraphs (a) to (e).

CHAPTER XV

REGULATED MORTGAGE CONTRACTS

The activities

Regulated mortgage contracts

61.—(1) Entering into a regulated mortgage contract as lender is a specified kind of activity.

(2) Administering a regulated mortgage contract is also a specified kind of activity, where the contract was entered into after the coming into force of this article.

(3) In this Chapter—

- (a) a “regulated mortgage contract” means a contract under which—
 - (i) a person (“the lender”) provides credit to an individual or to trustees (“the borrower”); and
 - (ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person;
- (b) “administering” a regulated mortgage contract means either or both of—
 - (i) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and
 - (ii) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;

(a) 1989 c. 40.

but a person is not to be treated as administering a regulated mortgage contract merely because he has, or exercises, a right to take action for the purposes of enforcing the contract (or to require that such action is or is not taken);

- (c) "credit" includes a cash loan, and any other form of financial accommodation.
- (4) For the purposes of paragraph (3)(a)(ii)—
 - (a) a "first legal mortgage" means a legal mortgage ranking in priority ahead of all other mortgages (if any) affecting the land in question, where "mortgage" includes charge and (in Scotland) a heritable security;
 - (b) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;
 - (c) "related person", in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—
 - (i) that person's spouse;
 - (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
 - (iii) that person's parent, brother, sister, child, grandparent or grandchild; and
 - (d) "timeshare accommodation" has the meaning given by section 1 of the Timeshare Act 1992 (a).

Exclusions

Arranging administration by authorised person

62. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he—

- (a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the contract; or
- (b) administers the contract himself during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

63. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he administers the contract pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

CHAPTER XVI

AGREEING TO CARRY ON ACTIVITIES

The activity

Agreeing to carry on specified kinds of activity

64. Agreeing to carry on an activity of the kind specified by any other provision of this Part (other than article 5, 10, 51 or 52) is a specified kind of activity.

Exclusion

Overseas persons

65. Article 64 is subject to the exclusion in article 72 (overseas persons).

(a) 1992 c. 35. The definition of "timeshare accommodation" in section 1 was amended by S.I. 1997/1081, reg. 2.

CHAPTER XVII

EXCLUSIONS APPLYING TO SEVERAL SPECIFIED KINDS OF ACTIVITY

Trustees, nominees and personal representatives

66.—(1) A person (“X”) does not carry on an activity of the kind specified by article 14 where he enters into a transaction as bare trustee or, in Scotland, as nominee for another person (“Y”) and—

- (a) X is acting on Y’s instructions; and
- (b) X does not hold himself out as providing a service of buying and selling securities or contractually based investments.

(2) Subject to paragraph (7), there are excluded from article 25(1) and (2) arrangements made by a person acting as trustee or personal representative for or with a view to a transaction which is or is to be entered into—

- (a) by that person and a fellow trustee or personal representative (acting in their capacity as such); or
- (b) by a beneficiary under the trust, will or intestacy.

(3) Subject to paragraph (7), there is excluded from article 37 any activity carried on by a person acting as trustee or personal representative, unless—

- (a) he holds himself out as providing a service comprising an activity of the kind specified by article 37; or
- (b) the assets in question are held for the purposes of an occupational pension scheme, and, by virtue of article 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (a), he is to be treated as carrying on that activity by way of business.

(4) Subject to paragraph (7), there is excluded from article 40 any activity carried on by a person acting as trustee or personal representative, unless he holds himself out as providing a service comprising an activity of the kind specified by article 40.

(5) A person does not, by sending or causing to be sent a dematerialised instruction (within the meaning of article 45), carry on an activity of the kind specified by that article if the instruction relates to an investment which that person holds as trustee or personal representative.

(6) Subject to paragraph (7), there is excluded from article 53 the giving of advice by a person acting as trustee or personal representative where he gives the advice to—

- (a) a fellow trustee or personal representative for the purposes of the trust or the estate; or
- (b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate.

(7) Paragraphs (2), (3), (4) and (6) do not apply if the person carrying on the activity is remunerated for what he does in addition to any remuneration he receives as trustee or personal representative, and for these purposes a person is not to be regarded as receiving additional remuneration merely because his remuneration is calculated by reference to time spent.

Activities carried on in the course of a profession or non-investment business

67.—(1) There is excluded from articles 21, 25(1) and (2), 40 and 53 any activity which—

- (a) is carried on in the course of carrying on any profession or business which does not otherwise consist of regulated activities; and
- (b) may reasonably be regarded as a necessary part of other services provided in the course of that profession or business.

(2) But the exclusion in paragraph (1) does not apply if the activity in question is remunerated separately from the other services.

(a) S.I. 2001/

Activities carried on in connection with the sale of goods or supply of services

68.—(1) Subject to paragraphs (9), (10) and (11), this article concerns certain activities carried on for the purposes of or in connection with the sale of goods or supply of services by a supplier to a customer, where—

“supplier” means a person whose main business is to sell goods or supply services and not to carry on any activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 and, where the supplier is a member of a group, also means any other member of that group; and

“customer” means a person, other than an individual, to whom a supplier sells goods or supplies services, or agrees to do so, and, where the customer is a member of a group, also means any other member of that group;

and in this article “related sale or supply” means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the same purpose as the sale or supply mentioned above.

(2) There is excluded from article 14 any transaction entered into by a supplier with a customer, if the transaction is entered into for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(3) There is excluded from article 21 any transaction entered into as agent by a supplier with a customer, if the transaction is entered into for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply, and provided that—

(a) where the investment to which the transaction relates is a security, the supplier does not hold himself out (other than to the customer) as engaging in the business of buying securities of the kind to which the transaction relates with a view to selling them, and does not regularly solicit members of the public for the purpose of inducing them (as principals or agents) to buy, sell, subscribe for or underwrite securities;

(b) where the investment to which the transaction relates is a contractually based investment, the supplier enters into the transaction—

(i) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(ii) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or, so far as relevant to any of those articles, article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(4) In paragraph (3)(a), “members of the public” has the meaning given by article 15(2), references to “A” being read as references to the supplier.

(5) There are excluded from article 25(1) and (2) arrangements made by a supplier for, or with a view to, a transaction which is or is to be entered into by a customer for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(6) There is excluded from article 37 any activity carried on by a supplier where the assets in question—

(a) are those of a customer; and

(b) are managed for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(7) There is excluded from article 40 any activity carried on by a supplier where the assets in question are or are to be safeguarded and administered for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(8) There is excluded from article 53 the giving of advice by a supplier to a customer for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply, or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with such a sale or supply or related sale or supply.

(9) Paragraphs (2), (3) and (5) do not apply in the case of a transaction for the sale or purchase of a qualifying contract of insurance, an investment of the kind specified by article 81, or an investment of the kind specified by article 89 so far as relevant to such a contract or such an investment.

(10) Paragraph (6) does not apply where the assets managed consist of qualifying contracts of insurance, investments of the kind specified by article 81, or investments of the kind specified by article 89 so far as relevant to such contracts or such investments.

(11) Paragraph (8) does not apply in the case of advice in relation to an investment which is a qualifying contract of insurance, is of the kind specified by article 81, or is of the kind specified by article 89 so far as relevant to such a contract or such an investment.

Groups and joint enterprises

69.—(1) There is excluded from article 14 any transaction into which a person enters as principal with another person if that other person is also acting as principal and—

- (a) they are members of the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise.

(2) There is excluded from article 21 any transaction into which a person enters as agent for another person if that other person is acting as principal, and the condition in paragraph (1)(a) or (b) is met, provided that—

- (a) where the investment to which the transaction relates is a security, the agent does not hold himself out (other than to members of the same group or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying securities of the kind to which the transaction relates with a view to selling them, and does not regularly solicit members of the public for the purpose of inducing them (as principals or agents) to buy, sell, subscribe for or underwrite securities;
- (b) where the investment to which the transaction relates is a contractually based investment, the agent enters into the transaction—
 - (i) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
 - (ii) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or, so far as relevant to any of those articles, article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(3) In paragraph (2)(a), “members of the public” has the meaning given by article 15(2), references to “A” being read as references to the agent.

(4) There are excluded from article 25(1) and (2) arrangements made by a person if—

- (a) he is a member of a group and the arrangements in question are for, or with a view to, a transaction which is or is to be entered into, as principal, by another member of the same group; or
- (b) he is or proposes to become a participator in a joint enterprise, and the arrangements in question are for, or with a view to, a transaction which is or is to be entered into, as principal, by another person who is or proposes to become a participator in that enterprise, for the purposes of or in connection with that enterprise.

(5) There is excluded from article 37 any activity carried on by a person if—

- (a) he is a member of a group and the assets in question belong to another member of the same group; or
- (b) he is or proposes to become a participator in a joint enterprise with the person to whom the assets belong, and the assets are managed for the purposes of or in connection with that enterprise.

(6) There is excluded from article 40 any activity carried on by a person if—

- (a) he is a member of a group and the assets in question belong to another member of the same group; or
- (b) he is or proposes to become a participator in a joint enterprise, and the assets in question—
 - (i) belong to another person who is or proposes to become a participator in that joint enterprise; and

- (ii) are or are to be safeguarded and administered for the purposes of or in connection with that enterprise.

(7) A person who is a member of a group does not carry on an activity of the kind specified by article 45 where he sends a dematerialised instruction, or causes one to be sent, on behalf of another member of the same group, if the investment to which the instruction relates is one in respect of which a member of the same group is registered as holder in the appropriate register of securities, or will be so registered as a result of the instruction.

(8) In paragraph (7), “dematerialised instruction” and “register of securities” have the meaning given by regulation 3 of the Uncertificated Securities Regulations 1995.

- (9) There is excluded from article 53 the giving of advice by a person if—
 - (a) he is a member of a group and gives the advice in question to another member of the same group; or
 - (b) he is, or proposes to become, a participator in a joint enterprise and the advice in question is given to another person who is, or proposes to become, a participator in that enterprise for the purposes of or in connection with that enterprise.

Activities carried on in connection with the sale of a body corporate

70.—(1) A person does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction if—

- (a) the transaction is one to acquire or dispose of shares in a body corporate other than an open-ended investment company, or is entered into for the purposes of such an acquisition or disposal; and
- (b) either—
 - (i) the conditions set out in paragraph (2) are met; or
 - (ii) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.

(2) The conditions mentioned in paragraph (1)(b) are that—

- (a) the shares consist of or include 50 per cent or more of the voting shares in the body corporate; or
- (b) the shares, together with any already held by the person acquiring them, consist of or include at least that percentage of such shares; and
- (c) in either case, the acquisition or disposal is between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.

(3) In paragraph (2)(c), “a group of connected individuals” means—

- (a) in relation to a party disposing of shares in a body corporate, a single group of persons each of whom is—
 - (i) a director or manager of the body corporate;
 - (ii) a close relative of any such director or manager;
 - (iii) a person acting as trustee for any person falling within paragraph (i) or (ii); and
- (b) in relation to a party acquiring shares in a body corporate, a single group of persons each of whom is—
 - (i) a person who is or is to be a director or manager of the body corporate;
 - (ii) a close relative of any such person; or
 - (iii) a person acting as trustee for any person falling within paragraph (i) or (ii).

(4) A person does not carry on an activity of the kind specified by article 21 by entering as agent into a transaction of the kind described in paragraph (1).

(5) There are excluded from article 25(1) and (2) arrangements made for, or with a view to, a transaction of the kind described in paragraph (1).

(6) There is excluded from article 53 the giving of advice in connection with a transaction (or proposed transaction) of the kind described in paragraph (1).

Activities carried on in connection with employee share schemes

71.—(1) A person (“C”), a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction the purpose of which is to enable or facilitate—

- (a) transactions in shares in, or debentures issued by, C between, or for the benefit of, any of the persons mentioned in paragraph (2); or
- (b) the holding of such shares or debentures by, or for the benefit of, such persons.

(2) The persons referred to in paragraph (1) are—

- (a) the bona fide employees or former employees of C or of another member of the same group as C;
- (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

(3) C, a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by article 21 by entering as agent into a transaction of the kind described in paragraph (1).

(4) There are excluded from article 25(1) or (2) arrangements made by C, a member of the same group as C or a relevant trustee if the arrangements in question are for, or with a view to, a transaction of the kind described in paragraph (1).

(5) There is excluded from article 40 any activity if the assets in question are, or are to be, safeguarded and administered by C, a member of the same group as C or a relevant trustee for the purpose of enabling or facilitating transactions of the kind described in paragraph (1).

(6) In this article—

- (a) “shares” and “debentures” include—
 - (i) any investment of the kind specified by article 76 or 77;
 - (ii) any investment of the kind specified by article 79 or 80 so far as relevant to articles 76 and 77; and
 - (iii) any investment of the kind specified by article 89 so far as relevant to investments of the kind mentioned in paragraph (i) or (ii);
- (b) “relevant trustee” means a person who, in pursuance of the arrangements made for the purpose mentioned in paragraph (1), holds, as trustee, shares in or debentures issued by C.

Overseas persons

72.—(1) An overseas person does not carry on an activity of the kind specified by article 14 by—

- (a) entering into a transaction as principal with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
- (b) entering into a transaction as principal with a person in the United Kingdom, if the transaction is the result of a legitimate approach.

(2) An overseas person does not carry on an activity of the kind specified by article 21 by—

- (a) entering into a transaction as agent for any person with or through an authorised person or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
- (b) entering into a transaction with another party (“X”) as agent for any person (“Y”), other than with or through an authorised person or such an exempt person, unless—
 - (i) either X or Y is in the United Kingdom; and
 - (ii) the transaction is the result of an approach (other than a legitimate approach) made by or on behalf of, or to, whichever of X or Y is in the United Kingdom.

(3) There are excluded from article 25(1) arrangements made by an overseas person with an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.

(4) There are excluded from article 25(2) arrangements made by an overseas person with a view to transactions which are, as respects transactions in the United Kingdom, confined to—

- (a) transactions entered into by authorised persons as principal or agent; and

- (b) transactions entered into by exempt persons, as principal or agent, in the course of business comprising regulated activities in relation to which they are exempt.
- (5) There is excluded from article 53 the giving of advice by an overseas person as a result of a legitimate approach.
- (6) There is excluded from article 64 any agreement made by an overseas person to carry on an activity of the kind specified by article 25(1) or (2), 37, 40 or 45 if the agreement is the result of a legitimate approach.
- (7) In this article, "legitimate approach" means—
 - (a) an approach made to the overseas person which has not been solicited by him in any way, or has been solicited by him in a way which does not contravene section 21 of the Act; or
 - (b) an approach made by or on behalf of the overseas person in a way which does not contravene that section.

PART III

SPECIFIED INVESTMENTS

Investments: general

73. The following kinds of investment are specified for the purposes of section 22 of the Act.

Deposits

74. A deposit.

Contracts of insurance

75. Rights under a contract of insurance.

Shares etc.

- 76.—(1) Shares or stock in the share capital of—
- (a) any body corporate (wherever incorporated), and
 - (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom.
- (2) Paragraph (1) includes—
- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986(a); and
 - (b) any transferable shares in a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions, or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body.
- (3) But subject to paragraph (2) there are excluded from paragraph (1) shares or stock in the share capital of—
- (a) an open-ended investment company;
 - (b) a building society incorporated under the law of, or any part of, the United Kingdom;
 - (c) a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions;
 - (d) any body constituted under the law of an EEA State for purposes equivalent to those of a body falling within sub-paragraph (b) or (c).

Instruments creating or acknowledging indebtedness

- 77.—(1) Subject to paragraph (2), such of the following as do not fall within article 78—
- (a) debentures;

(a) 1986 c. 53.

- (b) debenture stock;
- (c) loan stock;
- (d) bonds;
- (e) certificates of deposit;
- (f) any other instrument creating or acknowledging indebtedness.

(2) If and to the extent that they would otherwise fall within paragraph (1), there are excluded from that paragraph—

- (a) an instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
- (c) a banknote, a statement showing a balance on a current, deposit or savings account, a lease or other disposition of property, or a heritable security; and
- (d) a contract of insurance.

(3) An instrument excluded from paragraph (1) of article 78 by paragraph (2)(b) of that article is not thereby to be taken to fall within paragraph (1) of this article.

Government and public securities

78.—(1) Subject to paragraph (2), loan stock, bonds and other instruments creating or acknowledging indebtedness, issued by or on behalf of any of the following—

- (a) the government of the United Kingdom;
- (b) the Scottish Administration;
- (c) the Executive Committee of the Northern Ireland Assembly;
- (d) the National Assembly for Wales;
- (e) the government of any country or territory outside the United Kingdom;
- (f) a local authority in the United Kingdom or elsewhere; or
- (g) a body the members of which comprise—
 - (i) states including the United Kingdom or another EEA State; or
 - (ii) bodies whose members comprise states including the United Kingdom or another EEA State.

(2) There are excluded from paragraph (1)—

- (a) so far as applicable, the instruments mentioned in article 77(2)(a) to (d);
- (b) any instrument creating or acknowledging indebtedness in respect of—
 - (i) money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank;
 - (ii) money raised under the National Loans Act 1968(a) under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972(b).

Instruments giving entitlements to investments

79.—(1) Warrants and other instruments entitling the holder to subscribe for any investment of the kind specified by article 76, 77 or 78.

(2) It is immaterial whether the investment to which the entitlement relates is in existence or identifiable.

(3) An investment of the kind specified by this article is not to be regarded as falling within article 83, 84 or 85.

(a) 1968 c. 13.
 (b) 1972 c. 65.

Certificates representing certain securities

80.—(1) Subject to paragraph (2), certificates or other instruments which confer contractual or property rights (other than rights consisting of an investment of the kind specified by article 83)—

- (a) in respect of any investment of the kind specified by any of articles 76 to 79, being an investment held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
- (b) the transfer of which may be effected without the consent of that person.

(2) There is excluded from paragraph (1) any certificate or other instrument which confers rights in respect of two or more investments issued by different persons, or in respect of two or more different investments of the kind specified by article 78 and issued by the same person.

Units in a collective investment scheme

81. Units in a collective investment scheme (within the meaning of Part XVII of the Act).

Rights under a stakeholder pension scheme

82. Rights under a stakeholder pension scheme.

Options

83. Options to acquire or dispose of—

- (a) a security or contractually based investment (other than one of a kind specified by this article);
- (b) currency of the United Kingdom or any other country or territory;
- (c) palladium, platinum, gold or silver; or
- (d) an option to acquire or dispose of an investment of the kind specified by this article by virtue of paragraph (a), (b) or (c).

Futures

84.—(1) Subject to paragraph (2), rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.

(2) There are excluded from paragraph (1) rights under any contract which is made for commercial and not investment purposes.

(3) A contract is to be regarded as made for investment purposes if it is made or traded on a recognised investment exchange, or is made otherwise than on a recognised investment exchange but is expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

(4) A contract not falling within paragraph (3) is to be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days, unless it can be shown that there existed an understanding that (notwithstanding the express terms of the contract) delivery would not be made within seven days.

(5) The following are indications that a contract not falling within paragraph (3) or (4) is made for commercial purposes and the absence of them is an indication that it is made for investment purposes—

- (a) one or more of the parties is a producer of the commodity or other property, or uses it in his business;
- (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.

(6) It is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms.

(7) The following are indications that a contract is made for investment purposes—

- (a) it is expressed to be as traded on an investment exchange;

- (b) performance of the contract is ensured by an investment exchange or a clearing house;
 - (c) there are arrangements for the payment or provision of margin.
- (8) For the purposes of paragraph (1), a price is to be taken to be agreed on when a contract is made—
- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
 - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Contracts for differences etc.

- 85.—(1) Subject to paragraph (2), rights under—
- (a) a contract for differences; or
 - (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
 - (i) the value or price of property of any description; or
 - (ii) an index or other factor designated for that purpose in the contract.
- (2) There are excluded from paragraph (1)—
- (a) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates;
 - (b) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor;
 - (c) rights under any contract under which—
 - (i) money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank; or
 - (ii) money is raised under the National Loans Act 1968 under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972;
 - (d) rights under a qualifying contract of insurance.

Lloyd's syndicate capacity and syndicate membership

- 86.—(1) The underwriting capacity of a Lloyd's syndicate.
- (2) A person's membership (or prospective membership) of a Lloyd's syndicate.

Funeral plan contracts

87. Rights under a funeral plan contract.

Regulated mortgage contracts

88. Rights under a regulated mortgage contract.

Rights to or interests in investments

- 89.—(1) Subject to paragraphs (2) to (4), any right to or interest in anything which is specified by any other provision of this Part (other than article 88).
- (2) Paragraph (1) does not include interests under the trusts of an occupational pension scheme.
- (3) Paragraph (1) does not include—
- (a) rights to or interests in a contract of insurance of the kind referred to in paragraph (1)(a) of article 60; or
 - (b) interests under a trust of the kind referred to in paragraph (1)(b) of that article.
- (4) Paragraph (1) does not include anything which is specified by any other provision of this Part.

PART IV
CONSEQUENTIAL PROVISIONS

Regulated mortgage contracts: consequential provisions

Consequential amendments of the Consumer Credit Act 1974

90.—(1) The Consumer Credit Act 1974(a) is amended as follows.

(2) In section 16 (exempt agreements)(b), after subsection (6B) insert—

“(6C) This Act does not regulate a consumer credit agreement if—

- (a) it is secured by a land mortgage; and
- (b) entering into that agreement as lender is a regulated activity for the purposes of the Financial Services and Markets Act 2000.

(6D) But section 126, and any other provision so far as it relates to section 126, applies to an agreement which would (but for subsection (6C)) be a regulated agreement.

(6E) Subsection (6C) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000 (regulated activities: power to specify classes of activity and categories of investment);
- (b) any order for the time being in force under that section; and
- (c) Schedule 2 to that Act.”.

(3) In section 43 (advertisements), after subsection (3) insert—

“(3A) An advertisement does not fall within subsection (1)(a) in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication.

(3B) An “exempt generic communication” is a communication to which subsection (1) of section 21 of the Financial Services and Markets Act 2000 does not apply, as a result of an order under subsection (5) of that section, because it does not identify a person as providing an investment or as carrying on an activity to which the communication relates.”.

(4) In section 52 (quotations), after subsection (2) insert—

“(3) In this section, “quotation” does not include—

- (a) any document which is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000; or
- (b) any document (other than one falling within paragraph (a)) provided by an authorised person (within the meaning of that Act) in connection with an agreement which would or might be an exempt agreement as a result of section 16(6C).”.

(5) In section 53 (duty to display information), after “land” insert “(other than credit provided under an agreement which is an exempt agreement as a result of section 16(6C))”.

(6) In section 137 (extortionate credit bargains), in subsection (2)(a), after “any agreement” insert “(other than an agreement which is an exempt agreement as a result of section 16(6C))”.

(7) In section 151 (advertisements for the purposes of ancillary credit business), after subsection (2) insert—

“(2A) An advertisement does not fall within subsection (1) or (2) in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication (as defined in section 43(3B)).”.

(a) 1974 c. 39.

(b) Subsection (6B) was inserted by s. 22(3) of the Housing and Planning Act 1986 (c. 63) and amended by the Housing Act 1988 (c. 50), Sch. 17, Part I, para. 20, and by the Government of Wales Act 1998 (c. 38), Sch. 18, Part VI.

Consequential amendments of subordinate legislation under the Consumer Credit Act 1974

91.—(1) In the Consumer Credit (Advertisements) Regulations 1989(a), after paragraph (2) of regulation 9 (application of Regulations) insert—

“(3) These Regulations do not apply to any advertisement in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication.

(4) An “exempt generic communication” is a communication to which subsection (1) of section 21 of the Financial Services and Markets Act 2000 does not apply, as a result of an order under subsection (5) of that section, because it does not identify a person as providing an investment or as carrying on an activity to which the communication relates.”.

(2) In the Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements) (Amendment) Regulations 1999(b), in the definition of “quotation” in paragraph (1) of regulation 2 (interpretation of Part II)—

(a) omit “or” at the end of sub-paragraph (c); and

(b) after sub-paragraph (d) insert—

“(e) any document which is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000; or

(f) any document (other than one falling within sub-paragraph (e)), provided by an authorised person (within the meaning of that Act) in connection with an agreement which would or might be an exempt agreement as a result of section 16(6C) of the Act.”.

Greg Pope

Jim Dowd

26th February 2001

Two of the Lords Commissioners of Her Majesty's Treasury

(a) Subsection (6B) was inserted by s. 22(3) of the Housing and Planning Act 1986 (c. 63) and amended by the Housing Act 1988 (c. 50), Sch. 17, Part I, para. 20, and by the Government of Wales Act 1998 (c. 38), Sch. 18, Part VI.
(b) S.I. 1989/1125, amended by S.I. 1999/2725, S.I. 1999/3177 and S.I. 2000/1797, and modified by S.I. 1992/3218.

SCHEDULE 1
CONTRACTS OF INSURANCE

Article 3(1)

PART I
CONTRACTS OF GENERAL INSURANCE

Accident

1. Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured or, in the case of a contract made by virtue of section 140, 140A or 140B of the Local Government Act 1972(a) (or, in Scotland, section 86(1) of the Local Government (Scotland) Act 1973(b)), a person for whose benefit the contract is made—

(a) sustaining injury as the result of an accident or of an accident of a specified class; or

(b) dying as a result of an accident or of an accident of a specified class; or

(c) becoming incapacitated in consequence of disease or of disease of a specified class,

including contracts relating to industrial injury and occupational disease but excluding contracts falling within paragraph 2 of Part I of, or paragraph IV of Part II of, this Schedule.

Sickness

2. Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of loss to the persons insured attributable to sickness or infirmity but excluding contracts falling within paragraph IV of Part II of this Schedule.

Land vehicles

3. Contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.

Railway rolling stock

4. Contract of insurance against loss of or damage to railway rolling stock.

Aircraft

5. Contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.

Ships

6. Contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels.

Goods in transit

7. Contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.

Fire and natural forces

8. Contracts of insurance against loss of or damage to property (other than property to which paragraphs 3 to 7 relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.

Damage to property

9. Contracts of insurance against loss of or damage to property (other than property to which paragraphs 3 to 7 relate) due to hail or frost or any other event (such as theft) other than those mentioned in paragraph 8.

(a) S.I. 1999/2725, amended by S.I. 2000/1797.

(b) 1972 c. 70. Section 140 was amended by the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), s. 39(1) and Sch. 7, Part XVI; by the Insurance Companies Act 1982 (c. 50), Sch. 5, para. 13; and by the London Regional Transport Act 1984 (c. 32), Sch. 7. Section 140A was inserted by s. 39(2) of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), and amended by the Planning (Consequential Provisions) Act 1990 (c. 10), Sch. 2, para. 28, and by the Environment Act 1995 (c. 25), Sch. 24. Section 140B was inserted by s. 39(2) of the Local Government (Miscellaneous Provisions) Act 1982, and amended by the Local Government Act 1985 (c. 51), Sch. 17, and by the Local Government (Wales) Act 1994 (c. 19), Sch. 15, para. 31.

Motor vehicle liability

10. Contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.

Aircraft liability

11. Contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.

Liability of ships

12. Contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third party risks and carrier's liability.

General liability

13. Contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which paragraph 10, 11 or 12 relates.

Credit

14. Contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.

Suretyship

15.—(1) Contracts of insurance against the risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them.

(2) Fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, where these are—

- (a) effected or carried out by a person not carrying on a banking business;
- (b) not effected merely incidentally to some other business carried on by the person effecting them; and
- (c) effected in return for the payment of one or more premiums.

Miscellaneous financial loss

16. Contracts of insurance against any of the following risks, namely—

- (a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;
- (b) risks of loss to the persons insured attributable to their incurring unforeseen expense (other than loss such as is covered by contracts falling within paragraph 18);
- (c) risks which do not fall within sub-paragraph (a) or (b) and which are not of a kind such that contracts of insurance against them fall within any other provision of this Schedule.

Legal expenses

17. Contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).

Assistance

18. Contracts of insurance providing either or both of the following benefits, namely—

- (a) assistance (whether in cash or in kind) for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; or
- (b) assistance (whether in cash or in kind) for persons who get into difficulties otherwise than as mentioned in sub-paragraph (a).

PART II

CONTRACTS OF LONG-TERM INSURANCE

Life and annuity

1. Contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within paragraph III.

Marriage and birth

II. Contract of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

Linked long term

III. Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by references to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

Permanent health

IV. Contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that—

- (a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and
- (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Tontines

V. Tontines.

Capital redemption contracts

VI. Capital redemption contracts, where effected or carried out by a person who does not carry on a banking business, and otherwise carries on a regulated activity of the kind specified by article 10(1) or (2).

Pension fund management

VII. (a) Pension fund management contracts, and
(b) pension fund management contracts which are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest,
where effected or carried out by a person who does not carry on a banking business, and otherwise carries on a regulated activity of the kind specified by article 10(1) or (2).

Collective insurance etc.

VIII. Contracts of a kind referred to in article 1(2)(e) of the first life insurance directive.

Social insurance

IX. Contracts of a kind referred to in article 1(3) of the first life insurance directive.

SCHEDULE 2

Article 4

ANNEX TO THE INVESTMENT SERVICES DIRECTIVE

“ANNEX

SECTION A

Services

1. (a) Reception and transmission, on behalf of investors, of orders in relation to one or more instruments listed in Section B.

(b) Execution of such orders other than for own account.

2. Dealing in any of the instruments listed in Section B for own account.

3. Managing portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the instruments listed in Section B.

4. Underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues.

SECTION B

Investments

1. (a) Transferable securities.
(b) Units in collective investment undertakings.
2. Money-market instruments.
3. Financial-futures contracts, including equivalent cash-settled instruments.
4. Forward interest-rate agreements (FRAs).
5. Interest-rate, currency and equity swaps.
6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

SECTION C

Non-core services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.
2. Safe custody services.
3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.
4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.
5. Services related to underwriting.
6. Investment advice concerning one or more of the instruments listed in Section B.
7. Foreign-exchange services where these are connected with the provision of investment services.”

SCHEDULE 3

Article 4

ARTICLE 2.2 OF THE INVESTMENT SERVICES DIRECTIVE

“This Directive shall not apply to:

- (a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC or Article 1 of Directive 79/267/EEC or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC;
- (b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
- (d) firms that provide investment services consisting exclusively in the administration of employee participation schemes;
- (e) firms that provide investment services that consist in providing both the services referred to in (b) and those referred to in (d);
- (f) the central banks of Member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;
- (g) firms
 - which may not hold clients’ funds or securities and which for that reason may not at any time place themselves in debit with their clients, and
 - which may not provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings, and
 - which in the course of providing that service may transmit orders only to
- (i) investment firms authorised in accordance with this Directive;

- (ii) credit institutions authorised in accordance with Directives 77/80/EEC and 89/646/EEC(a);
- (iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive 89/646/EEC or in Directive 93/6/EEC;
- (iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;
- (v) investment companies with fixed capital, as defined in Article 15(4) of Directive 79/91/EEC, the securities of which are listed or dealt in on a regulated market in a Member State;
 - the activities of which are governed at national level by rules or by a code of ethics;
- (h) collective investment undertakings whether coordinated at Community level or not and the depositaries and managers of such undertakings;
- (i) person whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment services only for such producers and professional users to the extent necessary for their main business;
- (j) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts entered into by such firms must be assumed by clearing members of the same markets;
- (k) associations set up by Danish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (l) "agenti di cambio" whose activities and functions are governed by Italian Royal Decree No. 222 of 7 March 1925 and subsequent provisions amending it, and who are authorised to carry on their activities under Article 19 of Italian Law No 1 of 2 January 1991."

(a) References to Directives 77/80/EEC and 89/646/EEC are now to be construed as references to Directive 2000/12/EC (O.J. L126, 26.5.2000, p.1), by virtue of Article 67(2) of that Directive.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies kinds of activities and investments for the purposes of the Financial Services and Markets Act 2000 ("the Act"). When an activity of a specified kind is carried on by way of business in relation to an investment of a specified kind, it is a "regulated activity" for the purposes of the Act. The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177) makes provision as to the circumstances in which a person is, or is not, to be regarded as carrying on a regulated activity by way of business. Section 19 of the Act prohibits person who are not authorised or exempt from carrying on any regulated activity in the United Kingdom. Contravention of that prohibition is a criminal offence.

Part I of this Order makes provision for the citation, commencement and interpretation of the Order.

Part II specifies types of activities. Those activities are accepting deposits; effecting and carrying out contracts of insurance; dealing in investments as principal, or as agent; arranging deals in investments; managing investments; safeguarding and administering investments; sending dematerialised instructions; establishing etc. a collective investment scheme, or a stakeholder pension scheme; advising on investments; certain activities in relation to Lloyd's; entering into funeral plan contracts, or regulated mortgage contracts; and agreeing to carry on certain of the above activities.

Part II also sets out the exclusions (if any) applicable to each kind of specified activity.

Part III of the Order specifies the kinds of investment which are relevant for determining whether a person is carrying on a regulated activity for the purposes of the Act.

Part IV makes consequential amendments to the Consumer Credit Act 1974, and subordinate legislation under that Act, so as to exclude from its scope those categories of mortgage contract which are specified under this Order and which will therefore be regulated under the Act.

Schedule 1 to the Order lists the classes of insurance contract which are relevant to the scope of the activity specified by article 10.

Schedules 2 and 3 set out the text of certain provisions of Council Directive No. 93/22/EEC on investment services in the securities field which are relevant to the applicability of the exclusions contained in the Order (see article 4).

STATUTORY INSTRUMENTS

2001 No. 544

FINANCIAL SERVICES AND MARKETS

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

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2001 No. 996

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Prescribed
Markets and Qualifying Investments) Order 2001**

Made - - - - 15th March 2001

Laid before Parliament 15th March 2001

Coming into force in accordance with article 2

The Treasury, in exercise of the powers conferred upon them by section 118(3) of the Financial Services and Markets Act 2000(a), hereby make the following Order:

Citation

1. This Order may be cited as the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001.

Commencement

2. This Order comes into force on the day on which section 123 of the Act (power to impose penalties in cases of market abuse) comes into force.

Interpretation

3. In this Order—

“the Act” means the Financial Services and Markets Act 2000; and

“UK recognised investment exchange” means a body corporate or unincorporated association in respect of which there is in effect a recognition order made under section 290(1)(a) of the Act (recognition orders in respect of investment exchanges other than overseas investment exchanges).

Prescribed markets

4. There are prescribed, as markets to which section 118 of the Act applies, all markets which are established under the rules of a UK recognised investment exchange.

Qualifying investments

5. There are prescribed, as qualifying investments in relation to the markets prescribed by article 4, all investments of a kind specified for the purposes of section 22 of the Act.

(a) 2000 c.8.

15th March 2001

David Clelland
Clive Betts
Two of the Lords Commissioners
of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

Section 123 of the Financial Services and Markets Act 2000 (c.8) ("the Act") gives the Financial Services Authority power to impose penalties or publish statements in cases of market abuse. Section 118 of the Act defines market abuse as behaviour, meeting conditions set out in section 118(1) and (2), which occurs in relation to a qualifying investment traded on a market to which section 118 applies. This Order prescribes (in article 4) the markets to which section 118 applies, and (in article 5) the investments which are qualifying investments in relation to those markets.

Article 4 prescribes, as markets to which section 118 applies, markets established under the rules of a UK recognised investment exchange. This is defined in article 3 as meaning any investment exchange recognised under section 290(1)(a) of the Act (which covers recognition of investment exchanges whose head office or registered office is in the UK). Investment exchanges (other than overseas investment exchanges) which are recognised under section 37 of the Financial Services Act 1986 (c.60) will be given recognition under section 290(1)(a) of the Act by virtue of the transitional provisions contained in regulation 9 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (S.I. 2001/995). At the time of making this Order the exchanges in this category were the exchanges known as: COREDEAL, the International Petroleum Exchange, Jigsaw, the London International Financial Futures Exchange (LIFFE), the London Metal Exchange, OM London Exchange, the London Stock Exchange, and virt-X.

Article 5 prescribes the qualifying investments by reference to section 22 of the Act. The effect is that the market abuse regime in Part VIII of the Act applies to the same range of investments (if they are traded on a prescribed market) as is relevant in determining whether the general prohibition in section 19 of the Act applies. At the time of making this Order, the relevant investments were those set out in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), which covers a wide range of financial investments, including debt instruments, shares, government and public securities, and derivatives. Under section 118(6) of the Act the behaviour which is to be regarded as occurring in relation to qualifying investments includes behaviour which occurs in relation to anything which is the subject matter of (or whose price or value is expressed by reference to the price or value of) qualifying investments, or if it occurs in relation to investments whose subject matter is qualifying investments.

2001 No. 996

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Prescribed
Markets and Qualifying Investments) Order 2001

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2001 No. 995

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

Made - - - - 9th April 2001

Laid before Parliament 10th April 2001

Coming into force in accordance with regulation 2

The Treasury, in exercise of the powers conferred on them by sections 286(1), 426, 427 and 428(3) of the Financial Services and Markets Act 2000(a), and with the approval of the Secretary of State under section 286(2) of that Act, hereby make the following Regulations:

Citation

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001.

Commencement

2. These Regulations come into force on the day on which sections 290(1) and 292(2) of the Act (which relate to the making of recognition orders) come into force.

Interpretation

3.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“the Companies Act” means the Companies Act 1989(b);

“defaulter” and “default” are to be construed in accordance with section 188(2) of the Companies Act, and references to action taken under the default rules of an exchange or clearing house are to be construed in accordance with section 188(4) of that Act;

“exempt activities”, in relation to a recognised body, means the regulated activities in respect of which the body is exempt from the general prohibition as a result of section 285(2) or (3) of the Act;

“facilities”, in relation to a recognised body, means the facilities and services it provides in the course of carrying on exempt activities, and references to the use of the facilities of an exchange is to be construed in accordance with paragraph (2);

“financial crime” is to be construed in accordance with section 6(3) and (4) of the Act;

(a) 2000 c.8.
(b) 1989 c.40.

“the Financial Services Act” means the Financial Services Act 1986(a);

“investments” means investments of a kind specified for the purposes of section 22 of the Act;

“market contract” has the meaning given in section 286(4) of the Act (with reference, in the case of a recognised investment exchange, to section 155(2) of the Companies Act or article 80(2) of the Northern Ireland Order, or in the case of a recognised clearing house, to section 155(3) of the Companies Act or article 80(3) of the Northern Ireland Order) and references to a party to a market contract are to be construed in accordance with section 187 of the Companies Act;

“the Northern Ireland Order” means the Companies (No. 2) (Northern Ireland) Order 1990(b); and

“regulatory functions”, in relation to a recognised body, has the meaning given in section 291(3) of the Act.

(2) In these Regulations, references to dealings on an exchange, or transactions effected on an exchange, are references to dealings or transactions which are effected by means of the exchange’s facilities or which are governed by the rules of the exchange, and references to the use of the facilities of an exchange include use which consists of any such dealings or entering into any such transactions.

(3) In these Regulations, except in regulation 6, references to the performance of the functions of a recognised body are references to the carrying on by it of exempt activities together with the performance of its regulatory functions.

Recognition requirements for investment exchanges

4. Parts I and II of the Schedule set out recognition requirements applying to bodies in respect of which a recognition order has been made under section 290(1)(a) of the Act, or which have applied for such an order under section 287 of the Act.

Recognition requirements for clearing houses

5. Parts III and IV of the Schedule set out recognition requirements applying to bodies in respect of which a recognition order has been made under section 290(1)(b) of the Act, or which have applied for such an order under section 288 of the Act.

Method of satisfying recognition requirements

6.—(1) In considering whether a recognised body or applicant satisfies recognition requirements applying to it under these Regulations, the Authority may take into account all relevant circumstances including the constitution of the person concerned and its regulatory provisions and practices within the meaning of section 302(1) of the Act.

(2) Without prejudice to the generality of paragraph (1), a recognised body or applicant may satisfy recognition requirements applying to it under these Regulations by making arrangements for functions to be performed on its behalf by any other person.

(3) Where a recognised body or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by the Act on the recognised body or applicant to satisfy recognition requirements applying to it under these Regulations, but it is in addition a recognition requirement applying to the recognised body or applicant that the person who performs (or is to perform) the functions is a fit and proper person who is able and willing to perform them.

Dealings and transactions not involving investments

7. Nothing in these Regulations is to be construed as requiring a recognised investment exchange to limit dealings on the exchange to dealings in investments, or as requiring a recognised investment exchange or recognised clearing house to limit the provision of its clearing services to clearing services in respect of transactions in investments.

(a) 1986 c.60.

(b) S.I. 1990/1504 (N.I. 10).

Exchanges and clearing houses which do not enter into market contracts

8. Nothing in Parts II or IV of the Schedule is to be taken as requiring a recognised investment exchange or recognised clearing house which does not enter into such contracts as are mentioned in section 155(2)(b) or (3) of the Companies Act to have default rules, or to make any arrangements, relating to such contracts.

Effect of recognition under the Financial Services Act 1986

9.—(1) In this regulation, “commencement” means the beginning of the day on which subsections (2) and (3) of section 285 of the Act (exemption from the general prohibition for recognised investment exchanges and clearing houses) come into force.

(2) Subject to paragraph (3), an order under section 37(3) of the Financial Services Act which was in force immediately before commencement has effect after commencement as if it were a recognition order made under section 290(1)(a) of the Act following an application under section 287 of the Act, declaring the body or association to which it relates to be a recognised investment exchange.

(3) But if the order was made by virtue of section 40(2) of the Financial Services Act (recognition requirements for overseas investment exchanges and clearing houses), it has effect as if it were a recognition order made under section 292(2)(a) of the Act.

(4) Subject to paragraph (5), an order under section 39(3) of the Financial Services Act which was in force immediately before commencement has effect after commencement as if it were a recognition order made under section 290(1)(b) of the Act following an application under section 288 of the Act, declaring the body or association to which it relates to be a recognised clearing house.

(5) But if the order was made by virtue of section 40(2) of the Financial Services Act (recognition requirements for overseas investment exchanges and clearing houses), it has effect as if it were a recognition order made under section 292(2)(b) of the Act.

(6) Where a recognition order has effect by virtue of this regulation, the Authority may not give a notice under section 298(1)(a) of the Act, giving notice of its intention to give a direction under section 296 or to make a revocation order under section 297(2) in relation to the recognised body concerned, earlier than one month after commencement.

(7) Paragraph (6) is without prejudice to section 298(7) of the Act (which permits the Authority to give a direction under section 296 of the Act without following the procedure set out in section 298, if the Authority considers it essential to do so), or to the continued effect of any notice which has effect as a notice given under section 298(1)(a) of the Act by virtue of regulation 10(4) below.

Revocation of recognition: action taken before commencement

10.—(1) In this regulation—

(a) “commencement” has the same meaning as in regulation 9 above, and

(b) “relevant person” means—

(i) in relation to action taken in respect of a body or association of the kind described in section 40(1) of the Financial Services Act^(a) (overseas investment exchanges and clearing houses), the Treasury, or

(ii) in any other case, the Authority.

(2) This regulation applies to action taken by a relevant person before commencement pursuant to section 37(7) or 39(7) of the Financial Services Act^(b) (which relate to revocation of recognition orders under that Act), or pursuant to subsections (2) to (9) of section 11 of that Act as they had effect by virtue of section 37(7) or 39(7).

(a) The functions of the Secretary of State under sections 37, 39 and 40 of the Financial Services Act were transferred to the Financial Services Authority (previously known as the Securities and Investments Board Limited) by S.I. 1987/942, except in relation to bodies or associations of the kind described in section 40(1) of the Financial Services Act 1986 (overseas investment exchanges and clearing houses). In relation to such bodies, these functions of the Secretary of State were transferred to the Treasury by S.I. 1992/1315.

(b) The effect of sections 37(7) and 39(7) of the Financial Services Act is modified by section 40(4)(b) of that Act (in relation to overseas investment exchanges and clearing houses), and section 156 of the Companies Act (in all cases).

(3) Paragraphs (4) to (8) apply where a relevant person has given notice to a body or association under section 11(3) of the Financial Services Act of its intention to revoke a recognition order made under that Act in relation to that body or association, but has not notified the body or association of its determination whether to proceed to revoke that recognition order.

(4) The notice has effect after commencement as if it were a notice given by the Authority under section 298(1)(a) of the Act, giving notice of the Authority's intention to revoke the recognition order which is treated as having effect in relation to the body or association by virtue of regulation 9 above.

(5) If before commencement the relevant person has complied with—

- (a) the requirement in subsection (3) of section 11 of the Financial Services Act to bring the notice to the attention of members of the body or association in question, or
- (b) the requirement in that subsection to publish the notice to other persons likely to be affected,

the Authority is to be treated as having complied with the equivalent requirement in section 298(1)(b) or (as the case may be) (c) of the Act, in relation to the notice under section 298(1)(a) which has effect by virtue of paragraph (4).

(6) Nothing in paragraph (4) or in the Act is to be treated as changing the length or affecting the continuity of the period within which, in accordance with the notice as originally given, representations might be made by any person to the relevant person pursuant to section 11(5) of the Financial Services Act, but any such representations are to be considered by the Authority as if they were representations made to it pursuant to section 298(3) of the Act.

(7) For the purposes of the Authority's consideration whether to proceed to exercise the power to make a revocation order under subsection (2) of section 297 of the Act (but without prejudice to any exercise by the Authority of that power where it has given a new notice under section 298(1)(a) after commencement), that subsection is to be read as if the reference in paragraph (a) to recognition requirements were a reference to recognition requirements other than new recognition requirements, and as if the reference in paragraph (b) to obligations were a reference to obligations other than new obligations.

(8) A recognition requirement or obligation is to be treated as a new recognition requirement or obligation if its effect is not substantially the same as the effect of a requirement or obligation of the kind mentioned (or having effect as if mentioned) in section 37(7) (in the case of an investment exchange) or 39(7) (in the case of a clearing house) of the Financial Services Act (as those provisions had effect immediately before commencement).

(9) Paragraph (10) applies where a relevant person has made an order ("the revoking order") under section 37(7) or 39(7) of the Financial Services Act, revoking a recognition order made in relation to a body or association under that Act, but either—

- (a) the revoking order has not taken effect in accordance with section 11(2) of the Financial Services Act, or
- (b) the revoking order has taken effect but contains transitional provisions pursuant to section 11(7) of the Financial Services Act which continued to have effect immediately before commencement.

(10) The revoking order has effect after commencement as if it were a revocation order made by the Authority under section 297 of the Act, revoking (with effect from the date specified in the revoking order) the recognition order which is treated as having effect in relation to the body or association by virtue of regulation 9 above, and as if any such transitional provisions were included in the revocation order by virtue of section 297(5) of the Act.

David Clelland

Clive Betts

15th March 2001

Two of the Lords Commissioners of Her Majesty's Treasury

Approved,

Kim Howells

Parliamentary Under Secretary of State
for Consumers and Corporate Affairs,
Department of Trade and Industry

9th April 2001

SCHEDULE

Regulations 4 and 5.

PART I

Recognition requirements for investment exchanges

Financial resources

1.—(1) The exchange must have financial resources sufficient for the proper performance of its functions as a recognised investment exchange.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the exchange's connection with any person, and any activity carried on by the exchange, whether or not it is an exempt activity.

Suitability

2.—(1) The exchange must be a fit and proper person to perform the functions of a recognised investment exchange.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the exchange's connection with any person.

Systems and controls

3.—(1) The exchange must ensure that the systems and controls used in the performance of its functions are adequate, and appropriate for the scale and nature of its business.

(2) Sub-paragraph (1) applies in particular to systems and controls concerning—

- (a) the transmission of information;
- (b) the assessment and management of risks to the performance of the exchange's functions;
- (c) the effecting and monitoring of transactions on the exchange;
- (d) the operation of the arrangements mentioned in paragraph 4(2)(d) below; and
- (e) (where relevant) the safeguarding and administration of assets belonging to users of the exchange's facilities.

Safeguards for investors

4.—(1) The exchange must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.

(2) Without prejudice to the generality of sub-paragraph (1), the exchange must ensure that—

- (a) access to the exchange's facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors;
- (b) dealings in investments on the exchange are limited to investments in which there is a proper market;
- (c) appropriate arrangements are made for relevant information to be made available (whether by the exchange or, where appropriate, by issuers of the investments) to persons engaged in dealing in investments on the exchange;
- (d) satisfactory arrangements are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the exchange (being rights and liabilities in relation to those transactions);
- (e) satisfactory arrangements are made for recording transactions effected on the exchange, and transactions (whether or not effected on the exchange) which are cleared or to be cleared by means of its facilities;
- (f) appropriate measures are adopted to reduce the extent to which the exchange's facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence; and

- (g) where the exchange's facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.

(3) In sub-paragraph (2)(c), "relevant information" means information which is relevant in determining the current value of the investments.

Disclosure by issuers of securities

5.—(1) In this paragraph—

"admission to trading", "securities" and "regulated market" are to be construed in accordance with regulation 2 of the Traded Securities (Disclosure) Regulations 1994(a); "the obligation of disclosure" means the obligation imposed by regulation 3 of those Regulations;

"issuer" means a person who is subject to that obligation whose securities are admitted to trading on a regulated market which the exchange regulates and supervises; and

"the relevant securities" means securities in relation to which the obligation of disclosure arises.

(2) The rules of the exchange must enable the exchange, in the event of a failure by an issuer to comply with the obligation of disclosure,—

- (a) to discontinue the admission of the relevant securities to trading;
- (b) to suspend trading in the relevant securities;
- (c) to publish the fact that the issuer has failed to comply with the obligation of disclosure; and
- (d) to make public itself any information which the issuer has failed to publish.

(3) This paragraph is without prejudice to the requirement in paragraph 4(2)(c) above.

Promotion and maintenance of standards

6.—(1) The exchange must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities by persons in the course of using the facilities provided by the exchange.

(2) The exchange must be able and willing to cooperate, by the sharing of information or otherwise, with the Authority, with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator within the meaning of section 195 of the Act.

Rules and consultation

7.—(1) The exchange must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the exchange's facilities in appropriate cases.

(3) The exchange must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 8(3) below (or on any changes which it proposes to make to those arrangements).

Discipline

8.—(1) The exchange must have effective arrangements for monitoring and enforcing compliance with—

- (a) its rules (including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the exchange); and
- (b) the arrangements made by it as mentioned in paragraph 4(2)(d) above.

(2) Arrangements made pursuant to sub-paragraph (1) must include procedures for—

(a) S.I. 1994/188.

- (a) investigating complaints made to the exchange about the conduct of persons in the course of using the exchange's facilities; and
 - (b) the fair, independent and impartial resolution of appeals against decisions of the exchange.
- (3) Where arrangements made pursuant to sub-paragraph (1) include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways—
- (a) towards meeting expenses incurred by the exchange in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the exchange in relation to that breach;
 - (b) for the benefit of users of the exchange's facilities;
 - (c) for charitable purposes.

Complaints

- 9.—(1) The exchange must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions.
- (2) But sub-paragraph (1) does not extend to—
- (a) complaints about the content of rules made by the exchange, or
 - (b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 8(2)(b) above.
- (3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the exchange, and for him to report on the result of his investigation to the exchange and to the complainant.
- (4) The arrangements must confer on the person mentioned in sub-paragraph (3) the power to recommend, if he thinks it appropriate, that the exchange—
- (a) makes a compensatory payment to the complainant,
 - (b) remedies the matter complained of,
- or takes both of those steps.
- (5) Sub-paragraph (3) is not to be taken as preventing the exchange from making arrangements for the initial investigation of a complaint to be conducted by the exchange.

PART II

Recognition requirements for investment exchanges: default rules in respect of market contracts

Default rules in respect of market contracts

- 10.—(1) The exchange must have default rules which, in the event of a member of the exchange being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which he is a party.
- (2) The rules may authorise the taking of the same or similar action in relation to a member who appears to be likely to become unable to meet his obligations in respect of one or more market contracts.
- (3) The rules must enable action to be taken in respect of all unsettled market contracts, other than those entered into by a recognised clearing house for the purposes of or in connection with the provision of clearing services for the exchange.

Content of rules

- 11.—(1) This paragraph applies as regards contracts falling within section 155(2)(a) of the Companies Act.
- (2) The rules mentioned in paragraph 10 must provide—

- (a) for all rights and liabilities between those party as principal to unsettled market contracts to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the rules;
 - (b) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum; and
 - (c) for the certification by or on behalf of the exchange of the net sum payable or, as the case may be, of the fact that no sum is payable.
- (3) The reference in sub-paragraph (2) to rights and liabilities between those party as principal to unsettled market contracts does not include rights and liabilities—
- (a) in respect of margin; or
 - (b) arising out of a failure to perform a market contract.
- (4) The rules may make the same or similar provision, in relation to non-members designated in accordance with the procedures mentioned in sub-paragraph (5), as in relation to members of the exchange.
- (5) If such provision is made as is mentioned in sub-paragraph (4), the exchange must have adequate procedures—
- (a) for designating the persons, or descriptions of person, in respect of whom action may be taken;
 - (b) for keeping under review the question which persons or descriptions of person should be or remain so designated; and
 - (c) for withdrawing such designation.
- (6) The procedures must be designed to secure that—
- (a) a person is not, or does not remain, designated if failure by him to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market; and
 - (b) a description of persons is not, or does not remain, designated if failure by a person of that description to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market.
- (7) The exchange must have adequate arrangements—
- (a) for bringing a designation or withdrawal of designation to the attention of the person or description of persons concerned; and
 - (b) where a description of persons is designated, or the designation of a description of persons is withdrawn, for ascertaining which persons fall within that description.

12.—(1) This paragraph applies as regards contracts falling within section 155(2)(b) of the Companies Act.

- (2) The rules mentioned in paragraph 10 must provide—
- (a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules;
 - (b) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;
 - (c) for that sum—
 - (i) if payable by the defaulter to the exchange, to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;
 - (ii) if payable by the exchange to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and
 - (d) for the certification by or on behalf of the exchange of the sum finally payable or, as the case may be, of the fact that no sum is payable.

(3) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the rules authorising—

- (a) the effecting by the exchange of corresponding contracts in relation to unsettled market contracts to which the defaulter is party;
- (b) the transfer of the defaulter's position under an unsettled market contract to another member of the exchange;
- (c) the exercise by the exchange of any option granted by an unsettled market contract.

(4) A "corresponding contract" means a contract on the same terms (except as to price or premium) as the market contract but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.

(5) Sub-paragraph (4) applies with any necessary modifications in relation to a market contract which is not an agreement to sell.

(6) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Notification to other parties affected

13. The exchange must have adequate arrangements for ensuring that—

- (a) in the case of unsettled market contracts with a defaulter acting as principal, parties to the contract are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party; and
- (b) in the case of unsettled market contracts with a defaulter acting as agent, parties to the contract and the defaulter's principals are notified as soon as reasonably practicable of the default and of the identity of the other parties to the contract.

Cooperation with other authorities

14. The exchange must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder within the meaning of section 189 of the Companies Act, and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a member of the exchange or any non-member designated in accordance with the procedures mentioned in paragraph 11(5) above.

Margin

15.—(1) Where the exchange provides clearing services, the rules of the exchange must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account.

(2) This paragraph is without prejudice to the requirements of any rules relating to clients' money made by the Authority under sections 138 and 139 of the Act.

PART III

Recognition requirements for clearing houses

Financial resources

16.—(1) The clearing house must have financial resources sufficient for the proper performance of its functions as a recognised clearing house.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the clearing house's connection with any person, and any activity carried on by the clearing house, whether or not it is an exempt activity.

Suitability

17.—(1) The clearing house must be a fit and proper person to perform the functions of a recognised clearing house.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the clearing house's connection with any person.

Systems and controls

18.—(1) The clearing house must ensure that the systems and controls used in the performance of its functions are adequate, and appropriate for the scale and nature of its business.

(2) This requirement applies in particular to systems and controls concerning—

- (a) the transmission of information;
- (b) the assessment and management of risks to the performance of the clearing house's functions;
- (c) the operation of the matters mentioned in paragraph 19(2)(b) below; and
- (d) (where relevant) the safeguarding and administration of assets belonging to users of the clearing house's facilities.

Safeguards for investors

19.—(1) The clearing house must ensure that its facilities are such as to afford proper protection to investors.

(2) Without prejudice to the generality of sub-paragraph (1), the clearing house must ensure that—

- (a) access to the clearing house's facilities is subject to criteria designed to protect the orderly functioning of those facilities and the interests of investors;
- (b) its clearing services involve satisfactory arrangements for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions in respect of which it provides such services (being rights and liabilities in relation to those transactions);
- (c) satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its facilities;
- (d) appropriate measures are adopted to reduce the extent to which the clearing house's facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence; and
- (e) where the clearing house's facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.

Promotion and maintenance of standards

20.—(1) The clearing house must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities by persons in the course of using the facilities provided by the clearing house.

(2) The clearing house must be able and willing to cooperate, by the sharing of information or otherwise, with the Authority, with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator within the meaning of section 195 of the Act.

Rules

21.—(1) The clearing house must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the clearing house's facilities in appropriate cases.

(3) The clearing house must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 22(3) below (or on any changes which it proposes to make to those arrangements).

Discipline

22.—(1) The clearing house must have effective arrangements for monitoring and enforcing compliance with its rules.

(2) The arrangements must include procedures for—

- (a) investigating complaints made to the clearing house about the conduct of persons in the course of using the clearing house's facilities; and
- (b) the fair, independent and impartial resolution of appeals against decisions of the clearing house.

(3) Where the arrangements include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways—

- (a) towards meeting expenses incurred by the clearing house in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the clearing house in relation to that breach;
- (b) for the benefit of users of the clearing house's facilities;
- (c) for charitable purposes.

Complaints

23.—(1) The clearing house must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions.

(2) But sub-paragraph (1) does not extend to—

- (a) complaints about the content of rules made by the clearing house, or
- (b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 22(2)(b) above.

(3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the clearing house, and for him to report on the result of his investigation to the clearing house and to the complainant.

(4) The arrangements must confer on the person mentioned in sub-paragraph (3) the power to recommend, if he thinks it appropriate, that the clearing house—

- (a) makes a compensatory payment to the complainant,
- (b) remedies the matter complained of,

or takes both of those steps.

(5) Sub-paragraph (3) is not to be taken as preventing the clearing house from making arrangements for the initial investigation of a complaint to be conducted by the clearing house.

PART IV

Recognition requirements applying to clearing houses: default rules in respect of market contracts

Default rules in respect of market contracts

24.—(1) The clearing house must have default rules which, in the event of a member of the clearing house being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken to close out his position in relation to all unsettled market contracts to which he is a party.

(2) The rules may authorise the taking of the same or similar action where a member appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

Content of rules

25.—(1) The rules must provide—

- (a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules;

- (b) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;
- (c) for that sum—
 - (i) if payable by the defaulter to the clearing house, to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;
 - (ii) if payable by the clearing house to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and
- (d) for the certification by or on behalf of the clearing house of the sum finally payable or, as the case may be, of the fact that no sum is payable.

(2) The reference in sub-paragraph (1) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the rules authorising—

- (a) the effecting by the clearing house of corresponding contracts in relation to unsettled market contracts to which the defaulter is party;
- (b) the transfer of the defaulter's position under an unsettled market contract to another member of the clearing house;
- (c) the exercise by the clearing house of any option granted by an unsettled market contract.

(3) A "corresponding contract" means a contract on the same terms (except as to price or premium) as the market contract but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.

(4) Sub-paragraph (3) applies with any necessary modifications in relation to a market contract which is not an agreement to sell.

(5) The reference in sub-paragraph (1) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Notification to other parties affected

26. The clearing house must have adequate arrangements for ensuring that parties to unsettled market contracts with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party.

Cooperation with other authorities

27. The clearing house must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder within the meaning of section 189 of the Companies Act, and any other authority or body having responsibility for any matter arising out of or connected with the default of a member of the clearing house.

Margin

28.—(1) The rules of the clearing house must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account.

(2) This paragraph is without prejudice to the requirements of any rules relating to clients' money made by the Authority under sections 138 and 139 of the Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the recognition requirements which investment exchanges and clearing houses must satisfy in order to be or remain recognised by the Financial Services Authority under section 290 of the Financial Services and Markets Act 2000 (c.8) ("the Act"). Recognised investment exchanges and clearing houses have an exemption under section 285(2) of the Act, permitting them to carry on certain activities which would otherwise require authorisation by the Authority under Part IV of the Act.

The recognition requirements are listed in the Schedule to the Regulations, which applies in accordance with regulations 4 and 5. Regulation 6 indicates that in assessing compliance with the requirements the Financial Services Authority may take account, for example, of the body's constitution and practices, as well as its rules, guidance, and the arrangements which it makes for the provision of clearing services (see the definition of "regulatory provisions" in section 302(1) of the Act). Regulation 6 also permits a body to satisfy the requirements by delegating the performance of a function to another person, provided that person is fit and proper.

Part I of the Schedule sets out various requirements applying to investment exchanges, covering matters such as the sufficiency of its financial resources, the protection afforded to investors, and its willingness to maintain high standards of integrity and fair dealing. Part III of the Schedule sets out a similar range of requirements for clearing houses. Some requirements in Part I refer to "investments", which is defined in regulation 3(1) by reference to section 22 of the Act. At the time these Regulations were made, the investments specified for the purposes of that section were contained in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).

Parts II and IV of the Schedule set out requirements formerly contained in Parts I and II of Schedule 21 of the Companies Act 1989 (c.40) ("the Companies Act"). These provisions require recognised investment exchanges and clearing houses to have default rules applying where a person defaults on obligations under a market contract. "Market contract" (see regulation 1) is defined in section 286 of the Act as a contract to which Part VII of the Companies Act (or Part V of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504, N.I. 10)) applies. However under regulation 8 (which replaces section 156(3A) of the Companies Act) a recognised investment exchange or recognised clearing house is not required to have default rules relating to particular types of market contract if it does not enter into any such contracts. "Market contract" also includes any other categories of contract prescribed by the Treasury under section 286 of the Act, but no such additional categories are currently prescribed.

Regulations 9 and 10 contain transitional provisions. Regulation 9 ensures that investment exchanges and clearing houses which were recognised under the Financial Services Act 1986 (c.60) continue to be recognised under the Act. Regulation 10 ensures that any action taken with a view to the revocation of such recognition under the Financial Services Act can be continued. However regulations 9(6) and 10(7) contain safeguards to ensure that recognised bodies have sufficient time to comply with new requirements which did not previously apply to them.

2001 No. 995

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Recognition
Requirements for Investment Exchanges and Clearing
Houses) Regulations 2001**

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DIRECTIVE 2003/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 28 January 2003
on insider dealing and market manipulation (market abuse)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the European Central Bank ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 ⁽⁴⁾,

Whereas:

- (1) A genuine Single Market for financial services is crucial for economic growth and job creation in the Community.
- (2) An integrated and efficient financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.
- (3) The Commission Communication of 11 May 1999 entitled 'Implementing the framework for financial markets: action plan' identifies a series of actions that are needed in order to complete the single market for financial services. The Lisbon European Council of April 2000 called for the implementation of that action plan by 2005. The action plan stresses the need to draw up a Directive against market manipulation.
- (4) At its meeting on 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets. In its final report, the Committee of Wise Men proposed the introduction of new legislative techniques based on a four-level approach, namely framework principles, implementing measures, cooperation and enforcement. Level 1, the Directive, should confine itself to broad general 'framework' principles while Level 2 should contain technical implementing measures to be adopted by the Commission with the assistance of a committee.

- (5) The Resolution adopted by the Stockholm European Council of March 2001 endorsed the final report of the Committee of Wise Men and the proposed four-level approach to make the regulatory process for Community securities legislation more efficient and transparent.
- (6) The Resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration made before Parliament the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chairman of Parliament's Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process.
- (7) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁵⁾.
- (8) According to the Stockholm European Council, Level 2 implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments, and deadlines should be set for all stages of Level 2 work.
- (9) The European Parliament should be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, this period may be shortened. If, within that period, a resolution is passed by the European Parliament, the Commission should re-examine the draft measures.
- (10) New financial and technical developments enhance the incentives, means and opportunities for market abuse: through new products, new technologies, increasing cross-border activities and the Internet.
- (11) The existing Community legal framework to protect market integrity is incomplete. Legal requirements vary from one Member State to another, leaving economic actors often uncertain over concepts, definitions and enforcement. In some Member States there is no legislation addressing the issues of price manipulation and the dissemination of misleading information.

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 265.

⁽²⁾ OJ C 80, 3.4.2002, p. 61.

⁽³⁾ OJ C 24, 26.1.2002, p. 8.

⁽⁴⁾ Opinion of the European Parliament of 14 March 2002 (not yet published in the Official Journal), Council Common Position of 19 July 2002 (OJ C 228 E, 25.9.2002, p. 19) and Decision of the European Parliament of 24 October 2002 (not yet published in the Official Journal).

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

- (12) Market abuse consists of insider dealing and market manipulation. The objective of legislation against insider dealing is the same as that of legislation against market manipulation: to ensure the integrity of Community financial markets and to enhance investor confidence in those markets. It is therefore advisable to adopt combined rules to combat both insider dealing and market manipulation. A single Directive will ensure throughout the Community the same framework for allocation of responsibilities, enforcement and cooperation.
- (13) Given the changes in financial markets and in Community legislation since the adoption of Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing⁽¹⁾, that Directive should now be replaced, to ensure consistency with legislation against market manipulation. A new Directive is also needed to avoid loopholes in Community legislation which could be used for wrongful conduct and which would undermine public confidence and therefore prejudice the smooth functioning of the markets.
- (14) This Directive meets the concerns expressed by the Member States following the terrorist attacks on 11 September 2001 as regards the fight against financing terrorist activities.
- (15) Insider dealing and market manipulation prevent full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets.
- (16) Inside information is any information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments. Information which could have a significant effect on the evolution and forming of the prices of a regulated market as such could be considered as information which indirectly relates to one or more issuers of financial instruments or to one or more related derivative financial instruments.
- (17) As regards insider dealing, account should be taken of cases where inside information originates not from a profession or function but from criminal activities, the preparation or execution of which could have a significant effect on the prices of one or more financial instruments or on price formation in the regulated market as such.
- (18) Use of inside information can consist in the acquisition or disposal of financial instruments by a person who knows, or ought to have known, that the information possessed is inside information. In this respect, the competent authorities should consider what a normal and reasonable person would know or should have known in the circumstances. Moreover, the mere fact that market-makers, bodies authorised to act as counterparties, or persons authorised to execute orders on behalf of third parties with inside information confine themselves, in the first two cases, to pursuing their legitimate business of buying or selling financial instruments or, in the last case, to carrying out an order dutifully, should not in itself be deemed to constitute use of such inside information.
- (19) Member States should tackle the practice known as 'front running', including 'front running' in commodity derivatives, where it constitutes market abuse under the definitions contained in this Directive.
- (20) A person who enters into transactions or issues orders to trade which are constitutive of market manipulation may be able to establish that his reasons for entering into such transactions or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the regulated market concerned. A sanction could still be imposed if the competent authority established that there was another, illegitimate, reason behind these transactions or orders to trade.
- (21) The competent authority may issue guidance on matters covered by this Directive, e.g. definition of inside information in relation to derivatives on commodities or implementation of the definition of accepted market practices relating to the definition of market manipulation. This guidance should be in conformity with the provisions of the Directive and the implementing measures adopted in accordance with the comitology procedure.
- (22) Member States should be able to choose the most appropriate way to regulate persons producing or disseminating research concerning financial instruments or issuers of financial instruments or persons producing or disseminating other information recommending or suggesting investment strategy, including appropriate mechanisms for self-regulation, which should be notified to the Commission.
- (23) Posting of inside information by issuers on their internet sites should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data⁽²⁾.

⁽¹⁾ OJ L 334, 18.11.1989, p. 30.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

- (24) Prompt and fair disclosure of information to the public enhances market integrity, whereas selective disclosure by issuers can lead to a loss of investor confidence in the integrity of financial markets. Professional economic actors should contribute to market integrity by various means. Such measures could include, for instance, the creation of 'grey lists', the application of 'window trading' to sensitive categories of personnel, the application of internal codes of conduct and the establishment of 'Chinese walls'. Such preventive measures may contribute to combating market abuse only if they are enforced with determination and are dutifully controlled. Adequate enforcement control would imply for instance the designation of compliance officers within the bodies concerned and periodic checks conducted by independent auditors.
- (25) Modern communication methods make it possible for financial market professionals and private investors to have more equal access to financial information, but also increase the risk of the spread of false or misleading information.
- (26) Greater transparency of transactions conducted by persons discharging managerial responsibilities within issuers and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors.
- (27) Market operators should contribute to the prevention of market abuse and adopt structural provisions aimed at preventing and detecting market manipulation practices. Such provisions may include requirements concerning transparency of transactions concluded, total disclosure of price-regularisation agreements, a fair system of order pairing, introduction of an effective atypical-order detection scheme, sufficiently robust financial instrument reference price-fixing schemes and clarity of rules on the suspension of transactions.
- (28) This Directive should be interpreted, and implemented by Member States, in a manner consistent with the requirements for effective regulation in order to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of the exercise of rights or conversion) when the company is subject to a public take-over bid or other proposed change of control. In particular, this Directive does not in any way prevent a Member State from putting or having in place such measures as it sees fit for these purposes.
- (29) Having access to inside information relating to another company and using it in the context of a public take-over bid for the purpose of gaining control of that company or proposing a merger with that company should not in itself be deemed to constitute insider dealing.
- (30) Since the acquisition or disposal of financial instruments necessarily involves a prior decision to acquire or dispose taken by the person who undertakes one or other of these operations, the carrying out of this acquisition or disposal should not be deemed in itself to constitute the use of inside information.
- (31) Research and estimates developed from publicly available data should not be regarded as inside information and, therefore, any transaction carried out on the basis of such research or estimates should not be deemed in itself to constitute insider dealing within the meaning of this Directive.
- (32) Member States and the European System of Central Banks, national central banks or any other officially designated body, or any person acting on their behalf, should not be restricted in carrying out monetary, exchange-rate or public debt management policy.
- (33) Stabilisation of financial instruments or trading in own shares in buy-back programmes can be legitimate, in certain circumstances, for economic reasons and should not, therefore, in themselves be regarded as market abuse. Common standards should be developed to provide practical guidance.
- (34) The widening scope of financial markets, the rapid change and the range of new products and developments require a wide application of this Directive to financial instruments and techniques involved, in order to guarantee the integrity of Community financial markets.
- (35) Establishing a level playing field in Community financial markets requires wide geographical application of the provisions covered by this Directive. As regards derivative instruments not admitted to trading but falling within the scope of this Directive, each Member State should be competent to sanction actions carried out on its territory or abroad which concern underlying financial instruments admitted to trading on a regulated market situated or operating within its territory or for which a request for admission to trading on such a regulated market has been made. Each Member State should also be competent to sanction actions carried out on its territory which concern underlying financial instruments admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market has been made.

- (36) A variety of competent authorities in Member States, having different responsibilities, may create confusion among economic actors. A single competent authority should be designated in each Member State to assume at least final responsibility for supervising compliance with the provisions adopted pursuant to this Directive, as well as international collaboration. Such an authority should be of an administrative nature guaranteeing its independence of economic actors and avoiding conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. That authority should have adequate arrangements for consultation concerning possible changes in national legislation such as a consultative committee composed of representatives of issuers, financial services providers and consumers, so as to be fully informed of their views and concerns.
- (37) A common minimum set of effective tools and powers for the competent authority of each Member State will guarantee supervisory effectiveness. Market undertakings and all economic actors should also contribute at their level to market integrity. In this sense, the designation of a single competent authority for market abuse does not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions adopted pursuant to this Directive.
- (38) In order to ensure that a Community framework against market abuse is sufficient, any infringement of the prohibitions or requirements laid down pursuant to this Directive will have to be promptly detected and sanctioned. To this end, sanctions should be sufficiently dissuasive and proportionate to the gravity of the infringement and to the gains realised and should be consistently applied.
- (39) Member States should remain alert, in determining the administrative measures and sanctions, to the need to ensure a degree of uniformity of regulation from one Member State to another.
- (40) Increasing cross-border activities require improved cooperation and a comprehensive set of provisions for the exchange of information between national competent authorities. The organisation of supervision and of investigatory powers in each Member State should not hinder cooperation between the competent national authorities.
- (41) Since the objective of the proposed action, namely to prevent market abuse in the form of insider dealing and market manipulation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the measures, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (42) Technical guidance and implementing measures for the rules laid down in this Directive may from time to time be necessary to take account of new developments on financial markets. The Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive and the Commission acts according to the principles set out in this Directive, after consulting the European Securities Committee established by Commission Decision 2001/528/EC ⁽¹⁾.
- (43) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles:
- the need to ensure confidence in financial markets among investors by promoting high standards of transparency in financial markets,
 - the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances,
 - the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against economic crime,
 - the need for high levels of transparency and consultation with all market participants and with the European Parliament and the Council,
 - the need to encourage innovation in financial markets if they are to be dynamic and efficient,
 - the need to ensure market integrity by close and reactive monitoring of financial innovation,
 - the importance of reducing the cost of, and increasing access to, capital,
 - the balance of costs and benefits to market participants on a long-term basis (including small and medium-sized businesses and small investors) in any implementing measures,
 - the need to foster the international competitiveness of EU financial markets without prejudice to a much-needed extension of international cooperation,

⁽¹⁾ OJ L 191, 13.7.2001, p. 45.

- the need to achieve a level playing field for all market participants by establishing EU-wide regulations every time it is appropriate,
- the need to respect differences in national markets where these do not unduly impinge on the coherence of the single market,
- the need to ensure coherence with other Community legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.

(44) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular by Article 11 thereof and Article 10 of the European Convention on Human Rights. In this regard, this Directive does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. 'Inside information' shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

In relation to derivatives on commodities, 'inside information' shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices on those markets.

For persons charged with the execution of orders concerning financial instruments, 'inside information' shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

2. 'Market manipulation' shall mean:

(a) transactions or orders to trade:

- which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or
- which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level,

unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned;

(b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;

(c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. In respect of journalists when they act in their professional capacity such dissemination of information is to be assessed, without prejudice to Article 11, taking into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.

In particular, the following instances are derived from the core definition given in points (a), (b) and (c) above:

- conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions,
- the buying or selling of financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices,
- taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument (or indirectly about its issuer) while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

The definitions of market manipulation shall be adapted so as to ensure that new patterns of activity that in practice constitute market manipulation can be included.

3. 'Financial instrument' shall mean:
- transferable securities as defined in Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ⁽¹⁾,
 - units in collective investment undertakings,
 - money-market instruments,
 - financial-futures contracts, including equivalent cash-settled instruments,
 - forward interest-rate agreements,
 - interest-rate, currency and equity swaps,
 - options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates,
 - derivatives on commodities,
 - any other instrument admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market has been made.
4. 'Regulated market' shall mean a market as defined by Article 1(13) of Directive 93/22/EEC.
5. 'Accepted market practices' shall mean practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with guidelines adopted by the Commission in accordance with the procedure laid down in Article 17(2).
6. 'Person' shall mean any natural or legal person.
7. 'Competent authority' shall mean the competent authority designated in accordance with Article 11.

In order to take account of developments on financial markets and to ensure uniform application of this Directive in the Community, the Commission, acting in accordance with the procedure laid down in Article 17(2), shall adopt implementing measures concerning points 1, 2 and 3 of this Article.

Article 2

1. Member States shall prohibit any person referred to in the second subparagraph who possesses inside information from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

The first subparagraph shall apply to any person who possesses that information:

- (a) by virtue of his membership of the administrative, management or supervisory bodies of the issuer; or
- (b) by virtue of his holding in the capital of the issuer; or
- (c) by virtue of his having access to the information through the exercise of his employment, profession or duties; or
- (d) by virtue of his criminal activities.

⁽¹⁾ OJ L 141, 11.6.1993, p. 27. Directive as last amended by European Parliament and Council Directive 2000/64/EC (OJ L 290, 17.11.2000, p. 27).

2. Where the person referred to in paragraph 1 is a legal person, the prohibition laid down in that paragraph shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

3. This Article shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded before the person concerned possessed inside information.

Article 3

Member States shall prohibit any person subject to the prohibition laid down in Article 2 from:

- (a) disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;
- (b) recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

Article 4

Member States shall ensure that Articles 2 and 3 also apply to any person, other than the persons referred to in those Articles, who possesses inside information while that person knows, or ought to have known, that it is inside information.

Article 5

Member States shall prohibit any person from engaging in market manipulation.

Article 6

1. Member States shall ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuers.

Without prejudice to any measures taken to comply with the provisions of the first subparagraph, Member States shall ensure that issuers, for an appropriate period, post on their Internet sites all inside information that they are required to disclose publicly.

2. An issuer may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of that information. Member States may require that an issuer shall without delay inform the competent authority of the decision to delay the public disclosure of inside information.

3. Member States shall require that, whenever an issuer, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, as referred to in Article 3(a), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure.

The provisions of the first subparagraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association or on a contract.

Member States shall require that issuers, or persons acting on their behalf or for their account, draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall regularly update this list and transmit it to the competent authority whenever the latter requests it.

4. Persons discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall, at least, notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer, or to derivatives or other financial instruments linked to them. Member States shall ensure that public access to information concerning such transactions, on at least an individual basis, is readily available as soon as possible.

5. Member States shall ensure that there is appropriate regulation in place to ensure that persons who produce or disseminate research concerning financial instruments or issuers of financial instruments and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the public, take reasonable care to ensure that such information is fairly presented and disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates. Details of such regulation shall be notified to the Commission.

6. Member States shall ensure that market operators adopt structural provisions aimed at preventing and detecting market manipulation practices.

7. With a view to ensuring compliance with paragraphs 1 to 5, the competent authority may take all necessary measures to ensure that the public is correctly informed.

8. Public institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate them in a fair and transparent way.

9. Member States shall require that any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify the competent authority without delay.

10. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall adopt, in accordance with the procedure referred to in Article 17(2), implementing measures concerning:

- the technical modalities for appropriate public disclosure of inside information as referred to in paragraphs 1 and 3,
- the technical modalities for delaying the public disclosure of inside information as referred to in paragraph 2,
- the technical modalities designed to favour a common approach in the implementation of the second sentence of paragraph 2,
- the conditions under which issuers, or entities acting on their behalf, are to draw up a list of those persons working for them and having access to inside information, as referred to in paragraph 3, together with the conditions under which such lists are to be updated,
- the categories of persons who are subject to a duty of disclosure as referred to in paragraph 4 and the characteristics of a transaction, including its size, which trigger that duty, and the technical arrangements for disclosure to the competent authority,
- technical arrangements, for the various categories of person referred to in paragraph 5, for fair presentation of research and other information recommending investment strategy and for disclosure of particular interests or conflicts of interest as referred to in paragraph 5. Such arrangements shall take into account the rules, including self-regulation, governing the profession of journalist,
- technical arrangements governing notification to the competent authority by the persons referred to in paragraph 9.

Article 7

This Directive shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by a Member State, by the European System of Central Banks, by a national central bank or by any other officially designated body, or by any person acting on their behalf. Member States may extend this exemption to their federated States or similar local authorities in respect of the management of their public debt.

Article 8

The prohibitions provided for in this Directive shall not apply to trading in own shares in 'buy-back' programmes or to the stabilisation of a financial instrument provided such trading is carried out in accordance with implementing measures adopted in accordance with the procedure laid down in Article 17(2).

Article 9

This Directive shall apply to any financial instrument admitted to trading on a regulated market in at least one Member State, or for which a request for admission to trading on such a market has been made, irrespective of whether or not the transaction itself actually takes place on that market.

Articles 2, 3 and 4 shall also apply to any financial instrument not admitted to trading on a regulated market in a Member State, but whose value depends on a financial instrument as referred to in paragraph 1.

Article 6(1) to (3) shall not apply to issuers who have not requested or approved admission of their financial instruments to trading on a regulated market in a Member State.

Article 10

Each Member State shall apply the prohibitions and requirements provided for in this Directive to:

- (a) actions carried out on its territory or abroad concerning financial instruments that are admitted to trading on a regulated market situated or operating within its territory or for which a request for admission to trading on such market has been made;
- (b) actions carried out on its territory concerning financial instruments that are admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such market has been made.

Article 11

Without prejudice to the competences of the judicial authorities, each Member State shall designate a single administrative authority competent to ensure that the provisions adopted pursuant to this Directive are applied.

Member States shall establish effective consultative arrangements and procedures with market participants concerning possible changes in national legislation. These arrangements may include consultative committees within each competent authority, the membership of which should reflect as far as possible the diversity of market participants, be they issuers, providers of financial services or consumers.

Article 12

1. The competent authority shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions. It shall exercise such powers:

- (a) directly; or
- (b) in collaboration with other authorities or with the market undertakings; or
- (c) under its responsibility by delegation to such authorities or to the market undertakings; or
- (d) by application to the competent judicial authorities.

2. Without prejudice to Article 6(7), the powers referred to in paragraph 1 of this Article shall be exercised in conformity with national law and shall include at least the right to:

- (a) have access to any document in any form whatsoever, and to receive a copy of it;
- (b) demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and hear any such person;
- (c) carry out on-site inspections;
- (d) require existing telephone and existing data traffic records;
- (e) require the cessation of any practice that is contrary to the provisions adopted in the implementation of this Directive;
- (f) suspend trading of the financial instruments concerned;
- (g) request the freezing and/or sequestration of assets;
- (h) request temporary prohibition of professional activity.

3. This Article shall be without prejudice to national legal provisions on professional secrecy.

Article 13

The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts instructed by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by law.

Article 14

1. Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions adopted in the implementation of this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

2. In accordance with the procedure laid down in Article 17(2), the Commission shall, for information, draw up a list of the administrative measures and sanctions referred to in paragraph 1.

3. Member States shall determine the sanctions to be applied for failure to cooperate in an investigation covered by Article 12.

4. Member States shall provide that the competent authority may disclose to the public every measure or sanction that will be imposed for infringement of the provisions adopted in the implementation of this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Article 15

Member States shall ensure that an appeal may be brought before a court against the decisions taken by the competent authority.

Article 16

1. Competent authorities shall cooperate with each other whenever necessary for the purpose of carrying out their duties, making use of their powers whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate in investigation activities.

2. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1. Where necessary, the competent authorities receiving any such request shall immediately take the necessary measures in order to gather the required information. If the requested competent authority is not able to supply the required information immediately, it shall notify the requesting competent authority of the reasons. Information thus supplied shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

The competent authorities may refuse to act on a request for information where:

- communication might adversely affect the sovereignty, security or public policy of the Member State addressed,
- judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed, or
- where a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

In any such case, they shall notify the requesting competent authority accordingly, providing as detailed information as possible on those proceedings or the judgment.

Without prejudice to Article 226 of the Treaty, a competent authority whose request for information is not acted upon within a reasonable time or whose request for information is

rejected may bring that non-compliance to the attention of the Committee of European Securities Regulators, where discussion will take place in order to reach a rapid and effective solution.

Without prejudice to the obligations to which they are subject in judicial proceedings under criminal law, the competent authorities which receive information pursuant to paragraph 1 may use it only for the exercise of their functions within the scope of this Directive and in the context of administrative or judicial proceedings specifically related to the exercise of those functions. However, where the competent authority communicating information consents thereto, the authority receiving the information may use it for other purposes or forward it to other States' competent authorities.

3. Where a competent authority is convinced that acts contrary to the provisions of this Directive are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a regulated market situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State. The competent authority of the other Member State shall take appropriate action. It shall inform the notifying competent authority of the outcome and, so far as possible, of significant interim developments. This paragraph shall not prejudice the competences of the competent authority that has forwarded the information. The competent authorities of the various Member States that are competent for the purposes of Article 10 shall consult each other on the proposed follow-up to their action.

4. A competent authority of one Member State may request that an investigation be carried out by the competent authority of another Member State, on the latter's territory.

It may further request that members of its own personnel be allowed to accompany the personnel of the competent authority of that other Member State during the course of the investigation.

The investigation shall, however, be subject throughout to the overall control of the Member State on whose territory it is conducted.

The competent authorities may refuse to act on a request for an investigation to be conducted as provided for in the first subparagraph, or on a request for its personnel to be accompanied by personnel of the competent authority of another Member State as provided for in the second subparagraph, where such an investigation might adversely affect the sovereignty, security or public policy of the State addressed, or where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the State addressed or where a final judgment has already been delivered in relation to such persons for the same actions in the State addressed. In such case, they shall notify the requesting competent authority accordingly, providing information, as detailed as possible, on those proceedings or judgment.

Without prejudice to the provisions of Article 226 of the Treaty, a competent authority whose application to open an inquiry or whose request for authorisation for its officials to accompany those of the other Member State's competent authority is not acted upon within a reasonable time or is rejected may bring that non-compliance to the attention of the Committee of European Securities Regulators, where discussion will take place in order to reach a rapid and effective solution.

5. In accordance with the procedure laid down in Article 17(2), the Commission shall adopt implementing measures on the procedures for exchange of information and cross-border inspections as referred to in this Article.

Article 17

1. The Commission shall be assisted by the European Securities Committee instituted by Decision 2001/528/EC (hereinafter referred to as the 'Committee').

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof, provided that the implementing measures adopted according to this procedure do not modify the essential provisions of this Directive.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

4. Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following the entry into force of this Directive, the application of its provisions requiring the adoption of technical rules and decisions in accordance with paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them prior to the expiry of the period referred to above.

Article 18

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 12 October 2004. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 19

Article 11 shall not prejudice the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

Article 20

Directive 89/592/EEC and Article 68(1) and Article 81(1) of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ⁽¹⁾ shall be repealed with effect from the date of entry into force of this Directive.

Article 21

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 22

This Directive is addressed to the Member States.

Done at Brussels, 28 January 2003.

For the Parliament

The President

P. COX

For the Council

The President

G. PAPANDREOU

⁽¹⁾ OJ L 184, 6.7.2001, p. 1.

I

(Acts whose publication is obligatory)

DIRECTIVE 2004/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 21 April 2004
on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and
Directive 2000/12/EC of the European Parliament and of the Council and repealing Council
Directive 93/22/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the European Central Bank ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

(1) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ⁽⁵⁾ sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.

(2) In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of these developments the legal framework of the Community should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Community, being a Single Market, on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC should be replaced by a new Directive.

(3) Due to the increasing dependence of investors on personal recommendations, it is appropriate to include the provision of investment advice as an investment service requiring authorisation.

(4) It is appropriate to include in the list of financial instruments certain commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.

(5) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. It is necessary to recognise the emergence of a new generation of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets. With a view to establishing a proportionate regulatory framework provision should be made for the inclusion of a new investment service which relates to the operation of an MTF.

⁽¹⁾ OJ C 71 E, 25.3.2003, p. 62.

⁽²⁾ OJ C 220, 16.9.2003, p. 1.

⁽³⁾ OJ C 144, 20.6.2003, p. 6.

⁽⁴⁾ Opinion of the European Parliament of 25 September 2003 (not yet published in the Official Journal), Council Common Position of 8 December 2003 (OJ C 60 E, 9.3.2004, p. 1), Position of the European Parliament of 30 March 2004 (not yet published in the Official Journal) and Decision of the Council of 7 April 2004.

⁽⁵⁾ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

- (6) Definitions of regulated market and MTF should be introduced and closely aligned with each other to reflect the fact that they represent the same organised trading functionality. The definitions should exclude bilateral systems where an investment firm enters into every trade on own account and not as a riskless counterparty interposed between the buyer and seller. The term 'system' encompasses all those markets that are composed of a set of rules and a trading platform as well as those that only function on the basis of a set of rules. Regulated markets and MTFs are not obliged to operate a 'technical' system for matching orders. A market which is only composed of a set of rules that governs aspects related to membership, admission of instruments to trading, trading between members, reporting and, where applicable, transparency obligations is a regulated market or an MTF within the meaning of this Directive and the transactions concluded under those rules are considered to be concluded under the systems of a regulated market or an MTF. The term 'buying and selling interests' is to be understood in a broad sense and includes orders, quotes and indications of interest. The requirement that the interests be brought together in the system by means of non-discretionary rules set by the system operator means that they are brought together under the system's rules or by means of the system's protocols or internal operating procedures (including procedures embodied in computer software). The term 'non-discretionary rules' means that these rules leave the investment firm operating an MTF with no discretion as to how interests may interact. The definitions require that interests be brought together in such a way as to result in a contract, meaning that execution takes place under the system's rules or by means of the system's protocols or internal operating procedures.
- (7) The purpose of this Directive is to cover undertakings the regular occupation or business of which is to provide investment services and/or perform investment activities on a professional basis. Its scope should not therefore cover any person with a different professional activity.
- (8) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account unless they are market makers or they deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis, by providing a system accessible to third parties in order to engage in dealings with them should not be covered by the scope of this Directive.
- (9) References in the text to persons should be understood as including both natural and legal persons.
- (10) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession⁽¹⁾, First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance⁽²⁾ and Council Directive 2002/83/EC of 5 November 2002 concerning life assurance⁽³⁾ should be excluded.
- (11) Persons who do not provide services for third parties but whose business consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive.
- (12) Persons who provide investment services only on an incidental basis in the course of professional activity should also be excluded from the scope of this Directive, provided that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services.
- (13) Persons who provide investment services consisting exclusively in the administration of employee-participation schemes and who therefore do not provide investment services for third parties should not be covered by this Directive.
- (14) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings.
- (15) It is necessary to exclude from the scope of this Directive collective investment undertakings and pension funds whether or not coordinated at Community level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities.

⁽¹⁾ OJ 56, 4.4. 1964, p. 878/64. Directive as amended by the 1972 Act of Accession.

⁽²⁾ OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2002/87/EC.

⁽³⁾ OJ L 345, 19.12.2002, p. 1.