

## Chapter 2

# Authorisation and regulated activities

## 2.1 Application and purpose

### Application

- 2.1.1 **G** This chapter is relevant to any *person* who needs to know what activities fall within the scope of the *Act*.

### Purpose

- 2.1.2 **G** The purpose of this chapter is to provide *guidance*:
- (1) to *unauthorised persons* who wish to find out whether they need to be *authorised* and, if so, what *regulated activities* their *permission* needs to include; and
  - (2) to *authorised persons* who may have questions about the scope of their existing *permission*.



## 2.2 Introduction

- 2.2.1** **G** Under section 23 of the Act (Contravention of the general prohibition or section 20 (1) or (1A)), a *person* commits a criminal offence if he carries on activities in breach of the *general prohibition* in section 19 of the Act (The general prohibition) . An *authorised person* also commits a criminal offence if he carries on a credit-related regulated activity in the UK, or purports to do so, otherwise than in accordance with his *permission* (unless the *person* is an *appointed representative* carrying on the activity in circumstances where, as a result of section 39 (1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply). For these purposes, *entering into a regulated credit agreement as lender*, exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement and *debt collecting* are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the *borrower* to repay is secured on land. Although a *person* who commits the criminal offence is subject to a maximum of two years imprisonment and an unlimited fine, it is a defence for a *person* to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- 2.2.1A** **G** A *regulated credit agreement* that is made by an *authorised person* who does not have *permission* to do so, in contravention of section 20 of the Act, could be unenforceable against the *borrower* (see section 26A of the Act).
- 2.2.2** **G** Another consequence of a breach of the *general prohibition* is that certain agreements could be unenforceable (see sections 26 to 29 of the Act). This applies to agreements entered into by *persons* who are in breach of the *general prohibition*. It also applies to any agreement entered into by an *authorised person* if the agreement is made as a result of the activities of a *person* who is in breach of the *general prohibition*.
- 2.2.3** **G** Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in ■ PERG 2 Annex 1 G):
- (1) Will I be carrying on my activities by way of business (see ■ PERG 2.3)?
  - (2) Will I be managing the assets of an *occupational pension scheme* (see ■ PERG 2.3.2G (3))?
  - (3) If the answer is 'Yes' to (1) or (2), will my activities relate to *specified investments* (see ■ PERG 2.6)?

- (3A) Are my activities specified for the purposes of section 22(1)(b) of the Act (and, accordingly, when carried on by way of business, are a *regulated activity* when carried on in relation to property of any kind) or related to a *specified benchmark* (see ■ PERG 2.5.1A G)?
- (3B) Are my activities related to information about a *person's* financial standing (see ■ PERG 2.7.20K G)?
- (4) If the answer is 'Yes' to (3), (3A) or (3B), will my activities be, or include, *regulated activities* (see ■ PERG 2.7)?
- (5) If so, will I be carrying them on in the *United Kingdom* (see ■ PERG 2.4)?
- (6) If so, will my activities be excluded (see ■ PERG 2.8 and ■ PERG 2.9)?
- (7) If not, will I be exempt (see ■ PERG 2.10.5 G to ■ PERG 2.10.8 G)?
- (8) If not, am I allowed to carry on *regulated activities* without *authorisation* (see ■ PERG 2.10.9 G to ■ PERG 2.10.16 G)?
- (9) If not, do I benefit from the few provisions of the Act that *authorise* me without a *permission* under Part 4A of the Act (see ■ PERG 2.10.10 G (Members of Lloyds))?
- (10) If not, what is the scope of the *Part 4A permission* that I need to seek (see ■ PERG 2 Annex 2 G)?

2.2.4 G The rest of this chapter provides a high level guide through the questions set out in ■ PERG 2.2.3 G. It aims to give an overall picture but in doing so it necessarily relies on the reader referring to *UK* statutory provisions to fill in the detail (which can be extensive).

2.2.5 G The process of applying for *Part 4A permission* is available on the FCA website Apply for authorisation: [www.fca.org.uk/firms/authorisation/apply-authorisation](http://www.fca.org.uk/firms/authorisation/apply-authorisation). But a list of the activities for which *permission* may be given is annexed to this chapter (see ■ PERG 2 Annex 2 G). You may find this helpful in providing an overview of the activities that are regulated. The list is included here because, with some exceptions, the *investments* and activities for which *permission* may be given are the same as the investments and activities specified in the *Regulated Activities Order*. This creates a few additional categories for which *permission* must be sought.

## 2.3 The business element

2.3.1 **G** Under section 22 of the *Act (Regulated activities)*, for an activity to be a *regulated activity* it must be carried on 'by way of business'.

2.3.2 **G** There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177), as amended from time to time). The result is that the business element differs depending on the activity in question. This in part reflects certain differences in the nature of the activities:

- (1) The activity of *accepting deposits* will not be regarded as carried on by way of business by a *person* if he does not hold himself out as *accepting deposits* on a day-to-day basis and if the *deposits* he accepts are accepted only on particular occasions. In determining whether *deposits* are accepted only on particular occasions, the frequency of the occasions and any distinguishing characteristics must be taken into account.
- (2) Except as stated in ■ PERG 2.3.2G (2A) and ■ PERG 2.3.2G (3), the business element is not to be regarded as satisfied for any of the following *regulated activities* unless a *person* carries on the business of engaging in one or more of them:
  - (a) *regulated activities* carried on in relation to *securities* or *contractually based investments*;
  - (b) *regulated activities* carried on in relation to 'any property'
  - (c) the *regulated activities* listed in ■ PERG 2.7.2-BG (Accepting deposits and other regulated activities applying to deposits) so far as they relate to *structured deposits*;
  - (d) the *regulated activities* of *advising on P2P agreements*, *advising on a home finance transaction* and *arranging a home finance transaction*.

This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right.

- (2A) A *person* who carries on an *insurance distribution activity* will not be regarded as doing so by way of business unless that activity is taken up or pursued for remuneration. ■ PERG 2.3.3 G gives *guidance* on the factors that are relevant to the meaning of 'by way of business' in section 22 of the *Act*. ■ PERG 5.4 (The business test) gives further *guidance* on the business element as applied to *insurance distribution activity*.

- (3) A *person* managing assets on a discretionary basis while acting as trustee of an *occupational pension scheme* may in certain circumstances be regarded as acting by way of business even if he would not, in the ordinary meaning of the phrase, be regarded as doing so. The Financial Services and Markets Act (Carrying on Regulated Activities by Way of Business) Order 2001 (as amended) contains some exceptions from this (see article 4).
- (3A) A *person* who enters into a *regulated sale and rent back agreement* as *SRB agreement provider* is to be regarded as carrying on that activity by way of business except where that *person* is a *related party* in relation to the *SRB agreement seller*.
- (3B) If a *not-for-profit body* is carrying on *debt adjusting, debt counselling or providing credit information services* (or agreeing to carry on a *regulated activity* so far as relevant to any of those activities), it is to be regarded as doing so by way of business. It is immaterial whether the *not-for-profit body* also carries on other activities. This change to the business element does not apply, however, if the *not-for-profit body* carries on that activity only on an occasional basis.
- (3C) No provision in relation to the business element is made in respect of *not-for-profit bodies* carrying on *regulated claims management activity*; but article 89O of the *Regulated Activities Order* provides an exclusion for such bodies (see ■ PERG 2.8.14DG(2)).
- (4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting or carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract, carrying out a funeral plan contract as provider, entering into a home finance transaction or administering a home finance transaction, operating a dormant account fund, credit-related regulated activities* (subject to the modification for *not-for-profit bodies* in (3B)) and *operating an electronic system in relation to lending*.

2.3.3

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Whether or not an activity is carried on by way of business is ultimately a question of judgement that takes account of several factors (none of which is likely to be conclusive). These include the degree of continuity, the existence of a commercial element, the scale of the activity and the proportion which the activity bears to other activities carried on by the same *person* but which are not regulated. The nature of the particular *regulated activity* that is carried on will also be relevant to the factual analysis.

2.3.4

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A *person* carrying out the activity of *administering a specified benchmark* or *providing information in relation to a specified benchmark* will always be carrying out these activities by way of business.

2.3.4A

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A *person* carrying out the activity of *administering a benchmark* will always be carrying out that activity by way of business.

2.3.4B

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- (1) The *funeral plan* sector gives an example of how the 'by way of business' requirement referred to in ■ PERG 2.3.1G should be interpreted.
- (2) A burial society or other religious organisation operating within a particular religion and serving a defined religious community of members of that religion may provide a *funeral plan* to its members to facilitate their burial in a manner which complies with the teachings of that religion. In doing that, it may be carrying on *funeral plan provision activity*. However, if the provider does so on a not-for-profit basis, it is unlikely to do so by way of business.
- (3) One should look at whether the provider carries on its activities on a not-for-profit basis in a realistic way. So one should take into account:
  - (a) whether the services benefit, or are provided as part of, wider commercial activities carried on by the provider or by an affiliate or by their members; and
  - (b) any benefits an affiliate may get as well as those the provider gets.
- (4) If the provider's *funeral plan* activities generate a profit, that does not mean that it acts by way of business as long as the surplus is used for the purposes of its funeral activities, for example to buy new land for burials or to maintain its graveyards.
- (5) An important factor in this example is that the overall context is clearly non-commercial. The recipients of the services are not acting commercially. The funerals and the *funeral plan* activities take place within a religious community whose activities cover a much broader range of non-commercial activities. The funerals and the *funeral plan* activities are an integral part of those wider religious activities.
- (6) This non-commercial context means that the burial society or other religious organisation does not carry on the *funeral plan* activities by way of business just because:
  - (a) it carries on the *funeral plan* activities on a continuing basis;
  - (b) it carries on the *funeral plan* activities on an extensive scale; or
  - (c) (in the case of a burial society) the *funeral plan* activities are a major part of what the society does.

**Whether someone is carrying on his or her own business**

2.3.5

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Another aspect of the *general prohibition* is that an employee will not breach the *general prohibition* by carrying on a *regulated activity* on behalf of his employer. The reason for that is that it is the employer who is carrying on that activity. The employee is simply carrying on the employer's business.

2.3.6

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This principle potentially also applies to agents and others who assist another to carry on that other's business. That does not mean however that agents and other such *persons* can never carry on a *regulated activity*. Apart from anything else it is clear that some *regulated activities* are meant to be carried on by such *persons*, such as *dealing in investments as agent*.

2.3.7

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In the *FCA's* view the following factors are relevant in deciding whether a *person* (referred to in this paragraph as "an individual") is to be treated as carrying on his own business (in which case he may require *authorisation* unless an exemption or exclusion is available) or whether he is carrying on the business of the *person* for whom he works (in which case he will not require *authorisation*). In this paragraph, the *person* for whom the individual works is referred to as the principal *firm*.

- (1) The degree of control the principal *firm* has over the individual (the greater the control the more likely it is that the *general prohibition* does not apply). This takes into account the power of deciding the tasks to be carried out, the way in which the tasks are to be done, the means to be employed in doing them and the time when and the place where they are to be done. For example, at one end of the spectrum the individual may merely agree to achieve an end result without that end result being specified in detail. At the other end of the spectrum, the individual may be controlled in every detail of how things are to be done.
- (2) The degree to which the individual is integrated into the principal *firm's* business (the greater the integration the more likely it is that the *general prohibition* does not apply). One may look at how much the individual is subject to the managerial procedures of the principal *firm* in relation to such matters as quality of work and performance.
- (3) The degree to which the individual takes on the financial risks and rewards of an independent business (the more the individual takes on such risks the more likely it is that the *general prohibition* applies). For example, one might take into account whether the individual provides his own equipment; whether he hires his own helpers; what degree of financial risk he takes; what degree of responsibility for investment and management he has; whether and how far he has an opportunity of profiting from sound management in the performance of his task.
- (4) For example, if the individual is tasked with finding customers it may be relevant whether he is paid a commission for each customer gained. However, commission is not a particularly strong factor as many conventional employees are paid by commission.
- (5) The degree to which the individual deals with the principal *firm's* customers in his own name (if the individual deals with customers in his own name that points towards the *general prohibition* applying). For example, it may be relevant whether the individual receives monies from the principal *firm's* customers into a bank account in the individual's name.
- (6) The degree to which the services supplied by the individual to the principal *firm* are ones that the individual supplies to other clients as well. If the individual supplies services to more than one clients, it is very likely that the individual is in the business of providing those services generally and that, as a result, he is carrying on his own business and hence needs *authorisation* or an exemption from the *general prohibition*.
- (7) Whether the individual is a natural *person*. It is unlikely that a company or a partnership will fall outside the *general prohibition* on the grounds in ■ PERG 2.3.6 G.



- 2.3.8 **G** In practice, a *person* is only likely to fall outside the *general prohibition* on the grounds that he is not carrying on his own business if he is an employee or performing a role very similar to an employee.
- 2.3.9 **G** Even though working for more than one *firm* is likely to mean that the *person* will not be able to rely on the grounds in **■ PERG 2.3.6 G** to escape the *general prohibition* (see **■ PERG 2.3.7 G (6)**), that will not always be the case. In particular, say that a *person* is acting as an employee of one *firm* (Firm A) and as a self-employed agent of another *firm* (Firm B). In his capacity as an employee of Firm A, the *person* would not be carrying on his own business. Thus, the *general prohibition* does not apply in relation to his work for Firm A. If the only *firm* for which that *person* acts on a self-employed basis is Firm B, he could still fall outside the *general prohibition* in relation to Firm B too. The situation would be different if he was providing services to, or on behalf of, more than one client *firm* on a self-employed basis as under such circumstances he would be likely to be carrying on his own business.
- 2.3.10 **G** One example in the consumer credit industry of how the factors in **■ PERG 2.3.7 G** might apply can be found in the home collected credit sector. Home collected credit *firms* supply small, short-term, unsecured loans direct to customers in their homes. It is common practice in this sector for some of the larger *firms*, in particular, to deal with their customers via self-employed agents. Self-employed agents are not paid a salary by an employer. These agents call on customers in their homes to provide loans and/or collect repayments due on loans, on behalf of the home collected credit providers they represent, and they receive commission on the repayments they collect. Agents of home collected credit firms may:
- introduce new clients to the credit provider;
  - arrange for the completion of the relevant credit agreements by new clients; and
  - collect repayments.
- 2.3.11 **G** Although the overall relationship between a home collected credit provider (the principal *firm*) and a *person* providing the services described in **■ PERG 2.3.10 G** (the individual) will need to be taken into account, meeting the following criteria is likely to mean that the individual is carrying on the business of the principal *firm* (as its agent) and not his own, meaning that the individual does not require *authorisation* or to be exempt:
- (1) the principal *firm* appoints the individual as an agent;
  - (2) the individual only works for one principal *firm*;
  - (3) the principal *firm* has a *permission* from the FCA for every activity the individual is carrying on for which the principal *firm* would need *permission* if it was carrying on the activity itself;
  - (4) the contract sets out effective measures for the principal *firm* to control the individual;
  - (5) (in the case of collecting debts) receipt of repayment by the individual is treated as receipt by the principal *firm* so that the debtor is not disadvantaged if the individual becomes insolvent before the money is passed to the principal *firm*;

- (6) the principal *firm* accepts full responsibility for the conduct of the individual when the individual is acting on the principal *firm's* behalf in the course of its business; and
- (7) the individual makes clear to customers that it is representing a principal *firm* as its agent and the name of that principal *firm*.



## 2.4 Link between activities and the United Kingdom

- 2.4.1** **G** Section 19 of the *Act* (The general prohibition) provides that the requirement to be *authorised* under the *Act* only applies in relation to activities that are carried on 'in the *United Kingdom*'. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example because a client is outside the *United Kingdom* or because some other element of the activity happens outside the *United Kingdom*, the question may arise as to where the activity is carried on.
- 2.4.2** **G** Even with a cross-border element a *person* may still be carrying on an activity 'in the *United Kingdom*'. For example, a *person* who is situated in the *United Kingdom* and who is *safeguarding and administering investments* will be carrying on activities in the *United Kingdom* even though his *client* may be overseas.
- 2.4.2A** **G** The *regulated funeral plan activities* only apply if the contract is for a funeral in the *United Kingdom*.
- 2.4.3** **G** Section 418 of the *Act* (Carrying on regulated activities in the United Kingdom) takes this one step further. It extends the meaning that 'in the *United Kingdom*' would ordinarily have by setting out additional cases. The *Act* states that, in these cases, a *person* who is carrying on a *regulated activity* but who would not otherwise be regarded as carrying on the activity in the *United Kingdom* is, for the purposes of the *Act*, to be regarded as carrying on the activity in the *United Kingdom*.
- (1) [deleted]
  - (2) [deleted]
  - (3) The case is where a *regulated activity* is carried on by a *UK-based person* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*.
  - (4) The case is where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an establishment in the *United Kingdom*. This might occur when each of the stages that make up a *regulated activity* (such as *managing investments*) takes place in different countries. For example, a *person's* management is in country A, the assets are held by a nominee in country B, all transactions take place in country B or

country C but all decisions about what to do with the investments are taken from an office in the *United Kingdom*. Given that the investments are held, and all dealings in them take place, outside the *United Kingdom* there may otherwise be a question as to where the *regulated activity of managing investments* is taking place. For the purposes of the *Act*, it is carried on in the *United Kingdom*.

(5) [deleted]

2.4.4 **G** The application of the third and fourth cases will depend on how the activities carried on from the *UK* establishment are set up and operated.

2.4.5 **G** A *person* who is based outside the *United Kingdom* but who sets up an establishment in the *United Kingdom* must therefore consider the following matters. First, he must not, unless he is *authorised*, carry on *regulated activities* in the *United Kingdom*. Second, unless he is *authorised*, the day-to-day management of the carrying on of the *regulated activity* must not be the responsibility of the *UK* establishment. This may, for example, affect those *UK* establishments that in the context of *deposit-taking* activities were, before the *commencement* of the *Act*, treated as representative offices of overseas institutions. Such institutions will need to seek *authorisation* if the responsibility for the day-to-day management of the accepting of *deposits* by them outside the *United Kingdom* is nevertheless effectively that of their *UK* establishment. Third, such a *person* will need to ensure that he does not contravene other provisions of the *Act* that apply to *persons* who are not *authorised*. These include the controls on *financial promotion* (section 21 of the *Act* (Financial promotion)), and on giving the impression that a *person* is *authorised* (section 24).

2.4.6 **G** A *person* based outside the *United Kingdom* may also be carrying on activities in the *United Kingdom* even if he does not have a place of business maintained by him in the *United Kingdom* (for example, by means of the internet or other telecommunications system or by occasional visits). In that case, it will be relevant to consider whether what he is doing satisfies the business test as it applies in relation to the activities in question. In addition, he may be able to rely on the exclusions from certain *regulated activities* that apply in relation to *overseas persons* (see ■ PERG 2.9.15 G).

2.4.7 **G** [deleted]

2.4.8 **G** [deleted]

2.4.9 **G** Whether a *credit agreement* or *consumer hire agreement* is subject to the law of a country outside the *United Kingdom* is immaterial to whether an activity is *credit broking*, see ■ PERG 2.7.7E G.

2.4.10 **G** (1) The requirement to be authorised to carry on the *regulated activity of administering a benchmark* gives effect to the authorisation and registration regime under article 34 of the *benchmarks regulation*.

- (2) Article 34 only requires a *person* to be authorised or registered in the UK if that *person* is *located* in the UK.
- (3) Accordingly, the FCA considers that where a *person* (P) *administers a benchmark* in the UK but P is not *located* in the UK:
  - (a) P does not carry on the *regulated activity of administering a benchmark* from an establishment maintained by P in the UK for the purposes of section 418 of the Act; and
  - (b) P would not otherwise be regarded as carrying on that *regulated activity* in the UK.
- (4) *Located* is defined in the *Glossary* and has the same meaning as it does in the *benchmarks regulation*.

## 2.4A Link between regulated claims management activities and Great Britain

**2.4A.1** G Under section 22(1B) of the *Act*, a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.

**2.4A.2** G

- (1) Article 89F(3) of the *Regulated Activities Order* provides that a *person* is to be treated as carrying on a *regulated claims management activity* when either or both of the conditions in (2) and (3) are met.
- (2) The condition in this paragraph is that the activity is carried on by a *person* who is:
  - (a) a natural person who is ordinarily resident in *Great Britain*; or
  - (b) a *person*, other than a natural person, who is constituted under the law of a part of *Great Britain*.
- (3) The condition in this paragraph is that the activity is carried on in respect of a *claimant* or potential *claimant* who is:
  - (a) a natural person who is ordinarily resident in *Great Britain*; or
  - (b) a *person*, other than a natural person, who is constituted under the law of a part of *Great Britain*.

**2.4A.3** G Ordinary residence is to be determined for these purposes by reference to the Statutory Residence Test set out in Schedule 45 to the Finance Act 2013:

at the time of the facts giving rise to the *claim* or potential *claim*; or

at the time when the activity is carried out in respect of that *claimant* or potential *claimant*.

**2.4A.4** G Accordingly, the following list gives examples of activity which would be *regulated claims management activity* if carried on by way of business and where no exemption or exclusion applies:

- (1) a sole trader in England and Wales advising a natural person who is ordinarily resident in Northern Ireland in relation to a financial services or financial product *claim*;

- (2) a company incorporated in Northern Ireland advising a natural person who is ordinarily resident in Scotland in relation to a *personal injury claim*;
- (3) a company incorporated in France advising a natural person who is ordinarily resident in England in relation to a financial services or financial product *claim*;
- (4) a company incorporated in Scotland investigating a *personal injury claim* for a natural person who is ordinarily resident in Germany; and
- (5) a company incorporated in India seeking out details of claimants with *personal injury claims* who are ordinarily resident in Great Britain.

## 2.5 Investments and activities: general

**2.5.1** **G** In addition to the requirements as to the business test and the link to the *United Kingdom*, two other essential elements must be present before a *person* needs *authorisation* under the *Act*. The first is that the *investments* must come within the scope of the system of regulation under the *Act* (see ■ PERG 2.6). The second is that the activities, carried on in relation to those *specified investments*, are regulated under the *Act* (see ■ PERG 2.7). Both *investments* and activities are defined in the *Regulated Activities Order* made by the Treasury under section 22 of the *Act*.

**2.5.1-A** **G** The following *regulated activities* may be carried on in relation to property of any kind:

- (1) *managing a UK UCITS*;
- (2) *acting as trustee or depositary of a UK UCITS*;
- (3) *managing an AIF*;
- (4) *acting as trustee or depositary of an AIF*;
- (5) *establishing, operating and winding up a collective investment scheme*;
- (6) *establishing, operating and winding up a stakeholder pension scheme*;
- (7) *establishing, operating and winding up a personal pension scheme*;
- (8) *meeting of repayment claims*;
- (9) *managing dormant asset funds (including the investment of such funds)*; and
- (10) *dealing with unwanted asset money*.

**2.5.1A** **G** The *regulated activity* of *administering a benchmark* does not require the involvement of a *specified investment* in any way.

**2.5.1B** **G** The activities of *providing credit information services* and *providing credit references* are not required to relate to a *specified investment* to be *regulated activities*, but rather relate to information about a *person's* financial standing.



2.5.2 **G** The *Regulated Activities Order* contains exclusions. Exclusions may exist in relation to both the element of investment and the element of activity. Each should therefore be checked carefully. The exclusions that relate to *specified investments* are considered in ■ PERG 2.6, together with the outline of the *specified investments*. The exclusions that relate to activities are considered separately from the outline of activities (see ■ PERG 2.8 and ■ PERG 2.9).

**Modification of certain exclusions as a result of MiFID, the IDD and the Mortgage Credit Directive**

2.5.3 **G** The application of certain of the exclusions considered in ■ PERG 2.8 (Exclusions applicable to certain regulated activities) and ■ PERG 2.9 (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who are subject to the *UK* provisions which implemented *MiFID*, the *IDD* and the *MCD*. The reasons for this and the consequences of it are explained in ■ PERG 2.5.4 G for *MiFID*, ■ PERG 5 (Guidance on insurance distribution activities) for the *IDD*, and ■ PERG 4.10A for the *MCD*.

**Investment services and activities**

2.5.4 **G** Certain *persons* subject to the requirements of the *UK* provisions which implemented *MiFID* must be brought within the scope of regulation under the *Act*. A core element of *MiFID* is the concept of investment firm. An *investment firm* is any *person* whose regular occupation or business is the provision of one or more *investment services* to third parties or the performance of one or more *investment activities* on a professional basis. An *investment firm* is not subject to the *UK* provisions which implemented *MiFID* requirements if it falls within one or more of the exemptions in Part 1 of Schedule 3 of the *Regulated Activities Order*. Further information about these exemptions is contained in PERG 13.5. To the extent that an *investment firm* falls within one of these exemptions, it will not be a *MiFID investment firm*. Where a *firm* is not a *MiFID investment firm* because one or more of the exemptions in Part 1 of Schedule 3 of the *Regulated Activities Order* apply, it may still be carrying on *regulated activities* and therefore require *authorisation* unless it is an *exempt person*.

2.5.4A **G** Prior to *IP completion day*, the *UK* exercised part of the optional exemption in article 3 of *MiFID*. This is now set out in regulation 8 of the *MiFI Regulations*. Further information about this exemption is contained in Q48 to 53 in PERG 13.5. The investment services to which regulation 8 of the *MiFI Regulation* applies (namely reception and transmission of orders and investment advice in relation to either *transferable securities* or units in collective investment undertakings) correspond to *regulated activities* (see PERG 13 Annex 2 Tables 1 and 2).

2.5.5 **G** For *persons* who are *MiFID investment firms*, the activities that must be caught by the *Regulated Activities Order* are those that are caught by the *UK* provisions which implemented *MiFID*. To achieve this result, some of the exclusions in the Order (that will apply to *persons* who are not caught by *MiFID*) have been made unavailable to *MiFID investment firms* when they provide or perform *investment services and activities*. A "*MiFID investment firm*", for these purposes, includes *credit institutions* to which the *UK* provisions which implemented *MiFID* applies (see ■ PERG 13, Q5 and 9); *collective portfolio management investment firms* providing the services of

*portfolio management* and *personal recommendations* in relation to *financial instruments* or the ancillary service of safekeeping and administration in relation to *units* of collective investment undertakings; and *AIFM investment firms* providing the ancillary service of reception and transmission of orders in relation to *financial instruments*. The same exclusions are also unavailable to *third country investment firms* when they provide *investment services and activities*. Article 4(4) of the *Regulated Activities Order* (Specified activities: general) lists a number of exclusions that must be disregarded. These relate to the exclusions concerned with:

- (1) the absence of holding out (see ■ PERG 2.8.4G (1));
- (2) transactions or arrangements with or through certain *persons* (see ■ PERG 2.8.4G (2), ■ PERG 2.8.5G (1) and ■ PERG 2.8.6G (4));
- (2A) issuing own securities (see ■ PERG 2.8.4G(4));
- (3) risk management (see ■ PERG 2.8.4G (5) and ■ PERG 2.8.5G (2));
- (3A) arranging for the issue of your own securities ■ PERG 2.8.6AG(11);
- (4) *persons* acting under powers of attorney (see ■ PERG 2.8.7 G);
- (4A) professions or businesses not involving *regulated activities* (see ■ PERG 2.9.5 G);
- (5) sale of goods (see ■ PERG 2.9.7 G);
- (6) groups and joint enterprises (see ■ PERG 2.9.9 G);
- (7) sale of a *body corporate* (see ■ PERG 2.9.11 G); and
- (8) business angel-led enterprise capital funds (see ■ PERG 2.9.20 G to ■ PERG 2.9.22 G).

**Insurance distribution or reinsurance distribution**

2.5.6

G

The *IDD* was in part implemented through various amendments to the *Regulated Activities Order*. These included article 4(4A) (Specified activities: general) which precluded a *person* who, for remuneration, takes up or pursues *insurance distribution* or *reinsurance distribution*, in relation to a risk or commitment situated in an *EEA State* from making use of certain exclusions. Post *IP completion day*, this provision has been amended to refer to a risk or commitment situated in the *United Kingdom*. In other cases, some of the exclusions provided in relation to particular *regulated activities* are unavailable where the activity involves a *contract of insurance*. This is explained in more detail in ■ PERG 5(Guidance on insurance distribution activities).

**Wider definition of certain specified investments when carrying on some kinds of MiFID business**

2.5.7

G

Some *specified investments* are defined so that certain products only come within that *specified investment* when a *person* is providing services under certain legislation in relation to that product.

2.5.8 **G** When **■ PERG 2.5.7G** applies, the product is only treated as falling within the definition of the *specified investment* concerned if (in relation to that product):

- (1) one of the following *persons*:
  - (a) a *MiFID investment firm*; or
  - (b) a *third country investment firm*; or
  - (c) a *CRD credit institution*; or
  - (d) a *credit institution* that would qualify to be a *CRD credit institution* if its registered or head office were in the *United Kingdom*;  
provides or performs *investment services and/or activities* on a professional basis; or
- (2) a *UCITS investment firm* is providing certain *investment services and/or activities* under the *UK* provisions which implemented article 6.3 of the *UCITS Directive* (provision of services in addition to *UCITS* management); or
- (3) a *market operator* (or someone who would be a *market operator* if it was based in the *United Kingdom*) is providing the *investment services and/or activities* of operating a *multilateral trading facility* or *organised trading facility* (these activities are described in Q24 and Q24A in **■ PERG 13.3**); or
- (4) an *AIFM investment firm* is providing services under the *UK* provisions which implemented article 6.4 of the *AIFMD* (provision of services in addition to *AIF* management).

2.5.9 **G** **■ PERG 2.5.7G** only applies to the following *specified investments*:

- (1) an *emission allowance* (see **■ PERG 2.6.19DG** for more details);
- (2) an *option* (see **■ PERG 2.6.20G** for more details);
- (3) a *future* (see **■ PERG 2.6.22AG** for more details);
- (4) a credit derivative treated as a *contract for differences* (see **■ PERG 2.6.23G** for more details); and
- (5) a binary or fixed outcomes derivative treated as a *contract for differences* (see **■ PERG 2.6.24AG** for more details, which also explains that in certain circumstances **■ PERG 2.5.7G** does not apply to this product).

2.5.10 **G**

- (1) When deciding whether a person is a *MiFID investment firm* or a *third country investment firm* for the purposes of **■ PERG 2.5.8G(1)**, it is necessary to take into account the services that that *person* is providing in relation to the product concerned.
- (2) For example, say that a *UK person* does business in an option product to which **■ PERG 2.5.7G** applies. When deciding whether that product is a regulated *option*, it is not necessary for that *person* already to be:

- (a) a *MiFID investment firm*; or
  - (a) *authorised* under the *Act*;  
because of its other activities.
- (3) Therefore, when deciding whether the *UK person* in (2) is a *MiFID investment firm* and whether it needs to be *authorised* under the *Act*, it is necessary to take into account all the business it does, including business in that option product.



## 2.6 Specified investments: a broad outline

**2.6.1** G The following paragraphs describe the various *specified investments*, taking due account of any exclusion that applies.

### Deposits

**2.6.2** G A *deposit* is defined in article 5(2) of the *Regulated Activities Order*. This focuses on a sum of *money* paid by one *person* to another on terms that it will be repaid when a specified event occurs (for example, a demand is made).

**2.6.3** G Certain transactions are excluded. The definition of *deposit* itself excludes money paid in connection with certain transactions such as advance payments for the provision of goods or services and sums paid to secure the performance of a contract. The circumstances in which payments are excluded from the definition itself are exhaustively stated in article 5(3) of the *Regulated Activities Order* (Accepting deposits). In addition, there is a separate exclusion in article 9 of the Order (Sums received in consideration for the issue of debt securities) and another in article 9A (Sums received in exchange for electronic money). ■ PERG 3A Q4 contains guidance on the exclusion relating to *electronic money*.

**2.6.4** G In addition, several separate exclusions focus on the identity of the *person* paying the *money* or the *person* receiving it (or both).

- (1) Payments by certain *persons* are excluded if they are made by specified *persons* (such as local authorities or national, or supranational, bodies) or by *persons* acting in the course of a business consisting wholly or partly of lending money.
- (2) Exclusions apply for sums paid between certain *persons* who are linked in a specified way (such as *group companies* or *close relatives*).
- (3) Exclusions apply to sums received by *persons* acting for specified purposes. This covers sums received by a practising solicitor acting in the course of his profession or by *authorised* or *exempt persons* carrying on one of a specified range of *regulated activities* and acting within the scope of their *permission* or exemption.

- 2.6.4-A G (1) A *structured deposit* is a kind of *deposit*.
- (2) A *structured deposit* is a *deposit* which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:
- (a) an index or combination of indices; or
  - (b) a *financial instrument* or combination of *financial instruments*; or
  - (c) a *commodity* or combination of *commodities* or other physical or non-physical non-fungible assets; or;
  - (d) a foreign exchange rate or combination of foreign exchange rates.
- (3) A variable rate *deposit* whose return is directly linked to an interest rate index such as SONIA (whether or not adjusted) is not a *structured deposit* under paragraph (2)(a).
- (4) (3) applies whether or not the interest is predetermined and whether it is fixed or variable.
- 2.6.4-B G The reason why there is a definition of a *structured deposit* is that there are a number of *regulated activities* that apply to *structured deposits* that do not apply to other kinds of *deposit*. See ■ PERG 2.7.2-BG for a list.
- 2.6.4-C G Although the definition of a *structured deposit* specifically requires that the principal amount be fully repayable, that does not imply that this feature only applies to *structured deposits*. In the FCA’s view, capital certainty is a feature of any kind of *deposit*.
- Electronic money**  
.....
- 2.6.4A G *Electronic money* is specified as an *investment* in article 74A of the *Regulated Activities Order*, but only when issued by:
- (1) a *full credit institution*, a *credit union* or a municipal bank; or
  - (2) a *person* deemed to have been granted authorisation under regulation 74 of the *Electronic Money Regulations*; or a *person* who falls within regulation 76(1) of the *Electronic Money Regulations* (see ■ PERG 3A, Q30 and 31).
- The authorisation and registration requirements for any other *person* intending to issue *electronic money* are governed by the *Electronic Money Regulations*. Guidance on these regulations is available in ■ PERG 3A.
- Rights under a contract of insurance**  
.....
- 2.6.5 G *Contract of insurance* is defined to include certain things that might not be considered a *contract of insurance* at common law. Examples of such additions include *capital redemption* contracts or contracts to pay annuities on human life. Detailed *guidance* on identifying a *contract of insurance* is in ■ PERG 6 (Guidance on the Identification of Contracts of Insurance).

2.6.6 **G** There are two main sorts of *contracts of insurance*. These are *general insurance contracts* and *long-term insurance contracts*. The *Regulated Activities Order* provides that, in certain specified circumstances, a contract is to be treated as a *long-term insurance contract* notwithstanding that it contains supplementary provisions that might also be regarded as relating to a *general insurance contract* (see article 3(3)).

2.6.7 **G** The *Regulated Activities Order* uses two further terms in relation to *contracts of insurance* to identify those contracts under which rights are treated as *contractually based investments*.

(1) The first term is 'qualifying contracts of insurance' (referred to as *life policies* in the *Handbook*). This identifies those *long-term insurance contracts* under which rights are treated as *contractually based investments*. This term does not cover *long-term insurance contracts* which are contracts of reinsurance or, if specified conditions are met, contracts under which benefits are payable only on death or incapacity.

(2) The second term is '*relevant investments*'. This term applies to:

- (a) *contractually based investments*, which includes rights under *life policies*, and rights to or interests in such *investments* under article 89 of the *Regulated Activities Order* (Rights to or interests in investments); and
- (b) rights under *contracts of insurance* other than *life policies* (but not rights to or interests in such rights).

This term is used in connection with the treatment, under various parts of the *Regulated Activities Order*, of *persons carrying on insurance distribution activities* (see further ■ PERG 5 (Guidance on insurance distribution activities)).

2.6.8 **G** Certain arrangements in relation to funeral plans are specifically excluded from being *contracts of insurance* if they would otherwise be so. The exclusion applies to arrangements that fall within the definition of a *funeral plan contract* (see ■ PERG 2.6.26G).

**Shares etc**

2.6.9 **G** *Shares* are defined in the *Regulated Activities Order* as shares or stock in a wide range of entities; that is, any *body corporate* wherever incorporated and unincorporated bodies formed under the law of a country other than the *United Kingdom*. They include deferred shares issued by *building societies* as well as transferable shares in *industrial and provident societies*, *credit unions* and equivalent *EEA* bodies. These shares are transferable and negotiable in a way similar to other shares or stock and are treated as such for the purposes of defining *regulated activities*. They are specifically mentioned as being within the *specified investment* category of *shares* because other types of share issued by these mutual bodies are not transferable and are expressly excluded (see ■ PERG 2.6.10 G).

2.6.10 **G** The following are excluded from the *specified investment* category of *shares*. Shares or stock in all *open-ended investment companies* are excluded from being treated in this particular category (but see ■ PERG 2.6.17 G). Exclusions

from this category also apply to shares or stock in the share capital of certain mutuals or in equivalent *EEA* bodies. This takes out *building society* or *credit union* accounts and non-transferable shares in *industrial and provident societies*. These may nevertheless be *specified investments* in another category (such as *deposits* in the case of *building society* accounts).

**Debt instruments**

2.6.11

G

Two categories of *specified investments* relating to debt instruments are dealt with under this heading. They broadly split into private debt and public sector debt.

- (1) The first category of 'instruments creating or acknowledging indebtedness' (defined in article 77 of the *Regulated Activities Order* and referred to in the *Handbook* as *debentures*) expressly refers to a range of instruments such as *debentures*, bonds and loan stock and contains a catch-all reference to 'any other instrument creating or acknowledging indebtedness.'
- (2) The second category (defined in article 78 of the *Regulated Activities Order* and referred to in the *Handbook* as *government and public securities*) refers to loan stock, bonds and other instruments creating or acknowledging indebtedness which are issued by or on behalf of any government, the assemblies for Scotland, Wales or Northern Ireland, a local authority or an international organisation.

An instrument cannot fall within both categories of *specified investments* relating to debt instruments. 'Instrument' is defined to include any record whether or not in the form of a document (see article 3(1) of the *Regulated Activities Order*).

**Alternative finance investment bonds**

2.6.11A

G

Alternative finance investment bonds (defined in article 77A of the *Regulated Activities Order* and referred to in the *Handbook* as *alternative debentures*) are a form of Sharia compliant bond (known as *sukuk* in the plural or *sakk* in the singular) which are intended to be regulated in an equivalent manner to conventional debt securities, where appropriate. *Sukuk* arrangements allow assets to be held for the benefit of investors in certificates issued by a company. The benefits may include the payment of a return that is economically equivalent to interest and redemption of the certificates out of the proceeds from the disposal of the assets. *Alternative debentures* are not limited to those wishing to issue Sharia compliant *sukuk*.

2.6.11B

G

The arrangements which grant rights under *alternative debentures* are similar to the tax definition of arrangements relating to alternative finance investment bonds at section 48A of the Finance Act 2005 (see [www.opsi.gov.uk/acts/acts2007/ukpga\\_20070011\\_en\\_5#pt3-pb9-l1g53](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070011_en_5#pt3-pb9-l1g53)). However the purposes of the two provisions are not the same. One of the objectives of the *FCA* under the *Act* is consumer protection. Accordingly, secondary legislation made under the *Act*, like article 77A of the *Regulated Activities Order*, is likely to be interpreted by the *FCA* with consumer protection in mind. This may mean that whilst the arrangements described at section 48A of the Finance Act 2005 and those described at article 77A of the *Regulated Activities Order* are similar, they are likely to be construed differently by the courts. ■ PERG 2.6.11FG and ■ PERG 2.6.11GG explain the



consumer protection features in the definition of *alternative debentures* in more detail.

2.6.11C **G** The arrangements which grant rights under an *alternative debenture* arise where:

- (1) the arrangements provide for a person (the bond-holder) to pay a sum of money (the capital) to another (the bond-issuer);
- (2) the arrangements identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (the bond assets);
- (3) the arrangements specify a period at the end of which they cease to have effect (the bond term);
- (4) the bond-issuer undertakes under the arrangements:
  - (a) to make a repayment in respect of the capital (the redemption payment) to the bond-holder during or at the end of the bond term (whether or not in instalments); and
  - (b) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (the additional payments);
- (5) the amount of the additional payments does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital; and
- (6) the arrangements are a security admitted to:
  - (a) an *official list*; or
  - (b) trading on a *regulated market* or on a *recognised investment exchange*.

2.6.11D **G** Different types of *alternative debentures* are permitted so that, for example:

- (1) the assets of the arrangement may be acquired before or after it commences;
- (2) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them before the end of the bond term;
- (3) the return may be fixed, floating or determined in some other way;
- (4) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them.

2.6.11E **G** As these arrangements might amount to a collective investment scheme (see **■ PERG 9.4.2 GG** for a broad description) a consequential amendment to the Financial Services and Markets Act 2000 (Collective Investment Scheme) Order 2001 (SI 2001/1062) has been made so that, like conventional bonds,

*alternative debentures* are excluded from the definition of collective investment scheme.

**2.6.11F** **G** The range of instruments that are caught by the *alternative debenture* definition have been tightly circumscribed to ensure that only those arrangements that grant, in substance, debt-like returns are captured. This is because arrangements giving rights under an *alternative debenture* cannot amount to a *collective investment scheme* (see ■ PERG 2.6.11EG). If other types of investments were covered by the *alternative debenture* definition this could have the effect of undermining the regime for regulating *collective investment schemes*, which is primarily aimed at protecting the consumer from investing in unsuitable products. For example, under section 238 of the Act (Restrictions on promotion) an *authorised person* cannot *communicate* an invitation or inducement to participate in an *unregulated collective investment scheme*.

**2.6.11G** **G** The condition set out at ■ PERG 2.6.11CG (6) is also intended to protect consumers. This provides that *alternative debentures* must be listed on an *official list* or traded on a *regulated market* or *recognised investment exchange*. This is because there is a risk that *alternative debentures* could lead to regulatory arbitrage (i.e. the risk that the exclusion from being classified as a *collective investment scheme* is exploited by instruments not intended to be excluded). Mandatory listing is aimed at ensuring an enhanced level of transparency, reducing the likelihood of regulatory arbitrage.

**2.6.11H** **G** (1) The main provision within the definition of *alternative debenture* arrangements that seeks to ensure that only instruments that display the characteristics of a debt security can be *alternative debentures* is set out at ■ PERG 2.6.11CG (5). It provides that the amount of additional payments under the arrangements must not exceed an amount which would, at the time the bond is issued, be a reasonable commercial return on a loan of capital. Where the return is not fixed at the outset, it is the maximum possible amount of the additional payments that must be considered in deciding this question. The following example demonstrates how this condition should be approached.

**Example**

ABC Ltd is a property development company. It wishes to increase its portfolio on a short-term basis. It issues 5-year sukuk to investors and uses the proceeds to buy the head lease of a commercial property. The rental income from the lease is distributed to investors in proportion to their holdings without a cap on the level of return. After 5 years, the head lease is sold on at a profit and the proceeds shared between investors.

In this example, the investors participate directly in the success or failure of the underlying property business. The sukuk is not really in the nature of a debt instrument. It is unlikely to be an *alternative debenture* as:

(a) additional payments under the arrangements would exceed a reasonable commercial return on a loan of the capital.

Further, where the return is not fixed at the outset, it is the maximum possible amount of the additional payments that must be considered. Here,

the issue terms of the sukuk impose no upper limit on the amount of the periodic distributions: a sakk holder subscribing 1,000 may, in a year, get back 200 or 2,000 or nothing depending on the rental market. The maximum potential return is clearly in excess of a reasonable commercial return on a loan of 1,000; and

(b) the arrangements have not been admitted to an *official list* or admitted to trading on a *regulated market* or *recognised investment exchange* (see PERG 2.6.11CG (6)).

- (2) If, in the above example, investors returns were capped at 500 per sakk per year, then this is the amount that must be considered in deciding whether the return exceeds a reasonable commercial return on a loan, even where the amounts actually received turn out to be far lower.
- (3) In applying the reasonable commercial return test, the sakk should be compared to a hypothetical loan to the issuer on similar terms and carrying similar risks. For example, a conventional security convertible into shares will normally carry a lower rate of interest because the conversion right has a value. The return on an exchangeable or convertible sakk should be measured against the return on an equivalent exchangeable or convertible debt security.
- (4) The risk to investors in sukuk may vary slightly from that of a conventional bond in some instances. This may be due to the fact that sukuk holders only have recourse to the bond assets or some other structural feature which results in the risk profile being higher. In such instances it may be justifiable for the rate of return to be slightly higher than that of a conventional loan.
- (5) As with any financial instrument, the pricing of sukuk will depend on the issuers view of the market at the time of issue and reasonable commercial return may vary depending on the issuer and the economic circumstances prevalent at the time of issue.

2.6.12 G Certain instruments are excluded from both of the categories of *specified investments* referred to in ■ PERG 2.6.11 G. These include trade bills, specified banking documents (such as cheques and banknotes though not bills of exchange accepted by a banker) and *contracts of insurance*. There is a further exclusion from this category of *specified investment* dealing with public debt for National Savings deposits and products. However, for the purposes of article 78 of the Financial Services and Markets Act (Regulated Activities) Order 2001, this exclusion does not apply to instruments that meet the requirements of ■ PERG 2.6.11CG (1) to ■ (5).

### Warrants

2.6.13 G The category of *specified investment* of instruments giving entitlements to investments (referred to in the *Handbook* as *warrants*) covers warrants and other instruments which confer an entitlement to subscribe for *shares*, *alternative debentures*, *debentures* and *government and public securities*. This is one of several categories of *specified investments* that are expressed in terms of the rights they confer in relation to other categories of *specified investment*. The rights conferred must be rights to 'subscribe' for the relevant investments. This means that they are rights to acquire the investments directly from the *issuer* of the *investments* and by way of the

issue of new investments (rather than by purchasing investments that have already been issued).

- 2.6.14 G To keep clear distinctions between the different *specified investment* categories, instruments giving entitlements to investments are not to be regarded as *options, futures or contracts for differences*.

**Certificates representing securities**

- 2.6.15 G The *specified investment* category of *certificates representing certain securities* covers certificates or other instruments which confer rights in relation to *shares and debt securities*. It includes depositary receipts.

- 2.6.16 G There is an exclusion for any instrument that would otherwise fall within the *specified investment* category of *units* in a *collective investment scheme*. But the exclusion does not apply where the underlying investments covered by the certificate are issued by the same (non-public sector) *issuer* or constitute a single issue of public sector debt (such as a single issue of gilts). Certificates or other instruments conferring rights in respect of investments in these two cases continue to be treated as *certificates representing certain securities*.

**Units**

- 2.6.17 G The *specified investment* category of *units* in a *collective investment scheme* includes *units* in a *unit trust scheme or authorised contractual scheme, shares in open-ended investment companies* and rights in respect of most limited *partnerships* and all *limited partnership schemes*. *Shares* in or *securities* of an *open-ended investment company* are treated differently from *shares* in other *companies*. They are excluded from the *specified investment* category of *shares*. This does not mean that they are not investments but simply that they are uniformly treated in the same way as *units* in other forms of *collective investment scheme*. The effect is that an *open-ended investment company* will, in issuing its *shares*, be subject to the restrictions on promotion of *collective investment schemes* in section 238 of the *Act* (rather than to restrictions that apply to other forms of body corporate). For exclusions from the restrictions on the provisions of *collective investment schemes*, see the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (SI 2001/1060). *Guidance* on the meaning of *open-ended investment company* is in ■ PERG 9 (Meaning of open-ended investment company).

- 2.6.18 G There are no exclusions in the *Regulated Activities Order* for this *specified investment* category. This is because '*collective investment scheme*' is defined in section 235 of the *Act* (Collective investment schemes) for the purposes of the *Act* generally. But there is a separate power to provide for exemptions from that definition and the Treasury have exercised it (see the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062)). The result is that *units* in certain arrangements are excluded from being *collective investment schemes* (for example, closed-ended *bodies corporate*, franchise arrangements, timeshare schemes).

**Rights under a pension scheme**

- 2.6.19 **G** Three types of *investment* are specified here:
- (1) rights under a *stakeholder pension scheme*;
  - (2) rights under a *personal pension scheme*; and
  - (3) rights or interests under a pension scheme which provides *safeguarded benefits*.
- 2.6.19A **G** A *stakeholder pension scheme* is defined in section 1 of the Welfare Reform and Pensions Act 1999. Regulations made under that section set out detailed rules under which such schemes will operate (see the Stakeholder Pension Scheme Regulations 2000). Schemes must be registered with The Pensions Regulator.
- 2.6.19B **G** A *personal pension scheme* is, broadly speaking, a pension scheme which is not an *occupational pension scheme* or a *stakeholder pension scheme*. That is, a scheme or arrangement that is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people:
- (1) on retirement; or
  - (2) on having reached a particular age; or
  - (3) on termination of service in an employment.
- 2.6.19BA **G** Under section 48(8) of the Pension Schemes Act 2015 *safeguarded benefits* means benefits other than:
- (1) money purchase benefits (defined in section 181 of the Pension Schemes Act 1993 and section 176 of the Pension Schemes (Northern Ireland) Act 1993); and
  - (2) cash balance benefits (defined in section 75 of the Pension Schemes Act 2015).
- 2.6.19C **G**
- (1) Rights under *stakeholder pension schemes* and *personal pension schemes* are *specified investments* for the purposes of the entire *Regulated Activities Order*.
  - (2) Rights or interests under a pension scheme which provides *safeguarded benefits* as defined by section 48(8) of the Pension Schemes Act 2015 are only *specified investments* for the purposes of article 53E (Advising on conversion or transfer of pension benefits) and not in relation to any other *regulated activity*.
  - (3) There are no exclusions in the Order.

**Emission allowances**

- 2.6.19D** **G** This *specified investment* comprises *emissions allowances* that are auctioned as *financial instruments* or *two-day emissions spots* (together, *emissions auction products*).
- There are two *specified investments* relating to the scheme for *emission allowance* trading within the UK:
- (1) the first kind comprises *emission allowances* that are auctioned as *financial instruments* or *two-day emissions spots* (together, *emissions auction products*); and
  - (2) the second kind is an *emission allowance* itself subject to (2)).
- An *emission allowance* is only a *specified investment* if ■ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of MiFID business) applies.
- An *emission allowance* can also be the underlying for an *option*, *future* or *contract for differences*.
- 2.6.19E** **G** The *emissions auction product* specified investment relates only to the *regulated activity* of *bidding in emissions auctions* (whereby a bid is received, transmitted and submitted on an *auction platform*) and captures the two forms of allowance products that may be auctioned under regulation 4(2) of the *UK auctioning regulations* or the *EU auction regulation*: a two-day spot or a five-day future.
- 2.6.19F** **G** See ■ PERG 2.7.6DG for more about:
- (1) how the RAO deals with the overlap between *emission allowances* and *emissions auction products*; and
  - (2) whether these products are a *security*, a *contractually based investment* or a *relevant investment*.
- 2.6.19G** **G** Some other points about *emission allowances* are:
- (1) *Emission allowance* means an allowance as defined in article 3(a) of Directive 2003/87/EC or created under article 18 of the *trading scheme order 2020*. These provisions provide that an allowance is an allowance to emit one tonne of carbon dioxide equivalent during a specified period, only valid for the purpose of meeting the requirements of Directive 2003/87/EC or the *trading scheme order 2020* and only transferable in accordance with the provisions of that directive or order (*emission allowance*).
  - (2) A two-day spot is defined by reference to article 3(3) of the *EU auction regulation* or regulation 2 of the *UK auctioning regulations*. These provisions provide that a two-day spot is an allowance auctioned for delivery at an agreed date no later than the second trading day from the day of the auction (*two-day emissions spot*).
  - (3) A *financial instrument* is defined as any instrument listed in Part 1 of Schedule 2 to the *Regulated Activities Order*.

- (4) The distinction between *emission allowances* that are auctioned as *financial instruments* and those auctioned as two-day spots is no longer relevant as all *emissions auction products* are *financial instruments*.

**Options**

2.6.20

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The *specified investment* category of *options* comprises:

- (1) *options* to acquire or dispose of *securities* or *contractually based investments*, currency and certain precious metals and *options* to acquire or dispose of such *options*. *Options* to buy or sell other types of *commodity* will only fall within this *specified investment* category if they are *options* to buy or sell *futures*, or *options* to buy or sell *contracts for differences*, which are based on other *commodities*. But *options* to buy or sell other types of *commodity* may be *contracts for differences* (see ■ PERG 2.6.23 G);
- (2) *options* to acquire or dispose of other property and falling within paragraphs 5, 6, 7 or 10 of Part 1 of Schedule 2 to the *Regulated Activities Order* (see article 83(2) of the *Regulated Activities Order* and ■ PERG 13, Q33A to Q34 for *guidance* about these instruments), but only where they are *options* to which ■ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of MiFID business) applies; and
- (3) *options* to acquire or dispose of an *option* to which (2) applies, but only where ■ PERG 2.5.7G applies (see article 83(1)(e) of the *Regulated Activities Order*).

2.6.20A

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It follows therefore that *options* not falling within ■ PERG 2.6.20G (1), for example physically settled *options* on non-precious metals, such as copper *options*, will not be *options* unless they meet the conditions in ■ PERG 2.6.20G (2). Moreover, where the *option* in question is one to which ■ PERG 2.6.20G (2) applies, it will be an *option* only in relation to the services referred to in ■ PERG 2.5.8G, provided by that *person*. The same applies in the case of *options* falling within ■ PERG 2.6.20G (3), for example an *option* on a physically settled copper *option* traded on a *regulated market*.

**Futures**

2.6.21

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*Futures* is the name given to rights under a contract for the *sale* of a *commodity*, or of 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.

2.6.22

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The key issue in determining whether something is an investment in this category for the purposes of the *Regulated Activities Order* is whether the contract is made for investment purposes rather than commercial purposes. Contracts which are made for commercial purposes are excluded from this *specified investment* category and the *Regulated Activities Order* contains several tests as to when that is, or is not, the case (some are conclusive, others only indicative).

- 2.6.22A G As with *options*, there is an additional category of instruments which are *futures* only in limited circumstances. These are contracts as described in ■ PERG 2.6.21 G:
- (1) that would not be regarded as having been entered into for investment purposes because they fail one of the tests mentioned in ■ PERG 2.6.22 G;
  - (2) that:
    - fall within paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order* and relate to currencies (see ■ PERG 13, Q31A to Q31S for *guidance* about these derivatives); or
    - fall within paragraphs 5, 6, 7 or 10 of Part 1 of Schedule 2 to the *Regulated Activities Order* (see ■ PERG 13, Q33A to Q34 for *guidance* about these derivatives); and
  - (3) to which ■ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of MiFID business) applies.
- See article 84(1A)-(1D) of the *Regulated Activities Order*
- 2.6.22B G [deleted]
- Contracts for differences**.....
- 2.6.23 G The *specified investment* category of *contracts for differences* covers:
- (1) rights under *contracts for differences*;
  - (2) rights under other contracts whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in certain factors; and
  - (3) derivative contracts for the transfer of credit risk (not within (1) or (2)) falling within paragraph 8 or 9 of Part 1 of Schedule 2 to the *Regulated Activities Order* (see ■ PERG 13, Q31 for *guidance* about these instruments), but only where ■ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of MiFID business) applies.
- The factors mentioned in (2) include the value or price of property of any description or an index or any 'other factor designated in the contract'. This catches a wide range of factors.
- 2.6.23A G All contracts in this category are cash-settled instruments (as opposed to being settled by way of delivering something other than cash). Many would be unenforceable as gaming contracts were it not for section 412 of the *Act* (Gaming contracts). Examples of instruments that count as *specified investments* under this category are *spread bets* and interest rate swaps.
- 2.6.24 G There are a number of exclusions. These include a case where the parties intend that the profit is to be secured or the loss to be avoided by taking delivery of property. This avoids overlap with the *specified investment*



categories of *options* and *futures*. Also excluded are index-linked *deposits* and rights under certain contracts connected with the National Savings Bank or National Savings products. There is also provision to ensure that the *specified investment* category of *contracts for differences* does not include rights under *life policies*.

2.6.24A G

- (1) A binary or other fixed outcomes bet is also treated as *contract for differences*. This is defined as something that meets the following conditions:
  - (a) it is a derivative contract of a binary or other fixed outcomes nature;
  - (b) it is not covered by ■ PERG 2.6.23G(1) or (2);
  - (c) it is settled in cash;
  - (d) it is a *financial instrument* that falls within paragraphs 4, 5, 6, 7 or 10 of Part 1 of Schedule 2 to the *Regulated Activities Order* (see ■ PERG 13, Q31A to Q34 for *guidance* about these instruments); and
  - (e) one of the following requirements is met:
    - (i) ■ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of MiFID business) applies; or
    - (ii) a *person is making arrangements with a view to transactions in investments* in relation to it.
- (2) A product is binary (see ■ PERG 2.6.24AG(1) (a)) only if the payout is all or nothing. That is, the overall result will be that one party will pay the other a fixed sum. It is a sort of fixed odds bet.
- (3) The main example of a binary product is a binary or digital option.
- (4) A simple example is a contract between X and Y under which:
  - (a) at the start, X pays Y a fixed sum (equivalent to the stake in a bet);
  - (b) if shares in ABC PLC close above £5.20 per share at close of trading five days later, Y pays X a fixed sum (a multiple of X's original stake), the result being that Y pays X a fixed sum in net terms;
  - (c) if shares in ABC PLC close at or below £5.20 per share at close of trading five days later, X gets nothing, the result being that X pays Y a fixed sum.
- (5) A simple binary sporting bet is not a *contract for differences* as:
  - (a) it is not covered by *MiFID* and so it does not meet the condition in ■ PERG 2.6.24AG(1)(d); and
  - (b) it does not come under any other part of the definition of a *contract for differences*.
- (6) A product that that has fixed outcomes but is not binary (see ■ PERG 2.6.24AG(1)(a)):

- (a) is like a binary product in that there are fixed number of possible payouts and they are all known in advance; but
  - (b) differs from a binary contract in that the number of possible payouts is three or more rather than just two.
- (7) A simple example of a contract in (6) (although it may not be common in practice) is a contract between X and Y under which:
- (a) at the start, X pays Y a fixed sum (equivalent to the stake in a bet);
  - (b) if shares in ABC PLC close above £5.20 per share at close of trading five days later and (c) does not apply, Y pays X a fixed sum (a multiple of X's original stake), the result being that Y pays X a fixed sum in net terms;
  - (c) if shares in ABC PLC close above £5.20 per share at close of trading five days later and the market as a whole rises by more than ten percent, Y pays X a fixed sum that is:
    - (i) a multiple of X's original stake; but
    - (ii) a different (and usually smaller) multiple from the one in (b); the result being that Y pays X a fixed sum in net terms;
  - (d) if shares in ABC PLC close at or below £5.20 per share at close of trading five days later, X gets nothing, the result being that X pays Y a fixed sum.

2.6.24B

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- (1) Any derivative under *MiFID* will be an *option, future or contract for differences* where ■ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.
- (2) So for example the following contract between X and Y would be a *contract for differences*.
  - (a) At the start, X pays Y a fixed sum (equivalent to a stake in a bet).
  - (b) If the ABC index closes above 6,500 when the contract expires, Y pays X a fixed sum being the stake and an additional pay out (determined on the opening of the contract), the result of the contract being that Y pays X a fixed sum.
  - (c) If the ABC index closes below 6,500 when the contract expires, X gets nothing (and pays Y the stake paid when X opened the contract), the result of the contract being that X pays Y a fixed sum.
  - (d) If the ABC index was trading at 6,500 when the contract was opened and closes at 6,500 when the contract expires, Y pays X a fixed sum (being a proportion of the amount paid by X to Y on opening of the contract), the result of the contract being that X pays Y a fixed sum.

**Lloyd's investments**

2.6.25

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Two types of *specified investment* are relevant. These are the *underwriting capacity of a Lloyd's syndicate* and a *person's membership of a Lloyd's syndicate*. There are no exclusions from these *specified investment* categories.

**Rights under a funeral plan**

- 2.6.26 **G**
- (1) Rights under a *funeral plan contract* are the rights to a funeral obtained by a *person* who pays for the funeral before the death of the *person* whose funeral it will be.
  - (2) The definition of *funeral plan contract* excludes those contracts under which the *customer* and the *funeral plan provider* intend or expect that the funeral will be provided within one *month* of the contract being entered into.

**Rights under a regulated mortgage contract**

2.6.27 **G** In accordance with article 61(3)(a) of the *Regulated Activities Order*, a *regulated mortgage contract* is a contract which, at the time it is entered into, satisfies the following conditions:

- (1) the contract is one where the lender provides credit to an individual or trustees (the "borrower");
- (2) the obligation of the borrower to repay is secured by a mortgage on land:
  - (a) in relation to a contract entered into before *IP completion day*, means land in the *United Kingdom* or, if the contract was entered into on or after 21 March 2016, within the territory of an *EEA state*;
  - (b) in relation to a contract entered into on or after *IP completion day*, means land in the *United Kingdom*; and
- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling.

Detailed guidance on this is set out in ■ PERG 4.4 (Guidance on regulated activities connected with mortgages). However, generally, the definition of *regulated mortgage contract* does not include certain loans to commercial borrowers, second charge loans by a credit union, exempt consumer buy-to-let mortgage contracts (see ■ PERG 4.4.31G) and second charge bridging loans (see ■ PERG 4.4.1-A G).

**Rights under a home reversion plan**

2.6.27A **G** In accordance with article 63B(3)(a) of the *Regulated Activities Order*, a *home reversion plan* is an arrangement under which, at the time it is entered into:

- (1) a *person* (the "reversion purchaser") buys all or part of a qualifying interest in land (other than timeshare accommodation) in the *United Kingdom* from an individual or trustees (the "reversion occupier");
- (2) the *reversion occupier* (or, where trustees are concerned, an individual who is a beneficiary of the trust), or a related *person* of either, is entitled, and intends, to use at least 40% of that land as or in connection with a dwelling; and
- (3) the entitlement to occupy ends on the occurrence of any one or more of the following events:
  - (a) the end of a specified period of at least twenty years; or

- (b) the death of the individual; or
- (c) the individual enters a care home.

Detailed *guidance* on this is set out in ■ PERG 14.3 (Guidance on home reversion and home purchase activities).

### Rights under a home purchase plan

2.6.27B

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In accordance with article 63F(3)(a) of the *Regulated Activities Order*, a *home purchase plan* is an arrangement under which, at the time it is entered into:

- (1) a *person* (the "*home purchase provider*") buys a qualifying interest in land or an undivided share of a qualifying interest in land (other than timeshare accommodation) in the *United Kingdom*;
- (2) where an undivided share of a qualifying interest is bought, the interest is held on trust for the home purchase provider and the individual or trustee as beneficial tenants in common;
- (3) an individual or trustees (the "*home purchaser*") is obliged to buy the interest bought by the *home purchase provider* over the course of or at the end of a specified period; and
- (4) the *home purchaser* (or, where trustees are concerned, by an individual who is a beneficiary of the trust), or a related *person* of either, is entitled, and intends, to use at least 40% of that land as or in connection with a dwelling.

Detailed *guidance* on this is set out in ■ PERG 14.4 (Guidance on home reversion and home purchase activities).

### Rights under a regulated sale and rent back agreement

2.6.27C

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In accordance with Article 63J(3)(a) of the *Regulated Activities Order*, a *regulated sale and rent back agreement* is an arrangement under which, at the time it is entered into:

- (1) a *person* (the *SRB agreement provider*) buys all or part of the qualifying interest in land (other than timeshare accommodation) in the *United Kingdom* from an individual or trustees (the agreement seller); and
- (2) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related *person*, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated *home reversion plan*.

Detailed *guidance* on this is set out in ■ PERG 14.4A (Activities relating to regulated sale and rent back agreements).

**Rights to or interests in investments**

2.6.28 **G** Rights to, or interests in, all the *specified investments* in ■ PERG 2.6 (except rights to, or interests in, rights under a *home finance transaction*) are themselves treated as *specified investments*. The effect is that, in most cases, an activity carried on in relation to rights or interests derived from any of those *investments* is also a *regulated activity* if the activity would be regulated if carried on in relation to the investment itself. The exception is where the rights or interests relate to a *pure protection contract* or a *general insurance contract*.

2.6.29 **G**

(1) There are several things that are not covered by this category (other than rights to, or interests in, rights under a mortgage contract). Anything that is covered by any other *specified investment* category is excluded, as are interests under the trusts of an *occupational pension scheme*.

(2) There are also excluded from this category rights or interests acquired as a result of entering into a *funeral plan contract*. Where the *funeral plan contract* is trust or insurance-backed (see ■ FPCOB 3), the effect of this exclusion is that rights to, or interests in, the *contract of insurance* or interests under trust to which the contract relates are excluded from this *specified investment* category. Rights under the *funeral plan contract* itself which a *person* obtains when they enter into a *funeral plan contract* are covered by the *specified investment* category described in ■ PERG 2.6.26G.

**Rights under a credit agreement and an article 36H agreement**

2.6.30 **G** In accordance with article 60B (3) of the *Regulated Activities Order*, a *credit agreement* is an agreement between an *individual* ("A") and any other *person* ("B") under which B provides A with *credit* of any amount. In accordance with article 36H (10) of the *Regulated Activities Order*, rights under an article 36H agreement are also *specified investments*. The definition of an article 36H agreement is set out in ■ PERG 2.7.7H G. In addition and in accordance with article 53(5) of the *Regulated Activities Order*, rights under a 'relevant article 36H agreement' (within the meaning of that Order) are also *specified investments*.

**Rights under a consumer hire agreement**

2.6.31 **G** In accordance with article 60N(3) of the *Regulated Activities Order*, a *consumer hire agreement* is an agreement between a *person* ("the owner") and an *individual* ("the hirer") for the bailment or, in Scotland, the hiring, of *goods* to the hirer which:

(1) is not a *hire-purchase agreement*; and

(2) is capable of subsisting for more than three months.

**2.7 Activities: a broad outline**

**2.7.1** **G** The following paragraphs describe the various specified activities. The exclusions relating to activities are dealt with in ■ PERG 2.8 and ■ PERG 2.9.

**Accepting deposits and other regulated activities applying to deposits**

**2.7.2** **G** Whether or not *accepting deposits* is a *regulated activity* depends on the use to which the money is put. The activity is caught if money received by way of *deposit* is lent to others or if 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*.

**2.7.2-A** **G** In general, *accepting deposits* is the only *regulated activity* that applies to *deposits*, except for those *regulated activities* that can apply to property or assets that are not *specified investments*. However, *structured deposits* are an exception to this.

**2.7.2-B** **G** The following *regulated activities* apply to *deposits* that are *structured deposits* in addition to the *regulated activity* of *accepting deposits*:

- (1) *dealing in investments as agent*;
- (2) *arranging (bringing about) deals in investments*;
- (3) *making arrangements with a view to transactions in investments*;
- (4) *managing investments*; and
- (5) *advising on investments*.

**2.7.2-C** **G** The activities in ■ PERG 2.7.2-BG may be carried out by the *person* accepting the *structured deposit* or another *person*. However the activities in ■ PERG 2.7.2-BG(1) to (3) are unlikely to be relevant to the *person* accepting the *structured deposit* because:

- (1) the dealing activity in ■ PERG 2.7.2-BG(1) only applies to an agent; and
- (2) the exclusion described in ■ PERG 2.8.6AG(3) (arranging transactions to which the arranger is to be a party) may apply to the activities in ■ PERG 2.7.2-BG(2) and (3).

**2.7.2A** **G** **Issuing electronic money**  
 See ■ PERG 2.6.4A G for a description of those *persons* to whom this specified activity applies.

**2.7.3** **G** **Effecting or carrying out contracts of insurance as principal**  
 The activities of *effecting a contract of insurance* or *carrying out a contract of insurance* are separate *regulated activities*, each requiring *authorisation*. But this only applies where they are carried on by a *person* who is acting as principal. This means that the activities of agents, such as loss adjusters, will not constitute this *regulated activity*. The activities of some agents may, however, be regulated as *insurance distribution activities* (see ■ PERG 5 (Guidance on insurance distribution activities)).

**2.7.4** **G** In addition, certain other activities carried on in relation to rights under *contracts of insurance* are *regulated activities*. These are where the activity is carried on in relation to:

- (1) *life policies*, where the *regulated activities* concerned are:
  - (a) *dealing in investments as principal* (see ■ PERG 2.7.5 G);
  - (b) *managing investments* (see ■ PERG 2.7.8 G);
  - (c) *safeguarding and administering investments* (see ■ PERG 2.7.9 G); and
  - (d) agreeing to carry on any of those activities (see ■ PERG 2.7.21 G); and
- (2) rights under any *contract of insurance*, where the *regulated activities* concerned are:
  - (a) *dealing in investments as agent* (see ■ PERG 2.7.5 G);
  - (b) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments* (see ■ PERG 2.7.7A G);
  - (c) *assisting in the administration and performance of a contract of insurance* (see ■ PERG 2.7.8A G);
  - (d) *advising on investments (except P2P agreements)* (see ■ PERG 2.7.15 G); and
  - (e) agreeing to carry on any of those activities (see ■ PERG 2.7.21 G).

■ PERG 5 (Guidance on insurance distribution activities) has more *guidance* on these *regulated activities* where they are *insurance mediation activities*.

**2.7.5** **G** **Dealing in investments (as principal or agent)**  
 In relation to *securities* or *life policies* (or rights or interests in either), *dealing as principal* is only a *regulated activity* if certain conditions are satisfied (see ■ PERG 2.8.4G (1)).

**2.7.6** G Both the activities of *dealing in investments as principal* and *dealing in investments as agent* are defined in terms of 'buying, selling, subscribing for or underwriting' certain *investments*. These *investments* are:

- (1) for *dealing in investments as principal, securities or contractually based investments* (except rights under a *funeral plan contract*); and
- (2) for *dealing in investments as agent, securities, structured deposits and relevant investments*.

**2.7.6A** G Because of the different nature of the *specified investments* in relation to which these activities are carried on, 'buying' and 'selling' are defined terms that have an extended meaning. For example, some of the *specified investments* listed in ■ PERG 2.6 are particular things that can be bought and sold in the ordinary meaning of the words. Others fall outside the ordinary meaning of 'buy' and 'sell' because their transfer involves an assumption of a potential liability under a bilateral contract (*contracts for differences* are an example of this). To deal with the possible range of circumstances, 'buying' is defined in the *Regulated Activities Order* to include acquiring for valuable consideration. 'Selling' is defined to include disposing for valuable consideration and 'disposing' is itself given a specified meaning that covers a range of possible transactions according to the nature of the investment being transferred (including, for example, surrendering a life insurance contract).

**Bidding in emission auctions**.....

**2.7.6B** G The *RAO* and the *UK auctioning regulations* together generate three broad categories of *person* in relation to bidding for *emission allowances* on an *auction platform*:

- (1) The first category consists of a *MiFID investment firm* (other than a *collective portfolio management investment firm*) or a *third country investment firm* (other than one which would be a *collective portfolio management investment firm* if its head office were in the *United Kingdom*).
- (1A) The first category also consists of a *person* that is exempt from *MiFID* under article 2(1) (j), as onshored by Part 1 of Schedule 3 to the *RAO*, where it is bidding on behalf of a client of its main business or bidding on its own account (further information on the article 2(1) (j) exemption from *MiFID* is in ■ PERG 13.5, Q44).
- (1B) A *person* in this first category is entitled to bid on an *auction platform* but requires permission from the *FCA* for *bidding in emissions auctions* to do so.
- (2) The second category consists of operators or aircraft operators bidding on their own account as well as group entities or business groupings of those operators or *UK public bodies* or *UK state-owned entities* that control any of those operators (as set out in regulation 16 of the *UK auctioning regulations*). A *person* or entity in this category is entitled to bid on an *auction platform* but does not require *permission* from the *FCA* to do so as a result of an exclusion from the *regulated activity* of *bidding in emissions auctions* in article 24B of the *RAO*.



(3) The third category consists of all other *persons*. The *UK auctioning regulations* prevent an *auction platform* from granting these *persons* admission to bid. A *person* in this category is not entitled to bid on an *auction platform* and the *FCA* is not able to grant such a *person permission* to do so.

2.7.6C

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A *person* may fall into both the first and the second category. For example, a *person* might be both exempt from *MiFID* under article 2(1)(j) (within the first category) and be a group entity of an operator (within the second category). In this case, that *person* does not require *permission* for activities that cause that *person* to fall into the second category because those activities are excluded from the activity of *bidding in emissions auctions*.

2.7.6D

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- (1) As explained in ■ PERG 2.6.19DG, an *emission allowance* and an *emissions auction product* are both *specified investments*. The *Regulated Activities Order* deals with this as follows.
- (2) A *person* in the first category in ■ PERG 2.7.6BG requires *permission* from the *FCA* for *bidding in emissions auctions* but does not require any other *permission* to do so.
- (3) A *person* in the second category in ■ PERG 2.7.6BG does not require any *permission* from the *FCA* for bidding.
- (4) Article 24A(2) of the *RAO* is the main provision that deals with (2) and (3). It provides that *bidding in emissions auctions* does not form part of any other *regulated activity* and so a *person* seeking to carry on bidding activity will only require *permission for bidding in emissions auctions* to do so and will not require *permission* for any other *regulated activities*. Except for this exclusion, in the *FCA's* view, *bidding in emissions auctions* would broadly equate to the following *regulated activities*:
  - (a) *dealing in investments as principal*;
  - (b) *dealing in investments as agent*;
  - (c) *arranging (bringing about) deals in investments*; or
  - (d) *making arrangements with a view to transactions in investments*.
- (5) An *emission allowance* is a *security*. This means that any *person* wishing to carry out any activity in relation to it will need to consider whether any of the *regulated activities* relating to *securities* apply (subject to (8)).
- (6) A derivative on an *emission allowance* is potentially a *contractually based investment* and a *relevant investment*. Therefore any *person* wishing to carry out any activity in relation to it will need to consider whether any of the *regulated activities* relating to *contractually based investments* and *relevant investments* apply (subject to (8)).
- (7) An *emission allowance* auctioned under the *UK auctioning regulations*, as well as being a *specified investment* in its own right (an *emissions auction product*) may also be included in the *emission allowance* category of *specified investment* (subject to (8)). It is unlikely to be a *contractually based investment* or a *relevant investment*.

- (8) However (as explained in (2) to (4)), for a *firm* that is bidding under the *UK auctioning regulations*:
  - (a) the only *regulated activity* is *bidding in emissions auctions*; and
  - (b) the only *specified investment* is an *emissions auction product*.
- (9) (7) means that a *person* may need *permission* to carry out activities in relation to *emission allowances* that are auctioned under the *UK auctioning regulations* other than bidding activities, such as:
  - (a) buying and selling them in the secondary market; or
  - (b) advising a client about buying or selling them.
- (10) Where (9) applies, the *specified investment* involved will be an *emission allowance* or one of the *contractually based investments*. The *emissions auction product* category of *specified investment* is only relevant to the *regulated activity* of *bidding in emissions auctions*.
- (11) (9) applies to a *person* in (2) or (3) as well as anyone else wanting to carry out such activities.

**Arranging deals in investments and arranging a home finance transaction**

2.7.7

G [not used]

2.7.7A

G There are ten arranging activities that are *regulated activities* under the *Regulated Activities Order*. These are:

- (1) *arranging (bringing about) deals in investments* which are *securities, relevant investments, structured deposits* or the *underwriting capacity of a Lloyd's syndicate or membership of a Lloyd's syndicate* (article 25(1));
- (2) *making arrangements with a view to transactions in investments* which are *securities, relevant investments, structured deposits* or the *underwriting capacity of a Lloyd's syndicate or membership of a Lloyd's syndicate* (article 25(2));
- (3) *arranging (bringing about) regulated mortgage contracts*, which includes arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into by him as borrower after 31 October 2004 or a *legacy CCA mortgage contract* entered into by him as borrower (article 25A(1) and (2A));
- (4) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (5) *arranging (bringing about) a home reversion plan*, which includes arranging for another *person* to vary the terms of a *home reversion plan* entered into by him as the original reversion provider (and not merely as a *person* to whom the rights or obligations or the interest in land may be transferred) or as *reversion occupier* on or after 6 April 2007 (article 25B(1));

- (6) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (7) *arranging (bringing about) a home purchase plan*, which includes arranging for another person to vary the terms of a *home purchase plan* entered into by him as home purchaser on or after 6 April 2007 (article 25C(1));
- (8) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (9) *arranging (bringing about) a regulated sale and rent back agreement*, which includes arranging for another person (A) to vary the terms of a *regulated sale and rent back agreement* entered into on or after 1 July 2009 by A as agreement seller or agreement provider, in such a way as to vary As obligations under that agreement (article 25E(1)); and
- (10) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2)).

**2.7.7B**

**G**

The activity of *arranging (bringing about) deals in investments* is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, *arrangements* that bring it about). The activity of *making arrangements with a view to transactions in investments* is concerned with arrangements of an ongoing nature whose purpose is to facilitate the entering into of transactions by other parties. This activity has a potentially broad scope and typically applies in one of two scenarios. These are where a person provides arrangements of some kind:

- (1) to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or
- (2) to facilitate the entering into of transactions directly by the parties (such as multilateral trading facilities of any kind other than those excluded under article 25(3) of the *Regulated Activities Order*, exchanges, *clearing houses* and *service companies* (for example, persons who provide communication facilities for the routing of orders or the negotiation of transactions)).

**2.7.7BA**

**G**

It is of note, however, that the *regulated activity of making arrangements with a view to transactions in investments* is not limited to arrangements that are participated in by investors. It is also not necessary that both the buyer and the seller under the transaction that is being arranged should participate in the arrangements. So, arrangements may come within the activity if they are participated in only by product companies with a view to their issuing investments. A person may be carrying on this *regulated activity* even if he is only providing part of the facilities for bringing about a transaction.

**2.7.7BB**

**G**

It is also the FCA's view that certain arrangements may come within the activity even though the parties may have already committed to the transaction using other arrangements. This would typically apply to a *clearing house* whose clearing and settlement facilities may be seen to be made with a view to the members of the *clearing house*, as participants in its

arrangements, entering into transactions (usually through an investment exchange) which must be cleared through the *clearing house* to be completed. The *clearing house* is providing an essential part of the market infrastructure that is necessary to support trading activities. The same principle applies outside the markets context. So for example if a company that wishes to raise capital from private investors tells the potential investors, in order to increase their confidence, that all aspects of paying for and issuing shares will be handled by a particular firm, that firm may come within article 25(2) when it provides those services.

2.7.7BC

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In the *FCA's* view, it is generally the case that providers of back office administration services do not carry out the *regulated activity* of *making arrangements with a view to transactions in investments*. This is based essentially on the fact that providers of back office administration services aim to assist a broker *firm* to deal with the aftermath of transactions it has entered into on behalf of its clients. The broker *firm* has assumed full responsibility to its clients for completing their transactions, thus enabling the view to be taken that the *firm* to whom it outsources functions is making arrangements to assist the broker to complete transactions rather than with a view to the broker entering into trades as agent for its clients. The provider of back office services does not carry out the *regulated activity* of *making arrangements with a view to transactions in investments* because the transaction has already been entered into by the time of its involvement.

2.7.7BD

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- (1) The scope of article 25(2) of the *Regulated Activities Order* (the subject of ■ PERG 2.7.7B G) was considered by the High Court in the case of *Watersheds Limited v. David Da Costa and Paul Gentlemen*. The judgement suggests that the activity of introducing does not itself constitute a *regulated activity* for the purposes of article 25(2) of the *Regulated Activities Order*. The *FCA* has considered whether the judgement necessitates any change to the views expressed in ■ PERG 2.7.7B G and elsewhere in *PERG*. It appears to the *FCA* that the judgement should be considered in the light of the case to which it relates.
- (2) Also, the court does not seem to have had the benefit of a relevant argument. The *Regulated Activities Order* provides an exclusion which has the effect of removing certain arrangements for making introductions from the scope of article 25(2) of the *Regulated Activities Order*. This exclusions can be found in article 33 of the *Regulated Activities Order* (*guidance* on this can be found in PERG 8.33 and ■ PERG 5.6.17 G to ■ PERG 5.6.21 G). This exclusions would not be necessary if all introductions were outside the scope of article 25(2) of the *Regulated Activities Order*. Support for this can also be found in the fact that article 25A(2) is very similar to article 25(2) and there is an exclusion from it for certain introductions. The exclusion is in article 33A of the *Regulated Activities Order* and *guidance* on it can be found in ■ PERG 4.5.10 G and the following paragraphs. For these reasons, the *FCA* remains of the view that article 25(2) of the *Regulated Activities Order* includes certain types of arrangements for making introductions whilst recognising that the judgement in the *Watersheds* case introduces an element of doubt.

2.7.7BE

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In determining whether particular arrangements fall within the scope of Article 25(2) of the *Regulated Activities Order*, it may be necessary to

consider the purpose of the arrangements. Further guidance on this can be found in ■ PERG 8.32.3G. Although this *guidance* is in relation to the activities of publishers, broadcasters, website operators and telephone marketing services, the principle is not limited to those activities.

**2.7.7BF** **G** In the FCA's view, a mere passive display of literature advertising investments would not amount to the article 25(2) activity. Further *guidance* on this point can be found in ■ PERG 5.6.4 G. Although this *guidance* is in relation to *contracts of insurance*, the principle is not limited to them.

**2.7.7C** **G** Further *guidance* on the arranging activities as they relate to *home finance transactions* and *contracts of insurance* is in ■ PERG 4.5 (Arranging regulated mortgage contracts), ■ PERG 14.3 and ■ PERG 14.4 (Guidance on home reversion and home purchase activities) and ■ PERG 5.6 (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance) respectively.

**Operating a UK multilateral trading facility**

**2.7.7D** **G** *Guidance on the MiFID investment service of operating a multilateral trading facility* is given in ■ PERG 13, Q24. An activity that comes within the *regulated activity of operating a multilateral trading facility* does not come within the *regulated activities of dealing in investments as agent, dealing in investments as principal or arranging deals in investments*.

**2.7.7DA** **G** The definition of a *UK multilateral trading facility* covers:

- (1) a multilateral trading facility as defined by article 2(1)(14A) of MiFIR (see ■ PERG 13, Q24) operated by an *investment firm, a credit institution or a market operator*; or
- (2) a facility which:
  - (a) is operated by an *investment firm, a credit institution or a market operator* that is set up outside the *United Kingdom*; and
  - (b) would come within (1) if its operator was set up in the *United Kingdom*.

**Operating a UK organised trading facility**

**2.7.7DB** **G** *Guidance on the MiFID investment service of operating an organised trading facility* is given in ■ PERG 13, Q24A. An activity that comes within the *regulated activity of operating an organised trading facility* does not come within the *regulated activities of dealing in investments as agent, dealing in investments as principal or arranging deals in investments*.

**2.7.7DC** **G** The definition of an *UK organised trading facility* covers:

- (1) *UK organised trading facility* as defined by article 2(1)(15A) of MiFIR (see ■ PERG 13, Q24A) operated by an *investment firm, a credit institution or a market operator*; or
- (2) a facility which:

2.7.7DD

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- (a) is operated by an *investment firm*, a *credit institution* or a *market operator* that is set up outside the *United Kingdom*; and
  - (b) would come within the *MiFID* definition if its operator was set up in the *United Kingdom*.
- (1) The *regulated activity* of *operating an organised trading facility* only covers a trading facility on which non-equity *MiFID* instruments are traded.
  - (2) Subject to (3), a non-equity *MiFID* instrument means:
    - (a) a *debenture*, an *alternative debenture*, a *government and public security*, a *warrant*, a *certificate representing certain securities*, a *unit*, an *emission allowance*, an *option*, a *future* or a *contract for differences*; or
    - (B) *rights to or interests in investments* relating to anything in (a).
  - (3) However, a product in (2) is only a non-equity *MiFID* investment if it also falls into one of the following categories:
    - (a) a *bond*; or
    - (b) a *structured finance product*; or
    - (c) an *emission allowance*; or
    - (d) an instrument falling within paragraphs 4 to 10 of Section C of Annex 1 of *MiFID* (these are described in ■ PERG 13.4) if the instrument is a *transferable security*.

**Credit broking**

2.7.7E

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There are six activities that fall within *credit broking*. These are:

- (1) effecting an introduction of an *individual* who wishes to enter into a *credit agreement* to another *person*, with a view to that *person* entering as *lender* into a *credit agreement* by way of business;
- (2) effecting an introduction of an *individual* who wishes to enter into a *consumer hire agreement* to another *person*, with a view to that *person* entering as *owner* into a *consumer hire agreement* by way of business (except where the exemption relating to the supply of essential services would apply to the *consumer hire agreement*, see ■ PERG 2.7.190 G);
- (3) effecting an introduction of an *individual* who wishes to enter into a *credit agreement* or a *consumer hire agreement* to a *person* who carries on an activity in (1) or (2) by way of business;
- (4) presenting or offering an agreement which would (if entered into) be a *credit agreement*;
- (5) assisting an *individual* by undertaking preparatory work with a view to that *person* entering into a *credit agreement*;
- (6) entering into a *credit agreement* on behalf of a *lender*.

**2.7.7F** **G** An activity is not *credit broking* within ■ PERG 2.7.7EG (1), ■ PERG 2.7.7EG (4), ■ PERG 2.7.7EG (5) or ■ PERG 2.7.7EG (6) if the exemption relating to the number of repayments to be made would apply to the *credit agreement*, see ■ PERG 2.7.19G G.

**2.7.7G** **G** An activity is also not *credit broking* within ■ PERG 2.7.7EG (1) to ■ PERG 2.7.7EG (6) in so far as the activity is *operating an electronic system in relation to lending*, see ■ PERG 2.7.7H G.

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

**2.7.7H** **G**

- (1) This activity is aimed at what are sometimes referred to as peer-to-peer lending platforms. A person ("A") will be *operating an electronic system in relation to lending* if he operates an electronic system which enables him to facilitate *persons* ("B" and "C") becoming the *lender* and *borrower* under an article 36H agreement.
- (2) To be caught, all of the following conditions must be met:
  - (a) the electronic system operated by A must be capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise);
  - (b) A, or another *person* ("X") acting under an arrangement with A or at A's direction, undertakes to:
    - (i) receive payments in respect of interest or capital or both due under the article 36H agreement from C; and
    - (ii) make payments in respect of interest or capital or both due under the article 36H agreement to B; and
  - (c) A, or another *person* ("X") acting under an arrangement with A or at A's direction, undertakes to perform, or A undertakes to appoint or direct another *person* to perform either or both of the following activities:
    - (i) taking steps to procure the payment of a debt under the article 36H agreement;
    - (ii) exercising or enforcing rights under the article 36H agreement on behalf of B.
- (3) For the purposes of (2)(b):
  - (a) an agreement by A to appoint X to perform the activities is to be treated as an undertaking by A; and
  - (b) it is immaterial that:
    - (i) payments may be subject to conditions;
    - (ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.
- (4) Subject to the condition in (4A), an article 36H agreement is an agreement by which one *person* provides another *person* with *credit* and either of the following conditions is satisfied, or was satisfied at the time the agreement was entered into:
  - (a) the lender is an *individual*; or

- (b) the borrower is an *individual*; and
  - (i) the amount of *credit* provided is less than or equal to £25,000; or
  - (ii) the agreement is not entered into by the *borrower* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *borrower*. If the agreement includes a declaration by the borrower that it is entered into by the borrower wholly or predominantly for business purposes, this may create a presumption that this is the case (see ■ PERG 2.7.19D G).
  
- (4A) It is a condition to be an article 36H agreement that A does not provide *credit*, assume the rights (by *assignment* or operation of law) of a *person* who provided *credit*, or receive *credit* under the agreement.
  
- (5) An agreement may be an article 36H agreement and not a *credit agreement*, for example if it is an agreement by which an *individual* provides *credit* to a company. An agreement may, equally, be both an article 36H agreement for the purposes of *operating an electronic system in relation to lending* and a *credit agreement* for the purposes of other *credit-related regulated activities* if it is within the relevant definitions.
  
- (6) It is immaterial whether the *lender* is carrying on a *regulated activity*.
  
- (6A) A *person operating an electronic system in relation to lending* (A) also carries on a *regulated activity* where they operate an electronic system:
  - (a) that enables A to facilitate a *person* (B) assuming the rights of the *lender* under an article 36H agreement by *assignment* or operation of law; and
  - (b) that meets all of the conditions in ■ PERG 2.7.7HG(2), where C is the *borrower* under the agreement in (a).
  
- (7) The following activities are also caught by *operating an electronic system in relation to lending* if carried on by the operator in the course of, or in connection with, the activity in (1) or (6A):
  - (a) presenting or offering article 36H agreements to B or C with a view to B becoming the *lender* under the article 36H agreement or C becoming the *borrower* under the article 36H agreement; or
  - (b) furnishing information relevant to the financial standing of a *person* to assist a potential *lender* to determine whether to provide *credit* to that person under an article 36H agreement; or
  - (c) taking steps to procure the payment of a debt due under an article 36H agreement; or
  - (d) taking steps to perform duties or exercise or enforce rights under an article 36H agreement on behalf of the *lender*; or
  - (e) taking steps with a view to ascertaining whether a *credit information agency* holds information relevant to the financial standing of an *individual*; or
  - (f) taking steps with a view to ascertaining the contents of such information; or



- (g) taking steps with a view to securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information; or
- (h) taking steps with a view to securing that a *credit information agency* which holds such information stops holding the information, or does not provide it to any other *person*; or
- (i) giving advice in relation to the taking of any of the steps in (e) to (h).

**Managing investments**

2.7.8

G

The *regulated activity of managing investments* includes several elements.

- (1) First, a *person* must exercise discretion. Non-discretionary portfolio management (where the manager *buys* and *sells*, as principal or agent, on the instructions of some other *person*) is not caught by this activity, although it may be caught by a different *regulated activity* such as the activity of *dealing in investments as principal* or *dealing in investments as agent*. The discretion must be exercised in relation to the composition of the portfolio under management and not in relation to some other function (such as proxy voting) carried on by the manager.
- (2) Second, the property that is managed must belong beneficially to another *person*. This excludes from the *regulated activity* the management by a *person* of his own property. But discretionary management of assets by a *person* acting in his capacity as trustee will be caught even though he is the legal owner of the assets.
- (3) Third, the property that is managed must consist of (or include) *securities, structured deposits or contractually based investments*. Alternatively, discretionary management will generally be caught if it is possible that the property could consist of or include such products. This is the case even if there never has been any investment in these products, as long as there have been representations that there would be.

**Assisting in the administration and performance of a contract of insurance**

2.7.8A

G

The activity of *assisting in the administration and performance of a contract of insurance* is a *regulated activity* that is identified in the *IDD*. Further *guidance* on this activity is in ■ PERG 5.7 (The regulated activities: assisting in the administration and performance of a contract of insurance).

**Debt adjusting**

2.7.8B

G

This activity comprises:

- (1) negotiating with the *lender* or *owner*, on behalf of the *borrower* or *hirer*, terms for the discharge of a debt;
- (2) taking over, in return for payments by the *borrower* or *hirer*, that person's obligation to discharge a debt; or

(3) any similar activity concerned with the liquidation of a debt;

when carried on in relation to debts due under a *credit agreement* or *consumer hire agreement*.

**Debt-counselling**

**2.7.8C** **G** Giving advice to a *borrower* about the liquidation of a debt due under a *credit agreement* is a *regulated activity*. Giving advice to a *hirer* about the liquidation of a debt due under a *consumer hire agreement* is a *regulated activity*. See ■ PERG 17 for further guidance on *debt-counselling*.

**Debt-collecting**

**2.7.8D** **G**

- (1) Taking steps to procure the payment of a debt due under a *credit agreement* or a *consumer hire agreement* is a *regulated activity*.
- (2) Taking steps to procure the payment of a debt due under an article 36H agreement (see ■ PERG 2.7.7HG (3)) which has been entered into with the facilitation of an *operator of an electronic system in relation to lending* is also a *regulated activity*.
- (3) The activity is not a *regulated activity* in so far as the activity is *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*) see ■ PERG 2.7.7H G.

**Debt administration**

**2.7.8E** **G**

- (1) Taking steps to perform duties or to exercise or to enforce rights under a *credit agreement* or a *consumer hire agreement* on behalf of the *lender* or *owner* is a *regulated activity*.
- (2) Taking steps to perform duties or to exercise or to enforce rights under an article 36H agreement (see ■ PERG 2.7.7HG (3)) which has been entered into with the facilitation of an *operator of an electronic system in relation to lending* is also a *regulated activity*.
- (3) In so far as the activity is *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*, see ■ PERG 2.7.7H G) or *debt-collecting* (article 39F of the *Regulated Activities Order*) it is not also *debt administration*.

**Safeguarding and administering investments**

**2.7.9** **G** The activity of *safeguarding and administering investments* belonging to another is regulated, as is providing a service under which a *person* undertakes to arrange on a continuing basis for others actually to carry out the safeguarding and administering. In each case, both the elements of safeguarding and administering must be present before a *person* will be said to carry on the activity.

- (1) Safeguarding is acting as custodian of the property, for example, holding any documents evidencing the investments such as the share certificate (although it is worth noting that there is express provision that an uncertificated investment may be safeguarded and administered).

(2) Administration covers services provided to the owner or manager of the property, such as settlement of sale transactions relating to an investment, dealing with income arising from the investment and carrying out corporate actions such as voting. The nature of administration services must be such that the custodian has no discretion (otherwise he is likely to be caught by the regulated activity of managing investments (see ■ PERG 2.7.8 G)).

2.7.10 G The property that is safeguarded and administered must belong beneficially to another person. It must consist of (or include) securities or contractually based investments. Alternatively, safeguarding and administration will generally be caught if it is possible that the property could consist of (or include) such securities or investments. This is the case even if the property in question has never consisted of (or included) such securities or investments, as long as there have been representations that it would do.

**Sending dematerialised instructions**

2.7.11 G The regulated activities relating to sending dematerialised instructions relate to the operation of the system for electronic transfer of title to securities or contractually based investments. This is the CREST settlement system maintained under the Uncertificated Securities Regulations 2001 (SI 2001/3755) (and currently operated by Euroclear UK & Ireland Limited ). Sending instructions on behalf of another is a regulated activity, as is causing such instructions to be sent if the person causing the sending is a system-participant, as defined in those Regulations. A system-participant is the person who has the computer and network connection to CREST.

**Managing a UK UCITS, managing an AIF, and establishing etc collective investment schemes**

2.7.12 G

2.7.13 G

2.7.13A G There are five regulated activities associated with UCITS, AIFs and collective investment schemes:

- (1) managing a UK UCITS;
- (2) acting as trustee or depositary of a UK UCITS;
- (3) managing an AIF;
- (4) acting as trustee or depositary of a UK UCITS; and
- (5) establishing, operating and winding up a collective investment scheme.

2.7.13B G The activity of managing a UK UCITS is derived from the UCITS Directive. A person will manage a UK UCITS where they carry on collective portfolio management of a UK UCITS. A UK UCITS is a type of collective investment

scheme which is authorised by the FCA as meeting the requirements under the UK provisions which implemented UCITS Directive.

**2.7.13C** **G** A person will carry on the activity of *acting as trustee or depositary of a UCITS* if they act as:

- (1) *trustee of an authorised unit trust scheme; or*
- (2) *depositary of an investment company with variable capital or an authorised contractual scheme;*

where, in either case, the *scheme* or company is a UCITS.

**2.7.13D** **G** ■ PERG 16 provides *guidance* on the activities of *managing an AIF* (see ■ PERG 16.3) and *acting as trustee or depositary of an AIF* (see ■ PERG 16.4).

**2.7.13E** **G** Most *collective investment schemes* will also be either a UCITS or an AIF (although not all AIFs are *collective investment schemes*). As a result, there is a potential overlap between the activity of *establishing, operating and winding up a collective investment scheme* and the activities of *managing a UK UCITS* and *managing an AIF*. However, there are exclusions in the RAO which considerably reduce the overlap (see ■ PERG 2.8.10G (2) and ■ PERG 16.5).

**2.7.13F** **G** An *open-ended investment company* will, once it is authorised under regulations made under section 262 of the Act, become an *authorised person* in its own right under Schedule 5 to the Act (Persons concerned in Collective Investment Schemes). Under ordinary principles, a company operates itself and an *authorised open-ended investment company* will be operating the *collective investment scheme* constituted by the company. It is not required to go through a separate process of *authorisation* as a person because it has already undergone the process of product authorisation.

**2.7.13G** **G** [deleted]

**Establishing etc pension schemes**

**2.7.14** **G** The *regulated activities* carried on in relation to *pension schemes* are *establishing, operating or winding up a stakeholder pension scheme* and *establishing, operating or winding up a personal pension scheme*. The identity of the *operator* of such a pension scheme depends on the facts. However, the scheme administrator will usually be the *operator* of the scheme either on its own or jointly with the scheme trustees. More detailed *guidance* on the scope of this activity is in ■ PERG 12(Q4).

**Providing basic advice on stakeholder products**

**2.7.14A** **G** This activity covers advice in the form of a recommendation given to a retail *consumer*. The recommendation must relate to a *stakeholder product* and certain conditions must be met. These conditions are based on the need for the adviser to make an assessment of the *consumer's* needs based on the answers that the *consumer* provides to a series of pre-scripted questions. A

fuller description of the activity is given in ■ PERG 2.7.14B G and explains what is meant by "retail customer". This activity is separate to the *regulated activity of advising on investments (except P2P agreements)* (see ■ PERG 2.7.15 G (Advising on investments)). The existence of this separate advising activity does not prevent a *person* from giving advice on *stakeholder products* in circumstances that do not satisfy the conditions set out in ■ PERG 2.7.14B G. But such advice is likely to amount to *advising on investments (except P2P agreements)* unless the *stakeholder product* is a *deposit*. Neither does the existence of the activity prevent a *person* from selling *stakeholder products* in any other manner provided the *person* has the appropriate *permission*.

**2.7.14B** G A *person* ('P') carries on the *regulated activity of providing basic advice on a stakeholder product* when:

- (1) P gives the advice:
  - (a) to a *person* ('C') who does not receive the advice in the course of a business that he carries on; and
  - (b) in the course of a business that P carries on;
- (2) the advice is on the merits of C opening or *buying a stakeholder product*;
- (3) the following conditions are met:
  - (a) P asks C questions to enable P to assess whether a *stakeholder product* is appropriate for C;
  - (b) if P, relying solely on the information provided by C in response to the questions referred to in (a), assesses that a *stakeholder product* is appropriate for C, P:
    - (i) describes that product to C; and
    - (ii) gives a recommendation of that product to C; and
- (4) C has indicated to P that he has understood the description and recommendation referred to in (3)(b).

**Advising on investments**  
.....

**2.7.14C** G There are two *regulated activities* which constitute *advising on investments* in article 53 of the *Regulated Activities Order*. These are:

- (1) *advising on investments (except P2P agreements)* (in article 53(1) of the *Regulated Activities Order*); and
- (2) *advising on P2P agreements* (in article 53(2) of the *Regulated Activities Order*).

**2.7.15** G The *regulated activity of advising on investments (except P2P agreements)* under article 53(1) of the *Regulated Activities Order* applies to advice on *securities, structured deposits or relevant investments*. It does not, for example, include giving advice about *deposits (except structured deposits)*, or about things that are not *specified investments* for the purposes of the

*Regulated Activities Order*. Giving advice on certain other *specified investments* is, however, regulated under other parts of the *Regulated Activities Order* (see ■ PERG 2.7.16A G and ■ PERG 2.7.17G (2)). Giving a *person* generic advice about *specified investments* (for example, invest in Japan rather than Europe) is not a *regulated activity* nor is giving information as opposed to advice (for example, listings or company news). However, the context in which something is communicated may affect its character; for example, if a *person* gives information on share price against the background that, when he does so, that will be a good time to sell, then this will constitute *advising on investments (except P2P agreements)*.

**2.7.16** G The advice must also be given to someone who holds *specified investments* or is a prospective investor (including trustees, nominees or discretionary fund managers). This requirement excludes advice given to a *person* who receives it in another capacity. An example of this might be a tax professional to whom advice is given to inform the practice of his profession or advice given to an employer for the purposes of setting up a *group personal pension scheme*. Further *guidance* on the meaning of *advising on investments (except P2P agreements)* is in ■ PERG 8.24 (Advising on investments).

**2.7.16-A** G

- (1) The scope of the *regulated activity of advising on investments (except P2P agreements)* is narrower for a *person* who is authorised for the purposes of the Act to carry on certain *regulated activities* (as set out in (2)) than described in ■ PERG 2.7.15G and ■ PERG 2.7.16G.
- (2) The narrower scope of *advising on investments (except P2P agreements)* referred to in (1) applies to a *person* who is authorised for the purposes of the Act to carry on any *regulated activity* other than (or in addition to):
  - (a) *advising on investments (except P2P agreements)*; or
  - (b) the *regulated activity of agreeing to carry on a regulated activity* in relation to (a).
- (3) A *person* in (2) is not *advising on investments (except P2P agreements)* except to the extent that they are providing a *personal recommendation*.

**2.7.16A** G In certain circumstances, the activity of *advising on investments (except P2P agreements)* can also amount to *providing basic advice on a stakeholder product* (see ■ PERG 2.7.14A G (Providing basic advice on stakeholder products)).

**2.7.16AA** G The *regulated activity of advising on P2P agreements* under article 53(2) of the *Regulated Activities Order* applies to advice given to a *person* in their capacity as a *lender* or potential *lender* under a relevant article 36H agreement (defined in article 53(4) of the *Regulated Activities Order*), or as an agent for a *lender* or potential *lender* under such an agreement, where that advice is on the merits of their doing any of the following (whether as principal or agent):

- (1) entering into a relevant article 36H agreement as a *lender* or assuming the rights of a *lender* under such an agreement by *assignment* or operation of law; or
- (2) providing instructions to a *P2P platform operator* with a view to entering into a relevant article 36H agreement as a *lender* or assuming the rights of a *lender* under such an agreement by *assignment* or operation of law, where the instructions involve:
  - (a) accepting particular parameters for the terms of the agreement presented by a *P2P platform operator*; or
  - (b) choosing between options governing the parameters of the terms of the agreement presented by a *P2P platform operator*; or
  - (c) specifying the parameters of the terms of the agreement by other means; or
- (3) enforcing or exercising the *lender's* rights under a relevant article 36H agreement; or
- (4) assigning rights under a relevant article 36H agreement.

**Advising on regulated mortgage contracts**

2.7.16B

G

Under article 53A of the *Regulated Activities Order*, giving advice to a *person* in his capacity as borrower or potential borrower is a *regulated activity* if it is advice on the merits of the *person*:

- (1) entering into a particular *regulated mortgage contract*; or
- (2) varying the terms of a *regulated mortgage contract*.

Advice on varying terms as referred to in (2) comes within article 53A only where the borrower entered into the *regulated mortgage contract* on or after 31 October 2004, or the contract is a *legacy CCA mortgage contract*, and the variation varies the borrower's obligations under the contract. Further *guidance* on the scope of the *regulated activity* under article 53A is in ■ PERG 4.6 (Advising on regulated mortgage contracts).

**Advising on home reversion plans**

2.7.16C

G

Under article 53B of the *Regulated Activities Order*, giving advice to a *person* in his capacity as *reversion occupier* or *reversion provider* is a *regulated activity* if it is advice on the merits of the *person*:

- (1) entering into a particular *home reversion plan*; or
- (2) varying the terms of a *home reversion plan*.

Advice on varying terms as referred to in (2) only comes within article 53B where the plan was entered into by the *person* on or after 6 April 2007 and the variation varies his obligations under the plan. Where a *person* is entering into the plan as *reversion provider* purely as a result of rights or obligations, or the interest in land, being transferred to him, advice given to him on the merits of the transaction is only regulated where the plan was originally entered into on or after 6 April 2007. Further *guidance* on the

scope of the *regulated activity* under article 53B is in ■ PERG 14.3 (Guidance on home reversion and home purchase activities).

**Advising on a home purchase plan**

2.7.16D

G

Under article 53C of the *Regulated Activities Order*, giving advice to a *person* in his capacity as *home purchaser* is a *regulated activity* if it is advice on the merits of the *person*:

- (1) entering into a particular *home purchase plan*; or
- (2) varying the terms of a *home purchase plan*.

Advice on varying terms as referred to in (2) only comes within article 53C where the plan is entered into by the *person* on or after 6 April 2007 and the variation varies the *person's* obligations under the plan. Further *guidance* on the scope of the *regulated activity* under article 53C is in ■ PERG 14.4 (Guidance on home reversion and home purchase activities).

**Advising on regulated sale and rent back agreements**

2.7.16E

G

Under article 53D of the *Regulated Activities Order* giving advice to a *person* in his capacity as an *SRB agreement seller* or an *SRB agreement provider* is a *regulated activity* if it is advice on the merits of the *person*:

- (1) entering into a particular *regulated sale and rent back agreement*; or
- (2) varying the terms of a *regulated sale and rent back agreement*.

Advice on varying terms as referred to in (2) only comes within article 53D where the agreement is entered into by the *person* on or after 1 July 2009 and the variation varies the *person's* obligations under the agreement. Further *guidance* on the scope of the *regulated activity* under article 53D is in ■ PERG 14.4A (Activities relating to regulated sale and rent back agreements).

**Advising on regulated credit agreements for the acquisition of land**

2.7.16F

G

Under article 53DA of the *Regulated Activities Order*, advising a *person* ("P") is a *regulated activity* if:

- (1) the advice is given to P in P's capacity as a recipient of credit, or potential recipient of credit, under a *regulated credit agreement*;
- (2) P intends to use the credit to acquire or retain property rights in *land* or in an existing or projected building; and
- (3) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to *regulated credit agreements* entered into, or to be entered into, on or after 21 March 2016.



**Advising on conversion or transfer of pension benefits**

2.7.16G **G** Under article 53E of the *Regulated Activities Order* giving advice to a person ("P") who has *subsisting rights* in respect of any *safeguarded benefits* in their capacity as:

- (1) a *member of a pension scheme*; or
- (2) a *survivor of a member of a pension scheme*;

is a *regulated activity* if the advice is on the merits of P requiring the trustee or manager of the pension scheme to carry out any of the transactions listed in ■ PERG 2.7.16HG.

2.7.16H **G** The transactions in ■ PERG 2.7.16GG are:

- (1) converting any of the *safeguarded benefits* into different benefits that are *flexible benefits* under the scheme; or
- (2) making a transfer payment in respect of any of the *safeguarded benefits* with a view to acquiring a right or entitlement to *flexible benefits* for P under another pension scheme; or
- (3) paying a lump sum that would be an *uncrystallised funds pension lump sum* in respect of any of the *safeguarded benefits*.

2.7.16I **G** *Advising on conversion or transfer of pension benefits* can only be carried on in respect of one type of specified investments (see ■ PERG 2.6.19CG(2)).

**Lloyd's activities**

2.7.17 **G** Certain activities carried on in connection with business at Lloyds will be regulated. In addition to those already mentioned (*arranging deals* in the *underwriting capacity of a Lloyd's syndicate* or *membership of a Lloyd's syndicate*), there are three other *regulated activities* as follows.

- (1) *Managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* is a *regulated activity*. 'Managing agent' is defined in article 3(1) of the *Regulated Activities Order*.
- (2) *Advising on syndicate participation at Lloyd's*, that is advising a person to become, or continue or cease to be, a member of a particular syndicate is also caught. Giving advice about syndicate participation (such as how members should use their capital within the market and arrange their syndicate participation) is a separate *regulated activity* to that of providing advice in relation to *securities* and *contractually based investments* (see ■ PERG 2.7.15 G). Appropriate *permission* will be needed.
- (3) *Arranging deals in contracts of insurance written at Lloyd's* is also a *regulated activity* for the Society of Lloyd's itself.

**Entering into funeral plan contracts**

**2.7.18** **G** *Entering as provider into a funeral plan contract is a regulated activity. The 'provider', for the purposes of this activity, is the person to whom the pre-payments are made and who undertakes to provide, or secure the provision of, the funeral at some future point. They may be the funeral director or a third party who arranges for another person to provide the funeral.*

**2.7.18A** **G** *It is the FCA's view that, in the case of a funeral plan contract involving more than one payment (such as an instalment payment funeral plan), the funeral plan provider does not enter as provider into a funeral plan contract on the occasion of each individual payment.*

**2.7.19** **G** *In addition, other activities carried on in relation to rights under certain funeral plan contracts are regulated (see ■ PERG 2.7.6G, ■ PERG 2.7.7AG(1) and ■ (2), ■ PERG 2.7.8G, ■ PERG 2.7.9G, ■ PERG 2.7.10G, ■ PERG 2.7.11G and ■ PERG 2.7.14CG to ■ PERG 2.7.16-AG). This is because such rights are classified as contractually based investments.*

**Carrying out funeral plan contracts as provider**

**2.7.19-A** **G** *Carrying out a funeral plan contract as provider is a regulated activity. This regulated activity applies in relation to both new funeral plan contracts and those which were entered into by funeral plan providers before 29 July 2022 in reliance on the exclusions for trust and insurance-backed plans which were formerly contained in article 60 of the Regulated Activities Order.*

**2.7.19-B** **G** *In its consultation on the regulation of pre-paid funeral plans (June 2019), the Treasury indicated that this regulated activity was intended to cover the administration of funeral plan contracts after the point of sale. However, the Treasury's consultation also explained that the regulated activity of carrying out a funeral plan contract as provider was not intended to extend to the activities of the funeral services provider in providing the end service for which pre-payment is made under the funeral plan contract (whether or not the funeral services provider is also the provider of the funeral plan contract).*

**2.7.19-C** **G** *For the purposes of this regulated activity, the definition of funeral plan provider includes a person who has assumed the undertaking referred to in ■ PERG 2.7.18G to provide, or secure that another person provides, the funeral.*

**Regulated credit agreements**

**2.7.19A** **G** (1) *Entering into a regulated credit agreement as lender is a regulated activity.*

(2) *It is also a regulated activity for the lender or another person to exercise, or to have the right to exercise, the lender's rights and duties under a regulated credit agreement.*

**Exempt agreements**

2.7.19B

G

- (1) A *credit agreement* entered into before 1 April 2014 is a *regulated credit agreement* for the purposes of ■ PERG 2.7.19AG if it was a 'regulated agreement' within the meaning of the CCA when it was entered into, or became such a 'regulated agreement' by virtue of being varied or supplemented by another agreement before 1 April 2014. But a *credit agreement* is not a *regulated credit agreement* for the purposes of ■ PERG 2.7.19AG if it was entered into before 1 April 2014 and, if it had been entered into on 21 March 2016:
- (a) a *person* would have been carrying on the *regulated activity* of *entering into a regulated mortgage contract* or *entering into a home purchase plan* by entering into the agreement; or
  - (b) a *person* would have been carrying on the *regulated activity* of *administering a regulated mortgage contract* by administering the agreement.
- (2) A *credit agreement* entered into on or after 1 April 2014 is not a *regulated credit agreement* for the purposes of ■ PERG 2.7.19AG if it is an exempt agreement. ■ PERG 2.7.19CG to ■ PERG 2.7.19JG describe the categories of exempt agreement. Where part of a *credit agreement* falls within the exemptions in articles 60C to 60H of the *Regulated Activities Order*, only that part of the agreement is an exempt agreement.

**Exemptions relating to the nature of the agreement**

2.7.19C

G

A *credit agreement* is an exempt agreement in the following cases:

- (1) if:
- (a) by entering into the agreement as *lender*, a *person* is or was carrying on the *regulated activity* of *entering into regulated mortgage contracts*; or
  - (b) by entering into the agreement as *home purchase provider*, a *person* is or was carrying on a *regulated activity* of the kind specified by article 63F(1) of the *Regulated Activities Order* (entering into regulated *home purchase plans*); or
  - (c) by administering the agreement on 21 March 2016, a *person* is carrying on a *regulated activity* of the kind specified by article 61(2) of the *Regulated Activities Order* (administering *regulated mortgage contracts*);
- (2) if:
- (a) the *lender* provides the *borrower* with *credit* exceeding £25,000; and
  - (b) the agreement is entered into by the *borrower* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *borrower*;
- (3) if:
- (a) the *lender* provides the *borrower* with *credit* of £25,000 or less; and

- (b) the agreement is entered into by the *borrower* wholly for the purposes of a business carried on, or intended to be carried on, by the *borrower*; and
  - (c) the agreement is a *green deal plan*;
- (4) if it is made in connection with trade in goods or services:
- (a) between the *United Kingdom* and a country outside the *United Kingdom*; or
  - (b) within a country outside the *United Kingdom*; or,
  - (c) between countries outside the *United Kingdom*; and
- the *credit* is provided to the *borrower* in the course of a business carried on by the *borrower*.

2.7.19D

G

If a *credit agreement* includes a declaration which:

- (1) is made by the *borrower*;
- (2) provides that the agreement is entered into by the *borrower* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *borrower*; and
- (3) complies with the *rules* in ■ CONC App 1.4;

the *credit agreement* is to be presumed to have been entered into by the *borrower* wholly or predominantly for business purposes. This presumption does not apply, however, if the *lender* or any *person* who has acted on behalf of the *lender* knows or has reasonable cause to suspect that the agreement is not entered into by the *borrower* wholly or predominantly for business purposes. This also applies to the exemption in ■ PERG 2.7.19CG (3), as if the word "predominantly" were omitted.

**Exemption relating to the purchase of land for non-residential purposes**

2.7.19E

G

A *credit agreement* is an exempt agreement if, at the time it is entered into:

- (1) any sums due under it are secured by a *legal or equitable mortgage* on *land*;
- (2) less than 40% of the *land* is used, or is intended to be used, as or in connection with a dwelling:
  - (a) by the *borrower* or a related person of the *borrower*; or
  - (b) in the case of *credit* provided to trustees, by an individual who is a beneficiary of the trust or a *related person* of a beneficiary; and
- (2A) the *credit agreement* is not an *article 3(1)(b) credit agreement* which is not one to which section 423A(3) of the *Act* applies, and which is secured on *land* less than 40% of which is intended to be used as or in connection with a dwelling.
- (3) For these purposes, a person is related to a *borrower* or a beneficiary of a trust if they are a spouse or civil partner, or a parent, brother, sister, child, grandparent or grandchild of the *borrower* or beneficiary

or if their relationship with the *borrower* or beneficiary has the characteristics of the relationship between husband and wife.

(4) [deleted]

**Exemptions relating to the nature of the lender**

**2.7.19F** **G** A *credit agreement* is an exempt agreement in the following cases:

- (1) if the *credit agreement* is a *relevant credit agreement relating to the purchase of land* and the *lender* is a *local authority*;
- (2) if the *credit agreement* is a *relevant credit agreement relating to the purchase of land* specified in ■ CONC App 1.3 and the *lender* is a person or within a class of persons specified in ■ CONC App 1.3;
- (3) if the *credit agreement* is secured by a *legal or equitable mortgage on land*, that *land* is used or is intended to be used as, or in connection with, a dwelling and the *lender* is a housing authority; or
- (4) If the *lender* is an *investment firm* or a *credit institution* (other than a *credit union* or *friendly society*) and the agreement is entered into for the purpose of allowing the *borrower* to carry out a transaction relating to one or more *financial instruments*.

**2.7.19FA** **G** The exclusion referred to in ■ PERG 2.7.19FG may not be available to a *firm* that is an *MCD firm* (see ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

**2.7.19FB** **G**

- (1) In ■ PERG 2.7.19FG(3), ‘housing authority’ has the same meaning as in article 60E(7) of the *Regulated Activities Order*. The definition of ‘housing authority’ in article 60E includes housing associations registered under the relevant housing legislation.
- (2) The effect of the definition of ‘regulated credit agreement’ in the *Regulated Activities Order* is that credit agreements entered into by housing associations and other housing authorities before 1 April 2014 that were *regulated credit agreements* when they were entered into are to be *regulated credit agreements* notwithstanding the introduction of the exemption in article 60E(5) of the *Regulated Activities Order*. Credit agreements entered into on or after 1 April 2014 and that meet the conditions in ■ PERG 2.7.19F(3) are exempt. See also ■ PERG 4.4.28CG.

**Exemptions relating to number of repayments to be made**

**2.7.19G** **G** A *credit agreement* is also an exempt agreement in the following cases:

- (1) if (subject to ■ PERG 2.7.19H G):
  - (a) the agreement is a *borrower-lender-supplier agreement for fixed-sum credit*;
  - (b) the number of payments to be made by the *borrower* is not more than 12;

- (c) those payments are required to be made within a period of 12 months or less (beginning on the date of the agreement); and
  - (d) the *credit* is:
    - (i) secured on *land*; or
    - (ii) provided without interest or other charges;
- (2) if (subject to ■ PERG 2.7.19H G):
- (a) the agreement is a *borrower-lender-supplier agreement* for *running-account credit*;
  - (b) the *borrower* is to make payments in relation to specified periods which must be, unless the agreement is secured on *land*, of three months or less;
  - (c) the number of payments to be made by the *borrower* in repayment of the whole amount of *credit* provided in each period is not more than one; and
  - (d) the *credit* is:
    - (i) secured on *land*; or
    - (ii) provided without interest or other significant charges;
- (3) if:
- (a) the agreement is a *borrower-lender-supplier agreement* financing the purchase of *land*;
  - (b) the number of payments to be made by the *borrower* is not more than four; and
  - (c) the *credit* is:
    - (i) secured on *land*; or
    - (ii) provided without interest or other charges;
- (4) if:
- (a) the agreement is a *borrower-lender-supplier agreement* for *fixed-sum credit*;
  - (b) the *credit* is to finance a *premium* under a *contract of insurance* relating to *land* or anything on *land* (for example, house or contents insurance);
  - (c) the *lender* is the *lender* under a *credit agreement* secured by a *legal or equitable mortgage* on that *land*;
  - (d) the *credit* is to be repaid within the period (which must be 12 months or less) to which the *premium* relates;
  - (e) in the case of an agreement secured on *land*, there is no charge forming part of the *total charge for credit* under the agreement (see ■ CONC App 1) other than interest at a rate not exceeding the rate of interest payable under the mortgage loan in (c);
  - (f) in the case of an agreement which is not secured on *land*, the *credit* is provided without interest or other charges; and
  - (g) the number of payments to be made by the *borrower* is not more than 12;

(5) if:

- (a) the agreement is a *borrower-lender-supplier agreement for fixed-sum credit*;
- (b) the *lender* is the *lender* under a *credit agreement* secured by a *legal or equitable mortgage on land*;
- (c) the agreement is to finance a premium under a life insurance policy that meets certain conditions;
- (d) in the case of an agreement secured on *land*, there is no charge forming part of the *total charge for credit* under the agreement (see ■ CONC App 1) other than interest at a rate not exceeding the rate of interest payable under the mortgage loan in (b);
- (e) in the case of an agreement which is not secured on *land*, the *credit* is provided without interest or other charges; and
- (f) the number of payments to be made by the *borrower* is not more than 12.

For the purposes of (1) to (5), "payment" means any payment which comprises or includes a *repayment*, a payment of interest or any other charge which forms part of the *total charge for credit*.

2.7.19GA G The exclusion referred to in ■ PERG 2.7.19G may not be available to a *firm* that is an *MCD firm* (see ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

2.7.19H G The exemptions in ■ PERG 2.7.19GG (1) and ■ PERG 2.7.19GG (2) do not apply to:

- (1) *credit agreements* financing the purchase of *land*;
- (2) *conditional sale agreements* or *hire-purchase agreements*; or
- (3) *credit agreements* secured by a pledge (other than a pledge of documents of title or of bearer bonds).

### Exemptions relating to the total charge for credit

2.7.19I G A *credit agreement* is also an exempt agreement in the following cases:

- (1) if it is a *borrower-lender agreement*, the *lender* is a *credit union* and the rate of the *total charge for credit* (see ■ CONC App 1) does not exceed 42.6 per cent provided that:
  - (a) the agreement is not an *article 3(1)(b) credit agreement*; or
  - (b) the agreement is an *article 3(1)(b) credit agreement* but:
    - (i) the agreement is of a kind to which section 423A(3) of the *Act* applies (see ■ PERG 4.10A.5G(1) to (6)); or
    - (ii) it is a *credit agreement* which relates to the deferred payment, free of charge, of an existing debt and is not secured by a *legal or equitable mortgage*); or
    - (iii) it is a *bridging loan* described in ■ PERG 4.13.6G; or
    - (iv) it is a restricted public loan described in ■ PERG 4.13.7G; or

- (c) the agreement was entered into before 21 March 2016;
- (2) if (subject to (5), (6) and (7)):
  - (a) it is a *borrower-lender agreement*;
  - (b) it is offered to a particular class of *individual* and not offered to the public generally;
  - (c) it provides that the only charge included in the *total charge for credit* (see ■ CONC App 1) is interest; and
  - (d) interest under the agreement may not, at any time, be more than the sum of one per cent and the highest of the base rates published by the banks in (4) on the date 28 days before the date on which the interest is charged;
- (3) if (subject to (5), (6) and (7)):
  - (a) it is a *borrower-lender agreement*;
  - (b) it is an agreement of a kind offered to a particular class of *individual* and not offered to the public generally;
  - (c) it does not provide for or permit an increase in the rate or amount of any item which is included in the *total charge for credit* (see ■ CONC App 1); and
  - (d) the *total charge for credit* under the agreement is not more than the sum of one per cent and the highest of the base rates published by the banks in (4) on the date 28 days before the date on which the charge is imposed;
- (4) the banks (referred to in (3)(d)) are:
  - (a) the Bank of England;
  - (b) Bank of Scotland;
  - (c) Barclays Bank plc;
  - (d) Clydesdale Bank plc;
  - (e) Co-operative Bank Public Limited Company;
  - (f) Coutts & Co;
  - (g) National Westminster Bank Public Limited Company;
  - (h) the Royal Bank of Scotland plc;
- (5) the exemptions in (2) and (3) do not apply, however, if the total amount to be repaid by the *borrower* may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or other factor;
- (6) unless the agreement:
  - (a) is secured on *land*; or
  - (b) is offered by a *lender* to a *borrower* as an incident of employment with the *lender*, or with an *undertaking* in the same *group* as the *lender*;
 the exemptions in (2) and (3) apply only if:
  - (c) the agreement is offered under an enactment with a general interest purpose; and



- (d) the terms on which the *credit* is provided are more favourable to the *borrower* than those prevailing on the market, either because the rate of interest is lower than that prevailing on the market or because the rate of interest is no higher than that prevailing on the market, but the other terms on which *credit* is provided are more favourable to the *borrower*; and
- (7) if the agreement is an *article 3(1)(b) credit agreement*, the agreement is only an exempt agreement if:
  - (a) it meets the conditions in (6)(c) and (d);
  - (b) the *borrower* receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage; and
  - (c) any advertising of the agreement is fair, clear and not misleading.

**High net worth exemption**

2.7.19J

G

A *credit agreement* is an exempt agreement if:

- (1) the *borrower* is an individual;
- (2) the agreement is either:
  - (a) secured on *land*; or
  - (b) for credit which exceeds £60,260 and, if entered into on or after 21 March 2016, is for a purpose other the renovation of residential property.
- (3) the agreement includes a declaration, made by the *borrower* which provides that the *borrower* agrees to forgo the protection and remedies that would be available to the borrower if the agreement were a *regulated credit agreement*, which complies with ■ CONC App 1.4;
- (4) a statement has been made in relation to the income or assets of the *borrower* which complies with ■ CONC App 1.4; and
- (5) the connection between that statement and the *credit agreement* complies with ■ CONC App 1.4;
- (6) a copy of that statement was provided to the *lender* before the agreement was entered into; and
  - (where the purpose of the agreement is to acquire or retain property rights in land or in an existing or projected building):
    - (a) a declaration has been made by the *borrower* which provides that either the *borrower* is UK resident or is treated as present in the *United Kingdom*;
    - (b) a copy of that declaration was provided to the *lender* before the agreement was entered into; and
    - (c) the agreement is entered into on or after 21 July 2022.

**2.7.19J-A** G For the purposes of ■ PERG 2.7.19JG(7)(a), a *borrower*:

- (1) is UK resident if the *borrower* (or the *borrower's* spouse or civil partner, when living with them on the date the agreement is entered into) has been present in the *United Kingdom* for at least 183 days during the continuous period of 365 days ending with the date the agreement is entered into;
- (2) is treated as present in the *United Kingdom* if, on the date the agreement was entered into, the *borrower*:
  - (a) is in Crown employment (being employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision); and
  - (b) is present in a country or territory outside the *United Kingdom* for the purpose of performing activities in the course of that employment; or
  - (c) is living with their spouse or civil partner who is an individual falling within (a) and (b).

**2.7.19J-AB** G In ■ PERG 2.7.19J-A(1) and ■ (2)(c) the reference to spouse or civil partner excludes individuals who are separated under an order of a court of competent jurisdiction, are separated by deed of separation, or are otherwise separated in circumstances in which the separation is likely to be permanent.

**2.7.19JA** G The exclusion referred to in ■ PERG 2.7.19JG may not (unless paragraph (7) of that provision applies) be available to a *firm* that is an *MCD firm* (see ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

**Regulated consumer hire agreements**

**2.7.19K** G

- (1) Entering into a *regulated consumer hire agreement* as owner is a *regulated activity*.
- (2) It is also a *regulated activity* for the owner or another person to exercise, or to have the right to exercise, the owner's rights and duties under a *regulated consumer hire agreement*.

**Exempt agreements**

**2.7.19L** G A *consumer hire agreement* is not a *regulated consumer hire agreement* for the purposes of ■ PERG 2.7.19K G if it is an exempt agreement. ■ PERG 2.7.19M G to ■ PERG 2.7.19P G describe the categories of exempt agreement.

**Exemptions relating to nature of agreement**

**2.7.19M** G A *consumer hire agreement* is an exempt agreement if the *hirer* is required by the agreement to make payments exceeding £25,000, and the agreement is entered into by the *hirer* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *hirer*.

**2.7.19N** **G** As in the case of a *credit agreement* (see ■ PERG 2.7.19D G), if a *consumer hire agreement* includes a declaration which:

- (1) is made by the *hirer*;
- (2) provides that the agreement is entered into by the *hirer* wholly or predominantly for business purposes; and
- (3) complies with ■ CONC App 1.4;

the *consumer hire agreement* is to be presumed to have been entered into by the *hirer* for business purposes. This presumption does not apply, however, if the *owner* or any *person* who has acted on behalf of the *owner* knows, or has reasonable cause to suspect, that the agreement is not entered into by the *hirer* for business purposes.

**Exemption relating to supply of essential services**

**2.7.19O** **G** A *consumer hire agreement* is an exempt agreement if the *owner* is a body corporate which supplies gas, electricity or water under an enactment and the subject of the agreement is a meter or metering equipment which is used in connection with that purpose.

**High net worth exemption**

**2.7.19P** **G** This exemption is substantially the same as the one for *credit agreements* in ■ PERG 2.7.19J G.

**Entering into and administering a regulated mortgage contract**

**2.7.20** **G** *Entering into* as lender, and *administering*, a *regulated mortgage contract* are *regulated activities* under article 61 of the *Regulated Activities Order* (Regulated mortgage contracts). *Guidance* on these *regulated activities* is in ■ PERG 4.7 (Entering into a regulated mortgage contract) and ■ PERG 4.8 (Administering a regulated mortgage contract).

**Entering into and administering a home reversion plan**

**2.7.20A** **G** *Entering into a home reversion plan* and *administering a home reversion plan* are *regulated activities* under article 63B of the *Regulated Activities Order* (Regulated home reversion plans). *Guidance* on these *regulated activities* is in ■ PERG 14.3 (Guidance on home reversion and home purchase activities).

**Entering into and administering a home purchase plan**

**2.7.20B** **G** *Entering into a home purchase plan* and *administering a home purchase plan* are *regulated activities* under article 63F of the *Regulated Activities Order* (Regulated home purchase plans). *Guidance* on these *regulated activities* is in ■ PERG 14.4 (Guidance on home reversion and home purchase activities).

**Entering into and administering a regulated sale and rent back agreement**

**2.7.20BA** **G** *Entering into a regulated sale and rent back agreement as an agreement provider and administering a regulated sale and rent back agreement are regulated activities under Article 63J of the Regulated Activities Order (Regulated sale and rent back agreements). Guidance on these regulated activities is in ■ PERG 14.4A (Activities relating to regulated sale and rent back agreements).*

**Dormant account funds**

**2.7.20C** **G** *There are three regulated activities associated with the activities of a dormant asset fund operator:*

- (1) the meeting of repayment claims;*
- (2) managing dormant asset funds (including the investment of such funds); and*
- (3) dealing with unwanted asset money.*

**2.7.20D** **G** [deleted]

**2.7.20E** **G** [deleted]

**2.7.20EA** **G** [deleted]

**2.7.20F** **G** [deleted]

**2.7.20G** **G** [deleted]

**2.7.20GA** **G** [deleted]

**2.7.20H** **G** [deleted]

**2.7.20I** **G** [deleted]

**2.7.20J** **G** [deleted]

**Providing credit information services**

**2.7.20K** **G** (1) Taking any of the steps in (2) on behalf of an *individual* is a regulated activity.

(2) This activity catches steps taken with a view to:

- (a) ascertaining whether a *credit information agency* holds information relevant to the financial standing of an *individual*;

- (b) ascertaining the contents of such information;
  - (c) securing the correction of, the omission of anything from, or the making of, any other kind of modification of, such information; or
  - (d) securing that a *credit information agency* which holds such information stops holding the information or does not provide it to any other *person*.
- (3) Giving advice to an *individual* in relation to the taking of any of the steps in ■ PERG 2.7.20KG (2)(a) to ■ PERG 2.7.20KG (2)(d) is also a *regulated activity*.
- (4) A *credit information agency* that takes any of the steps in ■ PERG 2.7.20KG (2)(a) to ■ PERG 2.7.20KG (2)(d) in relation to information held by that agency does not *provide credit information services*.
- (5) In so far as taking any of the steps in ■ PERG 2.7.20KG (2)(a) to ■ PERG 2.7.20KG (2)(d) is the activity of *operating an electronic system in relation to lending*, then it is not also *providing credit information services*.

**Providing credit references**

2.7.20L

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- (1) Furnishing of *persons* with information relevant to the financial standing of *individuals* is a *regulated activity* if the *person* has collected the information for that purpose.
- (2) A person requires *authorisation* for this activity only if its business primarily consists of the activities in (1).
- (3) This activity does not include an activity in so far as it is *operating an electronic system in relation to lending*.

**Regulated claims management activity**

2.7.20M

G

- (1) Section 22(1B) of the Act provides that an activity is a *regulated activity* if it is an activity of a specified kind which:
  - is, or relates to, *claims management services*; and
  - is carried on in *Great Britain*.
- (2) The activities which have been specified are those set out in articles 89G to 89M of the *Regulated Activities Order*; these are listed in the *Glossary* definition of "*regulated claims management activity*" and set out in ■ PERG 2.7.20N. However, these are subject to the exclusions set out in articles 89N to 89W of the *Regulated Activities Order*: an activity which falls within one of the exclusions is not a *regulated activity* (see ■ PERG 2.8.14D).
- (3) The activity must be or relate to a *claims management service*. The drafting of the *Regulated Activities Order* has the effect that the *regulated claims management activities* all meet this condition.
- (4) The activity must be carried on in *Great Britain*: see ■ PERG 2.4A. A *person* outside *Great Britain* (including a *person* outside the *United Kingdom*) may require *permission* for a *regulated claims management*

2.7.20N G

activity if they deal with *claims* involving *claimants* who are constituted or ordinarily resident in *Great Britain* or handle details of such claimants, even if that *person* has no branch, office or establishment in *Great Britain*.

(1) *Seeking out, referrals and identification of claims or potential claims*, as specified in article 89G of the *Regulated Activities Order*, involves any or all of the following:

- (a) seeking out *persons* who may have a *claim* (unless that activity constitutes a *controlled claims management activity*: see ■ PERG 8.7A.5G);
- (b) referring details of a *claim* or a potential *claim* or a *claimant* or potential *claimant* to another *person*; and
- (c) identifying a *claim* or potential *claim*, or a *claimant*, or potential *claimant*;

when carried on in relation to a *personal injury claim*, a financial services or financial product *claim*, a *housing disrepair claim*, a *claim for a specified benefit*, a *criminal injury claim* or an *employment-related claim*.

(2) The other *regulated claims management activities* are:

- (a) *advice, investigation or representation in relation to a personal injury claim*;
- (b) *advice, investigation or representation in relation to a financial services or financial product claim*;
- (c) *advice, investigation or representation in relation to a housing disrepair claim*;
- (d) *advice, investigation or representation in relation to a claim for a specified benefit*;
- (e) *advice, investigation or representation in relation to a criminal injury claim*; and
- (f) *advice, investigation or representation in relation to an employment-related claim*.

(3) Advice includes any type of advice in relation to a *claim*, including advice on the merits of a *claim*, advice on the procedure for pursuing a *claim*, advice on how best to present a *claim*, and advice on possible means of challenging an unsatisfactory outcome to a *claim*.

(4) Investigation of a *claim* means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a *claim* (see article 89F(2)(i) of the *Regulated Activities Order*).

(5) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made (see article 89F(2)(j) of the *Regulated Activities Order*).

Agreeing

2.7.21

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Agreeing to carry on most regulated activities is itself a regulated activity. But this is not the case if the underlying activities to which the agreement relates are those of accepting deposits, issuing electronic money, effecting or carrying out contracts of insurance, operating a multilateral trading facility, operating an organised trading facility, managing dormant asset funds, the meeting of repayment claims, dealing with unwanted asset money, managing a UK UCITS, acting as trustee or depositary of a UK UCITS, managing an AIF, acting as trustee or depositary of an AIF, establishing, operating or winding up a collective investment scheme, establishing, operating or winding up a stakeholder pension scheme or establishing, operating or winding up a personal pension scheme. A person will need to make sure that it has appropriate authorisation at the stage of agreement and before it actually carries on the underlying activity (such as the dealing or arranging).

**2.8 Exclusions applicable to particular regulated activities**

**2.8.1** G Most *regulated activities* are subject to exclusions that are set out in the *Regulated Activities Order* directly following each activity.

**Accepting deposits**

**2.8.2** G Two exclusions apply to the *regulated activity of accepting deposits*. The first relates to a *firm* with a *Part 4A permission to manage an AIF or manage a UK UCITS* (see ■ PERG 2.9.22 G (Managers of UK UCITS and AIFs)). There is also excluded from *accepting deposits* any activity which is carried on by a local authority (see ■ PERG 2.9.23 G). In addition to the situations that are excluded from being '*deposits*' (see ■ PERG 2.6.2 G to ■ PERG 2.6.4 G), several *persons* are *exempt persons* in relation to the *regulated activity of accepting deposits* (see ■ PERG 2.10.8G (2)).

**2.8.2A** G [deleted]

**Effecting and carrying out contracts of insurance**

**2.8.3** G The following activities are excluded from both the *regulated activities of effecting and carrying out contracts of insurance*.

- (1) In specified circumstances, the activities of an *EEA firm* when participating in a Community co-insurance operation are excluded. A Community co-insurance operation is defined in the *Solvency II Directive*.
- (2) In specified circumstances, activities that are carried out in connection with the provision of on-the-spot accident or breakdown assistance for cars and other vehicles (such as repairs, vehicle retrieval, delivery of parts or fuel) are excluded.
- (3) [deleted]
- (4) Activities carried on by a *firm* with a *Part 4A permission to manage an AIF or manage a UK UCITS*, where they are in connection with, or for the purposes of, *managing an AIF or managing a UK UCITS* (see ■ PERG 2.9.22 G (Managers of UK UCITS and AIFs)).



**Dealing in investments as principal**

2.8.4

G

The *regulated activity of dealing in investments as principal* applies to specified transactions relating to any security or to any *contractually based investment* (apart from rights under *funeral plan contracts* or rights to or interests in such contracts). The activity is cut back by exclusions as follows.

- (1) Of particular significance is the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc). This applies where *dealing in investments as principal* involves entering into transactions relating to any security or assigning rights under a *life policy* (or rights or interests in such a contract). In effect, it superimposes an additional condition that must be met before a *person's* activities become *regulated activities*. The additional condition is that a *person* must hold himself out as making a market in the relevant *specified investments* or as being in the business of dealing in them, or he must regularly solicit members of the public with the purpose of inducing them to deal. This exclusion does not apply to dealing activities that relate to any *contractually based investment* except the assigning of rights under a *life policy*.
- (2) Entering into a transaction relating to a *contractually based investment* is not regulated if the transaction is entered into by an *unauthorised person* and it takes place in either of the following circumstances (a transaction entered into by an *authorised person* would be caught). The first set of circumstances is where the *person* with whom the *unauthorised person* deals is either an *authorised person* or an *exempt person* who is acting in the course of a business comprising a *regulated activity* in relation to which he is exempt. The second set of circumstances is where the *unauthorised person* enters into a transaction through a non-UK office (which could be his own) and he deals with or through a *person* who is based outside the *United Kingdom*. This non-UK *person* must be someone who, as his ordinary business, carries on any of the activities relating to *securities* or *contractually based investments* that are generally treated as *regulated activities*.
- (3) A *person* (for example, a bank) who provides another *person* with finance for any purpose can accept an instrument acknowledging the debt (and as security for it) without risk of *dealing as principal* as a result.
- (4) A *company* does not *deal* as principal by issuing its own *shares* or *share warrants* and a *person* does not *deal* as principal by issuing his own *debentures*, *alternative debentures* or *debenture warrants* or *alternative debenture warrants*.
- (4A) A *company* does not carry on the activity of *dealing in investments as principal* by purchasing its own *shares* where section 162A of the Companies Act 1985 (Treasury shares) applies to the *shares* purchased or by dealing in its own *shares* held as Treasury shares, in accordance with section 162D of that Act (Treasury shares: disposal and cancellation).
- (5) Risk-management activities involving *options*, *futures* and *contracts for differences* will not require *authorisation* if specified conditions are met. The conditions include the *company's* business consisting mainly of *unregulated activities* and the sole or main purpose of the

risk management activities being to limit the impact on that business of certain kinds of identifiable risk.

- (6) A *person* will not be treated as carrying on the activity of *dealing in investments as principal* if, in specified circumstances (outlined in ■ PERG 2.9), he enters as principal into a transaction:
- (a) while acting as bare trustee (or, in Scotland, as nominee);
  - (b) in connection with the sale of goods or supply of services;
  - (c) that takes place between members of a *group* or *joint enterprise*;
  - (d) in connection with the sale of a *body corporate*;
  - (e) in connection with an employee share scheme;
  - (f) as an *overseas person*;
  - (g) [deleted]
  - (h) where it is in connection with or for the purposes of *managing a UK UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UK UCITS* or *manage an AIF* (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs));
  - (i) while acting as an insolvency practitioner (see ■ PERG 2.9.25 G).
- (7) An activity that might otherwise be both *dealing in investments as principal* and *bidding in emissions auctions* is specifically excluded from *dealing in investments as principal* as a result of article 24A(2) of the RAO which provides that the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see ■ PERG 2.7.6DG).

**2.8.4A** G *Persons* who enter as principal into transactions involving rights under a *contract of insurance* of any kind will need to consider whether they may, as a result, be carrying on the *regulated activity* of:

- (1) *arranging (bringing about) deals in investments*; or
- (2) *making arrangements with a view to transactions in investments*; or
- (3) agreeing to do (1) or (2).

**2.8.4B** G The possibility referred to in ■ PERG 2.8.4 G will only arise where it is not the case that the *person* who enters into the transaction as principal either:

- (1) is the only *policyholder*; or
- (2) as a result of the transaction, would become the only *policyholder*.

**2.8.4C** G The exclusions referred to in ■ PERG 2.8.4G (1), (2), (4), (5) and (6)(b), (c) and (d) will not be available to *persons* who, when carrying on the activity of *dealing in investments as principal*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

**Dealing in investments as agent**

2.8.5

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The *regulated activity of dealing in investments as agent* applies to specified transactions relating to any *security* or to any *relevant investment*. The activity is cut back by exclusions as follows.

- (1) An exclusion applies to certain transactions entered into by an agent who is not an *authorised person* which depend on him dealing with (or through) an *authorised person*. It does not apply if the transaction relates to a *contract of insurance*. There are certain conditions which must be satisfied for the exclusion to apply. These are that the agent must not give any relevant advice on the transaction and that he must not receive any remuneration from the transaction unless account is made to his client.
- (2) There is an exclusion for risk-management transactions where the agent is dealing on behalf of a *group* company or a co-participant in a *joint enterprise*.
- (3) In addition, exclusions apply in specified circumstances (outlined in ■ PERG 2.9 (*Regulated activities: exclusions available in certain circumstances*)) where a *person* enters as agent into a transaction:
  - (a) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see ■ PERG 2.9.5 G);
  - (b) in connection with the sale of goods or supply of services (see ■ PERG 2.9.7 G);
  - (c) that takes place between members of a *group* or *joint enterprise* (see ■ PERG 2.9.9 G);
  - (d) in connection with the sale of a *body corporate* (see ■ PERG 2.9.11 G);
  - (e) in connection with an employee share scheme (see ■ PERG 2.9.13 G);
  - (f) as an *overseas person* (see ■ PERG 2.9.15 G);
  - (g) [deleted]
  - (h) as a provider of non-motor goods or travel services where the transaction involves a *general insurance contract* that satisfies certain conditions (see ■ PERG 2.9.19 G);
  - (i) that involves a *contract of insurance* covering large risks situated outside the *EEA* (see ■ PERG 2.9.19 G);
  - (j) on behalf of the participants of a business angel-led enterprise capital fund and that person is a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*;
  - (k) where it is in connection with or for the purposes of *managing a UK UCITS* or *managing an AIF* and the person has a *Part 4A permission to manage a UK UCITS* or *manage an AIF* (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs));
  - (l) as a *local authority* in relation to certain *contracts of insurance* (see ■ PERG 2.9.23 G);
  - (m) while acting as an insolvency practitioner (see ■ PERG 2.9.25 G).

- (4) An activity that might otherwise be both *dealing in investments as agent* and *bidding in emissions auctions* is specifically excluded from *dealing in investments as agent* as a result of article 24A(2) of the RAO which provides that the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see ■ PERG 2.7.6DG).

More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in ■ PERG 5 (Guidance on insurance distribution activities).

- 2.8.5A G The exclusions referred to in ■ PERG 2.8.5G (1), (2) and (3)(a), (b), (c), (d) and (j) will not be available to *persons* who, when carrying on the activity of *dealing in investments as agent*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

### Arranging deals in investments and arranging a home finance transaction

- 2.8.6 G The various activities that involve *arranging* fall into two general types. These are:
  - (1) those relating to arranging a particular transaction or a contract, agreement or plan variation (articles 25(1), 25A(1), 25A(2A), 25B(1), 25C(1) , and 25E(1) of the *Regulated Activities Order*); and
  - (2) those relating to making arrangements with a view to persons entering into certain transactions (articles 25(2), 25A(2), 25B(2), 25C(2) , and 25E(2) of the *Regulated Activities Order*).

The exclusions in relation to the *regulated activities* of *arranging* under articles 25(1) and (2) are of particular relevance in the context of raising corporate finance. Some of the exclusions outlined in ■ PERG 2.8.6A G relate to all of the arranging activities but most relate only to certain of those activities as indicated.

- 2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows.
  - (-1) Under article 24A(2), an activity that would otherwise be both *arranging* and *bidding in emissions auctions* is specifically excluded from *arranging* because the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see ■ PERG 2.7.6DG).
  - (1) Under article 26, arrangements that do not or would not bring about the transaction to which they relate are excluded from the *arranging* activities that relate to a particular transaction (see ■ PERG 2.8.6G (1)) only. A *person* will bring about a transaction or a contract or plan variation only if his involvement in the chain of events leading to a transaction or contract or plan variation is of sufficient importance that, without that involvement, it would not take place. This will require something more than the mere giving of advice (although giving such advice may be the *regulated activity* of *advising on*

*investments (except P2P agreements) or advising on home finance transactions).*

- (2) Under article 27, simply providing the means by which parties to a transaction (or possible transaction) are able to communicate with each other is excluded from arrangements made with a view to persons entering into certain transactions (see ■ PERG 2.8.6G (2)) only. This will ensure that *persons* such as Internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to be arrangements made with a view to the participants entering into transactions). If a *person* makes arrangements that go beyond providing the means of communication, and add value to what is provided, he will lose the benefit of this exclusion.
- (3) Under article 28, arranging investment transactions to which the *arranger* is to be a party is excluded from both article 25(1) and (2). The main purpose is to ensure that a *person* is not regarded as arranging deals for another when the transaction in question is one to which he intends to be a party. As a result, a *person* cannot both be engaging in a dealing activity (as principal or agent) and arranging *deals* for another as regards any particular transaction. But where the transaction involves a *contract of insurance*, article 28 will not apply if the *person* making the arrangements:
  - (a) is the only *policyholder*; or
  - (b) as a result of the transaction, would become the only *policyholder*.

Under article 28A, a *person* is excluded from any of the *arranging* activities that relate to *home finance transactions* if he is to enter into the contract or plan to which the *arrangements* relate or if he is or is to become a party to a contract or plan that is varied or to be varied.

- (4) Under article 29, an *unauthorised person* who, on behalf of a client, arranges transactions or contract or plan variations, with or through an *authorised person*, is excluded from each of the *arranging* activities if specified conditions as to advice and remuneration are satisfied. For example, the exclusion is dependent on the client not receiving any advice on the transactions or variations from the *unauthorised person* making the arrangements. The exclusion does not apply where the *investment* is a *contract of insurance*.
- (5) Under article 29A, an *unauthorised person* is excluded from the *regulated activity* of arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into on or after 31 October 2004 or a *legacy CCA mortgage contract* (article 25A(1)(b)) or a *home reversion plan* or *home purchase plan* entered into on or after 6 April 2007 (articles 25B(1)(b) and 25C(1)(b)) or a *regulated sale and rent back agreement* entered into on or after 1 July 2009 (article 25E(1)(b)). This is if the *arranging* is the result of:
  - (a) anything done in the course of the administration, by an *authorised person*:
    - (i) of a *regulated mortgage contract* in the way set out in article 62(a);
    - (ii) of a *home reversion plan* in the way set out in article 63C(a);

- (iii) of a *home purchase plan* in the way set out in article 63G(a);
  - (iv) of a *regulated sale and rent back agreement* in the way set out in article 63K(a); or
- (b) anything done by the *unauthorised person* in connection with the administration:
- (i) of a *regulated mortgage contract* in the way set out in article 62(b);
  - (ii) of a *home reversion plan* in the way set out in article 63C(b);
  - (iii) of a *home purchase plan* in the way set out in article 63G(b);
  - (iv) of a *regulated sale and rent back agreement* in the way set out in article 63K(b).
- (6) Under article 30, arranging investment transactions in connection with lending on the security of *contracts of insurance* is excluded, from article 25(1) and (2) but only where a *person* is not carrying on *insurance distribution* or *reinsurance distribution*.
- (7) Under article 31, making arrangements for finance (in whatever form) to be supplied to a *person* by a third party is excluded from article 25(1) and (2) if the finance is given in exchange for an instrument acknowledging the debt. This mirrors the exclusion from *dealing in investments as principal* in similar circumstances (see ■ PERG 2.8.4G (3)).
- (8) Under article 32, arrangements the only purpose of which is to provide finance to enable *persons* to enter into investment transactions are excluded from article 25(2) only. There is no equivalent exemption from article 25(1). But arrangements for the provision of finance will only be caught by that provision if the arrangements actually bring about the transaction.
- (9) Under article 33, making arrangements under which *persons* will be introduced to third parties who will provide independent services (consisting of advice or the exercise of discretion in relation to certain investments) is excluded from articles 25(2), 25A(2), 25B(2), 25C(2) and 25E(2) only. The party to whom the introduction is made must be of a specified standing (including that of an *authorised person*). The exclusion does not apply where the arrangements relate to a *contract of insurance*.
- (10) Under article 33A, making arrangements for introducing *persons* to:
- (a) an *authorised person* who has *permission* to carry on certain *regulated activities* concerned with *home finance transactions*; or
  - (b) an *appointed representative* who is able to carry on any of those activities without breaching the *general prohibition*; or
  - (c) an *overseas person* who carries on any of those activities;
- is excluded from articles 25A(2), 25B(2), 25C(2), and 25E(2) subject to certain conditions related to the receipt of client money and the disclosure of certain information.
- (10A) (1) Under article 33B, the mere provision of certain information is excluded from article 25(1) and (2). The information must be:

- (a) about a potential policyholder, and provided to either a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*), an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or an *IDD reinsurance intermediary*, or
  - (b) about certain insurance products or providers, and provided to a potential policyholder.
- (2) This is on the condition that the provider of the information takes no step other than to provide this information to assist in the conclusion of a *contract of insurance*.
- (11) Under article 34, a *company* is not carrying on a *regulated activity* under article 25(1) or (2) of the *Regulated Activities Order* (Arranging deals in investments) by arranging for the issue of its own *shares* or *share warrants* and a *person* is not doing so by arranging for the issue of his own *debentures* or *alternative debentures* or *debenture warrants* or *alternative debenture warrants*.
- (12) Under article 35, a body carrying out international securities business of a specified type can apply to the Treasury for approval as an international securities self-regulating organisation (ISSRO). Arrangements made in order to carry out the functions of an ISSRO are excluded from article 25(1) and (2). The exclusion applies whether the arrangements are made by the ISSRO or by a *person* acting on its behalf.
- (13) The following exclusions from both article 25(1) and (2) (outlined in ■ PERG 2.9) apply in specified circumstances where a *person* makes arrangements:
- (a) while acting as trustee or personal representative (see ■ PERG 2.9.3 G);
  - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see ■ PERG 2.9.5 G);
  - (c) in connection with the sale of goods or supply of services (see ■ PERG 2.9.7 G);
  - (d) in connection with certain transactions by a *group* member or by a participator in a *joint enterprise* (see ■ PERG 2.9.9 G);
  - (e) in connection with the sale of a *body corporate* (see ■ PERG 2.9.11 G);
  - (f) in connection with an employee share scheme (see ■ PERG 2.9.13 G);
  - (g) as an *overseas person* (see ■ PERG 2.9.15 G);
  - (h) as an *incoming ECA provider* (see ■ PERG 2.9.18 G);
  - (i) as a provider of non-motor goods or services related to travel (see ■ PERG 2.9.19 G);
  - (j) involving the provision, on an incidental basis, of information to *policyholders* or potential *policyholders* about *contracts of insurance* (see ■ PERG 2.9.19 G);
  - (k) that involve a *contract of insurance* covering large risks situated outside the *EEA* (see ■ PERG 2.9.19 G);

- (l) for or with a view to transactions to be entered into by or on behalf of the participants of a business angel-led enterprise capital fund and that person is a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*;
- (m) in connection with or for the purposes of *managing a UK UCITS* or *managing an AIF* and the person has a *Part 4A permission to manage a UK UCITS* or *manage an AIF* (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs));
- (n) as a *local authority* in relation to certain *contracts of insurance* (see ■ PERG 2.9.23 G);
- (o) while acting as an insolvency practitioner (see ■ PERG 2.9.25 G).

The exclusions referred to in (a), (b), (g), (h), (m) and (n) also apply to *arranging* activities related to *home finance transactions* (in that context, the exclusion in (n) covers any activity which is carried on by a *local authority*). More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in ■ PERG 5 Guidance on insurance distribution activities).

- (14) Under article 36(2A), arrangements related to *regulated mortgage contracts* are excluded from article 25A in so far they constitute *CBTL business* (see ■ PERG 4.10B) carried on by a *CBTL firm*.

**2.8.6B** G The exclusions referred to in ■ PERG 2.8.6AG (4), ■ PERG 2.8.6AG(11) and ■ PERG 2.8.6AG (13)(b), (c), (d), (e) and (l) will not be available to *persons* who, when carrying on an *arranging* activity, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

**2.8.6BA** G The exclusion referred to in ■ PERG 2.8.6AG (4) will not be available to *persons* who, when carrying on an *arranging* activity, are *MCD firms* (see ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

**Credit broking**

**2.8.6C** G The following activities are excluded from the *regulated activity* of *credit broking*:

Introducing by individuals in the course of canvassing off trade premises

- (1) Activities carried on by an individual by *canvassing off trade premises*:

- (a) a *restricted-use credit agreement* to finance a transaction between the *lender* or a member of the *lender's* group and the *borrower*; or
- (b) a *regulated consumer hire agreement*;

are excluded from *credit broking*, as long as the individual does not carry on any other activity in ■ PERG 2.7.7EG (1) to ■ PERG 2.7.7EG (3).

Activities for which no fee is paid

- (2) The activities in ■ PERG 2.7.7EG (4) to ■ PERG 2.7.7EG (6) carried on by a *person* for which that *person* does not receive a fee are excluded from *credit broking*.



- (3) "Fee" includes pecuniary consideration or any other form of financial consideration for the purposes of this paragraph.

Transaction to which the broker is a party

- (3) Activities carried on by a *person* in relation to a *credit agreement* or a *consumer hire agreement* into which that person enters or is to enter as *lender* or *owner* are excluded from *credit broking*.

Activities in relation to certain agreements relating to land (article 36E of the *Regulated Activities Order*)

- (3A) Activities carried on with a view to an *individual* entering into an investment property loan (within the meaning of article 61A of the *Regulated Activities Order*) are excluded from *credit broking*.
- (3B) The *regulated activities of arranging (bringing about) regulated mortgage contracts, making arrangements with a view to regulated mortgage contracts, arranging (bringing about) a home purchase plan and making arrangements with a view to a home purchase plan* are excluded from *credit broking*.
- (3C) Also excluded from *credit broking*, when not excluded by (3A) or (3B), are activities which consist of effecting an introduction with a view to an *individual* entering into *regulated mortgage contract* or a *home purchase plan*, if the *person* to whom the introduction is made is an *authorised person* who has *permission* to:
- (a) enter into such an agreement as *lender* or home purchase provider; or
  - (b) make an introduction to an *authorised person* who has *permission* to enter into such an agreement as *lender* or home purchase provider.

(4) [deleted]

(5) [deleted]

Activities carried on by members of the legal profession

- (6) Activities carried on by:
- (a) a barrister or advocate acting in that capacity;
  - (b) a solicitor acting in the course of providing advocacy services or litigation services;
  - (c) a *person* acting in the course of providing advocacy services or litigation services who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;
- are excluded from *credit broking*. For these purposes:
- (d) "advocacy services" means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings; and

- (e) "litigation services" means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings.

Activities carried on by registered social landlords

(6A) Activities carried on by registered social landlords are excluded from *credit broking* where:

- (a) the registered social landlord does not receive a fee, and
- (b) the activities relate to the introduction of an individual who wishes to enter into a *credit agreement* to:
  - (i) a credit union;
  - (ii) a community benefit society;
  - (iii) a community interest company limited by guarantee;
  - (iv) a registered charity, or a subsidiary of a registered charity; or
  - (v) a subsidiary of a registered social landlord.

For these purposes:

- (c) "community benefit society" means a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a registered society within the meaning of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969;
- (d) "community interest company limited by guarantee" means a community interest company limited by guarantee within the meaning of section 26 of the Companies (Audit, Investigations and Community Enterprise) Act 2004;
- (e) "credit union" means a credit union within the meaning of the Credit Unions Act 1979 or the Credit Unions (Northern Ireland) Order 1985;
- (f) "registered charity" means:
  - (i) in England and Wales, a charity registered under section 30(1) of the Charities Act 2011;
  - (ii) in Scotland, a charity registered within the meaning of section 13(1) of the Charities and Trustee Investment (Scotland) Act 2005; and
  - (iii) in Northern Ireland, a charity registered under section 16(2) of the Charities Act (Northern Ireland) 2008;
- (g) "registered social landlord" means:
  - (i) in England, a private registered provider within the meaning of section 80(3) of the Housing and Regeneration Act 2008;
  - (ii) in Wales, a registered social landlord within the meaning of Part 1 of the Housing Act 1996;
  - (iii) in Scotland, a registered social landlord within the meaning of the Housing (Scotland) Act 2010; and

(iv) in Northern Ireland, a housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992;

(h) “subsidiary” means a subsidiary as defined by section 1159 of the Companies Act 2006; and

(i) “fee” includes pecuniary consideration or any other form of financial consideration.

Other exclusions

(7) The exclusions for *electronic commerce activities* by an *incoming ECA provider* (see ■ PERG 2.9.18 G), activities carried on by a *CBTL firm* with a view to an individual entering into a *CBTL credit agreement* (see ■ PERG 2.9.28G and ■ PERG 4.10B) and activities carried on by *local authorities* (see ■ PERG 2.9.23 G) also apply to *credit broking*.

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

2.8.6D

G

(1) An activity of a kind specified below is excluded from the *regulated activity of operating an electronic system in relation to lending*:

- (a) *dealing in investments as principal*;
- (b) *arranging (bringing about) deals in investments*;
- (c) *making arrangements with a view to transactions in investments*;
- (d) *managing investments*; and
- (e) *advising on investments (except P2P agreements)*.

(1A) The *regulated activity of advising on P2P agreements* does not apply where such advice is given in relation to a relevant article 36H agreement (defined in article 53(4) of the *Regulated Activities Order*) which has been facilitated by the *person* giving the advice in the course of carrying on an activity specified by article 36H of the *Regulated Activities Order* and is given by:

- (a) an *authorised person* with *permission* to carry on the *regulated activity of operating an electronic system in relation to lending*; or
- (b) an *appointed representative* in relation to the *regulated activity of operating an electronic system in relation to lending*; or
- (c) an *exempt person* in relation to the *regulated activity of operating an electronic system in relation to lending*; or
- (d) a *person* to whom, as a result of Part 20 of the *Act*, the *general prohibition* does not apply in relation to the *regulated activity of operating an electronic system in relation to lending*.

(2) [deleted]

**Managing investments**

2.8.7

G

The activities of *persons* appointed under a power of attorney are excluded under article 38 of the *Regulated Activities Order*, from the *regulated activity of managing investments*, if specified conditions are satisfied. The exclusion only applies where a *person* is not carrying on *insurance distribution* or *reinsurance distribution* and is subject to further limitations discussed below.

In addition, the following exclusions (outlined in ■ PERG 2.9) apply in specified circumstances where a *person* manages assets:

- (1) While acting as trustee or personal representative; or
- (2) in connection with the sale of goods or supply of services; or
- (3) that belong to a *group* member or participator in a *joint enterprise*; or
- (4) [deleted]
- (5) belonging to the participants of a business angel-led enterprise capital fund and that person is a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*; or
- (6) in connection with or for the purposes of *managing a UK UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UK UCITS* or *manage an AIF* (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs)); or
- (7) while acting as an insolvency practitioner (see ■ PERG 2.9.25 G).

The exclusion in article 38 of the *Regulated Activities Order* and the exclusions referred to in ■ PERG 2.8.7G (2), ■ PERG 2.8.7G (3) and ■ PERG 2.8.7G (5) will not be available to *persons* who, when carrying on the activity of *managing investments*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

**Assisting in the administration and performance of a contract of insurance**

**2.8.7A** [G] *Assisting in the administration and performance of a contract of insurance* is excluded under article 39B where it is carried on by a *person* acting in the capacity of:

- (1) an expert appraiser; or
- (2) a loss adjuster acting for a relevant insurer; or
- (3) a claims manager acting for a relevant insurer.

The term 'relevant insurer' is defined in article 39B(2).

**2.8.7B** [G] The following exclusions from *assisting in the administration and performance of a contract of insurance* also apply to a *person* in specified circumstances:

- (1) while acting as trustee or personal representative (see ■ PERG 2.9.3 G); or
- (2) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see ■ PERG 2.9.5 G); or
- (3) [deleted]

- (4) as a provider of non-motor goods or services related to travel (see ■ PERG 2.9.19 G); or
- (5) that involve the provision, on an incidental basis, of information to *policyholders* or potential *policyholders* about *contracts of insurance* (see ■ PERG 2.9.19G (2));
- (6) that involve a *contract of insurance* covering large risks situated outside the *United Kingdom* (see ■ PERG 2.9.19 G); or
- (7) where it is in connection with, or for the purposes of, *managing a UK UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UK UCITS* or *manage an AIF* (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs)); or
- (8) as a *local authority* in relation to certain *contracts of insurance* (see ■ PERG 2.9.23 G); or
- (9) while acting as an insolvency practitioner (see ■ PERG 2.9.25 G).

**Debt adjusting, debt counselling, debt collecting and debt administration**

2.8.7C

G

- (1) Activities carried on by:
  - (a) the *lender* or *owner* under the agreement;
  - (b) the *supplier* in relation to the *credit agreement*;
  - (c) a *credit broker* who has acquired the business of the *person* who was the *supplier* in relation to the *credit agreement*; or
  - (d) a *person* who would be a *credit broker* but for the exclusion in ■ PERG 2.8.6CG (1) where the agreement was made in consequence of an introduction (by that *person* or another *person*) to which that exclusion applies;

are excluded from the *regulated activities* of *debt adjusting*, *debt counselling* and *debt collecting*.
- (2) Steps taken under, or in relation to, an agreement by any of the *persons* in (1) are excluded from being *debt administration*.
- (3) Activities carried on by a relevant energy supplier in relation to debts due under a *green deal plan* associated with the supplier are excluded from being *debt adjusting*, *debt counselling*, *debt collecting* or *debt administration*. A *green deal plan* is associated with a supplier if the payments under the plan are to be made to the supplier.
- (4) There is also an exclusion from *debt adjusting*, *debt counselling*, *debt collecting* and *debt administration* for any activity that relates to a *regulated mortgage contract* or a *home purchase plan* to the extent that the activity constitutes a *regulated activity* (other than only *debt adjusting*, *debt counselling*, *debt collecting* and *debt administration*), where entering into that contract as *lender* constitutes *entering into a regulated mortgage contract* or entering into that *home purchase plan* as provider constitutes *entering into a home purchase plan*.
- (5) Activities carried on by:

- (a) a barrister or advocate acting in that capacity;
- (b) a solicitor acting in the course of providing advocacy services or litigation services;
- (c) a *person* acting in the course of providing advocacy services or litigation services who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from *debt adjusting, debt counselling, debt collecting and debt administration*. For these purposes:

- (d) "advocacy services" means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings; and
- (e) "litigation services" means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings.

(6) The exclusions relating to activities carried on by a *local authority* (see ■ PERG 2.9.23 G) or an insolvency practitioner (see ■ PERG 2.9.25 G) also apply to these *regulated activities*.

**2.8.7D** G The *regulated activity of advising on P2P agreements* does not apply in so far as the advice is given in the course of carrying on an activity of a kind specified by:

- (1) article 39F of the *Regulated Activities Order* (debt collecting); or
- (2) article 39G of the *Regulated Activities Order* (debt administration);

by a *person* carrying on that activity not in contravention of the *general prohibition*.

### Safeguarding and administering investments

**2.8.8** G The exclusions from the *regulated activity of safeguarding and administering investments* are as follows.

- (1) Safeguarding and administration activities carried on by one *person* are excluded if a specified third party undertakes a responsibility for the assets which is no less onerous than it would have been if he were doing the safeguarding and administration himself. The effect of this is that an *authorised person* with *permission* to carry on this *regulated activity* (or in certain circumstances an *exempt person*) can delegate all or part of the activities without the delegate needing to be *authorised* and without loss of protection to the owner of the assets.
- (2) Introductions to an *authorised person*, or to an *exempt person* acting within the scope of his exemption and in the course of a business, are excluded from that aspect of this *regulated activity* which consists of

*arranging safeguarding and administration of assets by another person* (see ■ PERG 2.7.9 G).

- (2A) Trustees are excluded from arranging for another *person* to safeguard and administer assets where that other *person* is either:
  - (a) an *authorised person* who has *permission to safeguard and administer investments*; or
  - (b) an *exempt person* whose exemption permits him to *safeguard and administer investments*; or
  - (c) a *person* to whom (1) applies.
- (3) Certain specified activities (such as currency conversion and document handling) are excluded from being the administration of investments. A *person* who safeguards and administers assets will not be carrying on *regulated activities* if these are the only administration activities in which he engages. This is because a *person* must be carrying on both the activity of safeguarding and that of administration, or be arranging for both to be carried on by another, before he requires *authorisation* (see ■ PERG 2.7.9 G).
- (3A) A *person* with a *Part 4A permission to act as trustee or depositary of an AIF or act as trustee or depositary of an UCITS* will not carry on the activity of *safeguarding and administering investments* in respect of their activities for an *AIF* or *UCITS* for which they are acting as *trustee or depositary*.
- (4) The following exclusions apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):
  - (a) while acting as trustee or personal representative (see ■ PERG 2.9.3 G);
  - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see ■ PERG 2.9.5 G);
  - (c) in connection with the sale of goods or supply of services (see ■ PERG 2.9.7 G);
  - (d) which belong to a *group member* or participator in a *joint enterprise* (see ■ PERG 2.9.9 G);
  - (e) in connection with an employee share scheme (see ■ PERG 2.9.13 G);
  - (f) [deleted]
  - (g) that are *contracts of insurance* and, in so doing, provides information to *policyholders* or potential *policyholders* on an incidental basis in the course of his carrying on a business or profession not otherwise consisting of *regulated activities* (see ■ PERG 2.9.19G (2));
  - (h) belonging to the participants in a business angel-led enterprise capital fund, but only where such safeguarding and administration is carried on by a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*;
  - (i) in connection with or for the purposes of *managing a UK UCITS* or *managing an AIF* and the *person* has a *Part 4A permission* to

*manage a UK UCITS or manage an AIF* (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs)); and

(j) while acting as an insolvency practitioner (see ■ PERG 2.9.25 G).

### Sending dematerialised instructions

2.8.9

G

Exclusions from the *regulated activity* of *sending dematerialised instructions* apply in relation to certain types of instructions sent in the operation of the system maintained under the Uncertificated Securities Regulations 2001 (SI 2001/3755). The various exclusions relate to the roles played by participating issuers, settlement *banks* and network providers (such as Internet service providers) and to instructions sent in connection with takeover offers (as long as specified conditions are met). In addition, the following exclusions (outlined in ■ PERG 2.9) apply in specified circumstances where a *person* sends dematerialised instructions:

- (1) while acting as trustee or personal representative (see ■ PERG 2.9.3 G);
- (2) on behalf of a *group* member (see ■ PERG 2.9.3 G);
- (3) [deleted]
- (4) where it is in connection with, or for the purposes of, *managing a UK UCITS or managing an AIF* and the *person* has a *Part 4A permission to manage a UK UCITS or manage an AIF* (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs));
- (5) while acting as an insolvency practitioner (see ■ PERG 2.9.25 G).

### Managing a UK UCITS, managing an AIF and establishing etc collective investment schemes

2.8.10

G

- (1) The exclusion for business angel-led capital funds (see ■ PERG 2.9.20 G) applies to the activities of *managing an AIF, managing a UK UCITS and establishing, operating and winding up a collective investment scheme*. There is a third exclusion for insolvency practitioners (see ■ PERG 2.9.25 G).
- (2) In addition, there are two further exclusions which apply to the activity of *establishing, operating or winding up a collective investment scheme*:
  - (a) the exclusion in ■ PERG 2.9.22 G (Managers of UCITS and AIFs); and
  - (b) a *person* (A) does not carry on the *regulated activity* of *establishing, operating or winding up a collective investment scheme* if:
    - (i) in relation to a *UCITS*, at the time A carries on the activity, the *UCITS* is managed by a *person* with a *Part 4A permission to manage a UK UCITS* or, no more than 30 days have passed since the *UCITS* was managed by a *person* with that *permission* (this 30-day period can be extended in certain circumstances, as set out in article 51ZG(2) of the *RAO*); or
    - (ii) in relation to an *AIF*, the exclusion described in ■ PERG 16.5, question 5.2(2) applies.



(3) In other cases, the key issue is whether or not what is being done relates to something that is a *collective investment scheme* (see ■ PERG 2.6.18 G) or an *AIF* (see ■ PERG 16.6).

**Establishing etc pension schemes**

**2.8.11** **G** Two exclusions apply to the range of activities specified as being regulated in relation to *stakeholder pension schemes* and *personal pension schemes*. The first relates to *firms* with a *Part 4A permission to manage an AIF or manage a UK UCITS* (see ■ PERG 2.9.22 G (Managers of UK UCITS and AIFs)). The second relates to insolvency practitioners (see ■ PERG 2.9.25 G).

**Advising on investments**

**2.8.12** **G** In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the *regulated activities* of:

- (1) *advising on investments;*
- (2) *advising on regulated mortgage contracts;*
- (3) *advising on a home reversion plan;*
- (4) *advising on a home purchase plan;*
- (5) *advising on a regulated sale and rent back agreement; and*
- (6) [text to follow]
- (7) *advising on conversion or transfer of pension benefits.*

See ■ PERG 7 (Periodical publications: news services and broadcasts: applications for certification) for further *guidance* on this exclusion.

**2.8.12A** **G** Advice given by an *unauthorised person* in relation to a *home finance transaction* or *advising on regulated credit agreements for the acquisition of land* in the circumstances referred to in ■ PERG 2.8.6AG (5)(a) or (b) (Arranging deals in investments and arranging a home finance transaction) is also excluded. In addition:

- (1) the following exclusions apply in specified circumstances where a *person is advising on investments, advising on regulated credit agreements for the acquisition of land or advising on a home finance transaction*:
  - (a) while acting as trustee or personal representative (see ■ PERG 2.9.3 G);
  - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see ■ PERG 2.9.5 G);
  - (c) [deleted]
  - (d) where it is in connection with, or for the purposes of, *managing a UK UCITS or managing an AIF* and the *person* has a *Part 4A*

*permission to manage a UK UCITS or manage an AIF (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs));*

- (e) *as a local authority (in the case of advising on investments, in relation to certain contracts of insurance) (see ■ PERG 2.9.23 G); and*
- (f) *as a CBTL firm in the course of CBTL business (see ■ PERG 4.10B) (in the case of advising on regulated credit agreements the purpose of which is to acquire land);*

(2) the following exclusions apply in specified circumstances where a person is *advising on investments*:

- (a) *in connection with the sale of goods or supply of services (see ■ PERG 2.9.7 G);*
- (b) *to a group member or participator in a joint enterprise (see ■ PERG 2.9.9 G);*
- (c) *in connection with the sale of a body corporate (see ■ PERG 2.9.11 G);*
- (d) *as an overseas person (see ■ PERG 2.9.15 G);*
- (e) *that are limited to certain covering risks to non-motor goods or related to travel (see );*
- (f) *that are covering large risks situated outside the (see )*
- (g) *to be made by or on behalf of the participants of a business angel-led enterprise capital fund, when the advice is given to the participants in that fund and that person is a as specified in article 72E(7) of the ;*
- (h) *while acting as an insolvency practitioner (see ■ PERG 2.9.25 G).*

More detailed *guidance* on certain of these exclusions is in ■ PERG 4 (Guidance on regulated activities connected with mortgages), ■ PERG 5 (Guidance on insurance distribution activities), ■ PERG 14.3 (Activities relating to home reversion plans), ■ PERG 14.4 (Activities relating to home purchase plans) and ■ PERG 14.4A (Activities relating to regulated sale and rent back agreements).

2.8.12B

G

The exclusions referred to in ■ PERG 2.8.12AG (1)(b) and (2)(a), (b), (c) and (g) will not be available to persons who, when carrying on the activity of *advising on investments* are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

**Lloyd's activities**

2.8.13

G

A *firm* with a *Part 4A permission to manage an AIF or manage a UK UCITS* is also excluded from carrying on a *regulated activity* if the person carries on that activity in connection with, or for the purposes of, *managing an AIF or managing a UK UCITS* (see ■ PERG 2.9.22 G). Otherwise the only exclusions that apply concern the *regulated activity of arranging deals* in its application to business carried on at Lloyd's.

**Entering into funeral plan contracts and carrying out funeral plan contracts as provider**

- 2.8.14** **G**
- (1) The definition of *funeral plan contract* excludes those contracts under which the *customer* and the *funeral plan provider* intend or expect that the funeral will be provided within one *month* of the contract being entered into.
  - (2) The exclusion relating to activities carried on by a *local authority* (see ■ PERG 2.9.23G) applies to the *funeral plan provision activities*.
  - (3) [deleted]
  - (4) The *funeral plan provision activities* are subject to the exclusion for *firms* with a *Part 4A permission to manage an AIF or manage a UK UCITS* for activities carried on in connection with, or for the purposes of, *managing a UK UCITS or managing an AIF*.

**Administering regulated mortgage contracts**

- 2.8.14A** **G**
- Exclusions from the *regulated activities* that involve *administering a home finance transaction* are provided where an *unauthorised person*:
- (1) arranges for administration by an *authorised person* who has *permission* for carrying on that *regulated activity*;
  - (2) carries out the administration for up to one month after an arrangement of the kind mentioned in (1) comes to an end; or
  - (3) carries out the administration under an agreement with an *authorised person* who has *permission* for carrying on that *regulated activity*.

These exclusions are subject to certain conditions and are explained in greater detail in ■ PERG 4.8 (Administering a regulated mortgage contract), ■ PERG 14.3, ■ PERG 14.4 and ■ PERG 14.4A (Guidance on home reversion, home purchase and regulated sale and rent back agreement activities).

- 2.8.14B** **G**
- The following exclusions apply in specified circumstances where a *person* is *administering a home finance transaction*:
- (1) while acting as trustee or personal representative (see ■ PERG 2.9.3 G);
  - (2) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see ■ PERG 2.9.5 G);
  - (3) [deleted]
  - (4) in connection with, or for the purposes of, *managing a UK UCITS or managing an AIF* and the *person* has a *Part 4A permission to manage a UK UCITS or manage an AIF* (see ■ PERG 2.9.22 G (Managers of UCITS and AIFs)); and
  - (5) if the *person* is a *local authority* (see ■ PERG 2.9.23 G);
  - (6) in the course of carrying on *CBTL business* as a *CBTL firm* (see ■ PERG 4.10B).

**Regulated credit agreements**

**2.8.14ZA** **G** A person who is not an *authorised person* and exercises, or has the right to exercise, the *lender's* rights and duties under a *regulated credit agreement* does not require *authorisation* to do so where he:

- (1) arranges for another *person* to do so and the other person is an *authorised person* with *permission* to carry on that *regulated activity*;
- (2) does so for up to one month after an arrangement of the kind in (1) comes to an end; or
- (3) does so under an agreement with an *authorised person* who has *permission* to carry on that *regulated activity*.

**2.8.14ZB** **G** [deleted]

**2.8.14ZC** **G** (1) [deleted]

(2) There is also an exclusion from *entering into a regulated credit agreement as lender* and exercising, or having the right to exercise, the *lender's* rights and duties under a regulated credit agreement for any activity carried on by a *local authority* in so far as the *credit agreement* is of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive (see ■ PERG 2.9.23 G).

**Regulated consumer hire agreements**

**2.8.14ZD** **G** (1) The exclusion for an activity carried on by a *local authority* (see ■ PERG 2.9.23 G) also applies to the *regulated activities* of *entering into a regulated consumer hire agreement as owner* and exercising, or to having the right to exercise, the *owner's* rights and duties under a regulated consumer hire agreement.

**Providing credit information services or credit references**

**2.8.14C** **G** (1) The exclusions relating to activities carried on by members of the legal profession (see ■ PERG 2.8.6CG (6)) applies to *providing credit information services* and *providing credit references*.

(2) The exclusions for activities carried on by a *local authority* (see ■ PERG 2.9.23 G) and insolvency practitioners (see ■ PERG 2.9.25 G) also apply to *providing credit information services*.

**Regulated claims management activity**

**2.8.14D** **G** The *Regulated Activities Order* excludes a number of activities from *regulated claims management activity*. The exclusions include:

- (1) activity carried on by or through a legal practitioner, or by a natural person who carries on that activity at the direction of, and under the supervision of, a legal practitioner, provided that the legal practitioner carries on that activity in the ordinary course of legal practice pursuant to the professional rules to which that legal practitioner is subject (article 89N);

- (2) activity carried on by a charity or *not-for-profit body* (article 89O);
- (3) exclusion from *seeking out, referrals and identification of claims or potential claims* for providers of referrals who meet all the following conditions (article 89V):
  - (a) the *person* who refers those details (“the introducer”) carries on no other *regulated claims management activity*;
  - (b) the activity is incidental to the introducer’s main business;
  - (c) the details are only referred to *authorised persons, legal practitioners, or a firm, organisation, or body corporate* that provides the service through legal practitioners;
  - (d) of the claims that the introducer refers to such *persons*, that introducer is paid, in money or money’s worth, for no more than 25 claims per calendar quarter;
  - (e) the introducer, in obtaining and referring those details, has complied with, the Privacy and Electronic Communications (EC Directive) Regulations 2003, *data protection legislation* and the *Unfair Trading Regulations* (but this condition does not apply in the case of a referral to a legal practitioner, or to a firm, *organisation, or body corporate* that carries on the activity through legal practitioners); and
- (4) any *regulated activity* of the kind specified in articles 21, 25, 39A, 53 or 64 of the *Regulated Activities Order* carried on by a *person* who has *permission* to carry on that activity in relation to a *contract of insurance* (article 89U).

**Agreeing**

2.8.15

G

A *person* who agrees to carry on certain other *regulated activities* (which is itself a *regulated activity* see ■ PERG 2.7.21 G) does not require *authorisation* where the *person* concerned is an *overseas person* and the agreement is reached as a result of a legitimate approach (see ■ PERG 2.9.12 G). For this exclusion to apply, the agreement must be one to arrange deals, *manage investments, assist in the administration and performance of a contract of insurance, safeguard and administer investments or send dematerialised instructions*.

2.8.16

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To the extent that an exclusion applies in relation to a *regulated activity*, then 'agreeing' to carry on an activity falling within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order*.

**2.9 Regulated activities: exclusions applicable in certain circumstances**

**2.9.1** **G** The various exclusions outlined below deal with a range of different circumstances.

(1) Within each set of circumstances, the *Regulated Activities Order*, in Chapter XVII of Part II of the Order, makes separate provision for each *regulated activity* affected. This is necessary because each exclusion has to be tailored to reflect the different nature of the *regulated activity* involved and the different language required (for example, some activities involve entering directly into transactions while others relate to the provision of services).

(2) [deleted]

**2.9.2** **G** The exclusions grouped together in the *Regulated Activities Order* are described below in this chapter in general terms. The exact terms of each exclusion will need to be considered by any *person* who is considering whether they need *authorisation*. Each description is accompanied by an indication of which *regulated activities* are affected.

**Trustees, nominees or personal representatives**.....

**2.9.3** **G** This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

(1) *dealing in investments as principal;*

(2) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*

(2A) *arranging a home finance transaction;*

(3) *managing investments;*

(4) *assisting in the administration and performance of a contract of insurance;*

(5) *safeguarding and administering investments;*

(6) *sending dematerialised instructions;*

(7) *advising on investments, advising on regulated credit agreements for the acquisition of land or advising on a home finance transaction;*

- (8) *entering into a home finance transaction; and*
- (9) *administering a home finance transaction.*

The exclusion is, however, disapplied where a *person* is carrying on *insurance distribution* or *reinsurance distribution*, or the *person* would be an *MCD firm*. This is due to article 4(4A) and 4(4B) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution activities) and *guidance* on activities and exclusions relevant to the *MCD* is in ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive).

2.9.4

G

A *person* carrying on certain *regulated activities* does not require *authorisation* in specified circumstances if he is acting in a representative capacity. The representative capacities covered by the exclusions depend on the *regulated activity* concerned but, in most cases, the focus is on *persons* who are acting as trustee or personal representative. In broad terms, the exclusions apply to specified transactions, or activities, that are part of the discharge of his general obligations by the trustee or representative when he is acting as such. Many of the exclusions require that the trustee or representative must not hold himself out as providing services consisting of the *regulated activity* in question. In addition, he must not receive remuneration that is additional to any he receives for acting in the representative capacity (although a *person* is not to be regarded as receiving additional remuneration merely because his remuneration as trustee or representative is calculated by reference to time spent). The exclusions for *entering into a home finance transaction* and for *administering a home finance transaction*, however, work on a different basis. They apply where the activity relates to a *home finance transaction* under which the borrower, *reversion occupier*, *home purchaser* or *SRB agreement seller* as the case may be is a beneficiary.

**Professions or business not involving regulated activities**.....

2.9.5

G

This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments, and making arrangements with a view to transactions in investments;*
- (2A) *arranging a home finance transaction;*
- (3) *assisting in the administration and performance of a contract of insurance;*
- (4) *safeguarding and administering investments; and*
- (5) *advising on investments, advising on regulated credit agreements for the acquisition of land or advising on a home finance transaction.*

The exclusion is, however, disapplied where a *person* is carrying on *insurance distribution* or *reinsurance distribution*. This is due to article 4(4A) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution

activities). The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MCD firms* (see ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

- 2.9.6 G The exclusions apply where the *regulated activity* is carried out in the course of a profession or business which does not otherwise consist of the carrying on of *regulated activities* in the *United Kingdom*. However, activities are only excluded to the extent that they may reasonably be regarded as a necessary part of the other services provided in the course of the profession or business. The exclusion does not apply if separate remuneration is received in respect of any *regulated activity* that is carried on. (See separate *guidance for authorised professional firms* in *PROF*.)

**Sale of goods and supply of services**

- 2.9.7 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (4) *managing investments;*
- (5) *safeguarding and administering investments;* and
- (6) *advising on investments.*

- 2.9.8 G Broadly speaking, the exclusions focus on cases where the main business of a *person* is to sell goods or supply services but where certain activities may have to be carried on for the purposes of that business which would otherwise be *regulated activities*. The exclusions are not available where the customer to whom goods are sold or services are supplied is an individual. They are also not available where what is at issue is a transaction entered into, or service provided, in relation to rights under a *contract of insurance* or *units* in a *collective investment scheme* (or rights to, or interests in, either). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

**Group and joint enterprises**

- 2.9.9 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*



- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (4) *managing investments;*
- (5) *safeguarding and administering investments;*
- (6) *sending dematerialised instructions; and*
- (7) *advising on investments.*

**2.9.10** G These exclusions apply to intra-group dealings and activities and to dealings or activities involving participators in a joint enterprise which take place for the purposes of, or in connection with, the enterprise. The general principle here is that, as long as activities that would otherwise be *regulated activities* take place wholly within a group of companies, then there is no need for *authorisation*. The same principle applies to dealings or activities that take place wholly within a *joint enterprise* entered into for commercial purposes related to the participators' unregulated business. The exclusions in ■ PERG 2.9.9G (2), ■ (3), ■ (4) and ■ (7) are disapplied where they concern a *contract of insurance*. *Guidance* on exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution activities). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

**Sale of body corporate**  
.....

**2.9.11** G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments; and*
- (4) *advising on investments.*

**2.9.12** G The exclusions apply in relation to transactions to *buy or sell shares* in a *body corporate* where, in broad terms:

- (1) the transaction involves the acquisition or disposal of a least 50 per cent of the voting shares in the *body corporate* and is, or is to be, between certain specified kinds of *person*; or
- (2) the object of the transaction may otherwise reasonably be regarded as being the acquisition of day-to-day control of the affairs of the *body corporate*.

These exclusions also apply to transactions that are entered into for the purposes of the above transactions (such as transactions involving the offer of *securities* in the offeror as consideration or part consideration for the sale of the *shares* in the *body corporate*). These exclusions do not have effect in relation to shares in an *open-ended investment company*. The exclusions in ■ PERG 2.9.11G (2), ■ (3) and ■ (4) are disapplied where they concern a *contract of insurance*. Guidance on exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution activities). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G to ■ PERG 2.5.5 G (Investment services and activities)).

2.9.12A G [deleted]

**Employee share schemes**

2.9.13 G This group of exclusions applies, in specified circumstance, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (4) *safeguarding and administering investments.*

2.9.14 G In broad terms, the exclusions apply to activities which further an employee share scheme, or are carried on in operation of such a scheme. They apply to activities carried on by the *company* whose securities or debentures (which are given an extended meaning for this exclusion) are the subject of the scheme. They also apply to activities of any *company* in the same *group* or of any trustee who holds certain types of securities or debentures under the scheme. They do not apply to the activities of a *person* who is neither such a *company* nor such a trustee (for example, a third party administration service provider).

**Overseas persons**

2.9.15 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (3A) *arranging a home finance transaction;*
- (3B) *operating a multilateral trading facility;*

- (3C) *operating an organised trading facility;*
- (4) *advising on investments;*
- (5) *entering into a home finance transaction;*
- (6) *administering a home finance transaction; and*
- (7) *agreeing to carry on the regulated activities of managing investments, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the performance and administration of a contract of insurance, safeguarding and administering investments or sending dematerialised instructions.*

**2.9.16** **G** An overseas person is defined as a person who carries on what would be regulated activities (including any activity that would otherwise be excluded from being a regulated activity by virtue of the exclusions for overseas persons referred to in ■ PERG 2.9.15 G) but who does not do so, or offer to do so, from a permanent place of business maintained by him in the United Kingdom. Where a person does not have a permanent place of business in the United Kingdom, he will not, in any event, need to rely on these exclusions unless what he does is regarded as carried on in the United Kingdom (see ■ PERG 2.4). Nor will a person be able to rely on the exclusions in ■ PERG 2.9.15 G (1) to (4) if when carrying on the relevant regulated activity it is a MiFID investment firm and its Home State is the United Kingdom.

**2.9.17** **G** The exclusions are available, for regulated activities other than those that relate to home finance transactions in the two broad cases set out below. For some of these regulated activities, the exclusions apply in each case. In others, they apply in only one.

- (1) The first case is where the nature of the regulated activity requires the direct involvement of another person and that person is authorised or exempt (and acting within the scope of his exemption). For example, this might occur where the person with whom an overseas person deals is an authorised person or where the arrangements he makes are for transactions to be entered into by such a person.
- (2) The second case is where a particular regulated activity is carried on as a result of what is termed a 'legitimate approach'. An approach to an overseas person that has not been solicited by him in any way, or has been solicited in a way that does not contravene the restrictions on financial promotion in section 21 of the Act, is a legitimate approach. An approach that is made by him in a way that does not contravene section 21 of the Act is also a legitimate approach. In such circumstances, the overseas person can, without requiring authorisation, enter into deals with (or on behalf of) a person in the United Kingdom, give advice in the United Kingdom or enter into agreements in the United Kingdom to carry on certain regulated activities. The exemptions to the financial promotion restrictions made by the Treasury under section 21 of the Act (Restrictions on financial promotion) will be relevant to the question of whether those restrictions have been contravened (see separate guidance on

*financial promotion* in ■ PERG 8 (Financial promotion and related activities)).

**2.9.17A** **G** The exclusions for *overseas persons* who carry on certain *regulated activities* related to *home finance transactions* work in a different way. They depend on the residency of the borrower or borrowers, the *reversion occupier* or *reversion occupiers*, the *home purchaser* or *home purchasers* or the *SRB agreement seller* or *SRB agreement sellers* as the case may be. In addition, some of the exclusions also depend on the residency of the reversion provider or *SRB agreement provider*. Guidance on these exclusions is in ■ PERG 4.11 (Link between activities and the United Kingdom) and ■ PERG 14.6 (Guidance on home reversion, home purchase and regulated sale and rent back agreement activities).

**2.9.17B** **G**

- (1) The exclusion for *overseas persons* described in ■ PERG 2.9.17G does not apply to an *investment firm* or *credit institution* set up in a third country that has been found equivalent under article 46 or 47 of *MiFIR*, as described in more detail in the rest of this paragraph.
- (2) Article 46 of *MiFIR* has a mechanism under which the *FCA* may register a *third country investment firm* or a third country *credit institution* without a *branch* in the *United Kingdom*. Registration allows the *third country investment firm* or third country *credit institution* to provide certain services to certain customers within the *United Kingdom* without the need for further authorisation by the *United Kingdom*.
- (3) (2) only applies where the Treasury has made a formal assessment that the legal and supervisory arrangements of that third country ensure that *investment firms* and *credit institutions* authorised in that third country comply with legally binding prudential and conduct of business requirements which have equivalent effect to the *UK* provisions which implemented *MiFID*, *MiFIR* and *CRD*.
- (4) [deleted]
- (5) The exclusion for *overseas persons* described in ■ PERG 2.9.17G does not apply to *investment services* or *activities* provided by an *investment firm* or *credit institution* in (1) if:
  - (a) it is registered as described in (2); or
  - (b) [deleted]
  - (c) it provides the *investment services* or *activities* at the initiative of certain *United Kingdom*-based clients.
- (6) However, (5) only applies from three years after the equivalence decision in (3). For the first three years following the equivalence decision, the exclusion for *overseas persons* described in ■ PERG 2.9.17G continues to apply in the normal way.
- (7) The purpose of the three year period is to implement article 54 of *MiFIR* (transitional provisions) under which the *Act* will continue to apply for three years after the equivalence decision in (3).

- (8) There are currently no special provisions in the *Act* or related legislation such as the *Regulated Activities Order* dealing expressly and specifically with the treatment of *third country investment firms* and *third country credit institutions* under the *general prohibition* after the overseas persons exclusion is switched off at the end of the three year period in (6).

2.9.18 **G** [deleted]

**Insurance distribution activities**

2.9.19 **G** The exclusions in this group apply to certain *regulated activities* involving certain *contracts of insurance*. The exclusions and the *regulated activities* to which they apply are as follows.

- (1) The first exclusion of this kind relates to certain activities carried on by a provider of non-motor goods or services, or services related to travel in connection with *general insurance contracts* that satisfy a number of conditions.
- (a) The contracts must:
- (i) have a premium of:
    - (A) 600 euro or less (calculated on a pro rata annual basis); or
    - (B) 200 euro or less, where the *contracts of insurance* are complementary to a service being provided by the provider and the duration of that service is equal to or less than three months,
 or equivalent amounts of sterling or another currency;
  - (ii) cover:
    - (A) breakdown or loss of or damage to non-motor goods supplied by the provider;
    - (B) loss of or damage to baggage and other risks linked to certain travel services booked with the provider; or
    - (C) the non-use of services supplied by the provider.
- (b) The travel services must be the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation, or must relate to attendance at an event organised or managed by the provider.
- (c) Where the travel services relate to an event, the exclusion does not apply if the party seeking insurance is an individual (acting in their private capacity) or a small business. A small business is a sole trader, *body corporate*, *partnership* or unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where it is a member of a group, the combined turnover of the group is used). Turnover means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on those amounts.

- (d) There must not be any liability risk cover other than (in relation to travel risk) where this is ancillary to the main risk covered in a travel policy.
- (e) The insurance must be complementary to the goods or services being supplied by the provider in the course of the provider's carrying on a business or profession not otherwise consisting of *regulated activities*.
- (f) This exclusion applies where the *regulated activities* concerned are:
  - (i) *dealing in investments as agent;*
  - (ii) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
  - (iii) *assisting in the administration and performance of a contract of insurance; and*
  - (iv) *advising on investments.*

(2) The second exclusion applies where information is provided to a *policyholder* by a *person* on an incidental basis in the course of that *person's* profession or business that does not otherwise consist of *regulated activities*. This exclusion applies where the *regulated activities* are:

- (a) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (b) *managing investments;*
- (c) *assisting in the administration and performance of a contract of insurance; and*
- (d) *safeguarding and administering investments;*

(3) The third exclusion applies to certain *general insurance contracts* covering large risks where the risk is situated outside the *United Kingdom*. This exclusion applies where the *regulated activities* concerned are:

- (a) *dealing in investments as agent;*
- (b) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (c) *assisting in the administration and performance of a contract of insurance; and*
- (d) *advising on investments.*

The fourth exclusion applies where specified information is provided to a potential *policyholder*, or to a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*), an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or an *IDD reinsurance intermediary*, by a *person* who does not take any other step to assist in the conclusion of a *contract of insurance* (see ■ PERG 2.8.6A(10A)G and ■ PERG 5.6.4B-EG).

*Guidance* on these and other exclusions relevant to *insurance distribution activities* is in ■ PERG 5 (Guidance on insurance distribution activities).

**Business angel-led enterprise capital funds**

**2.9.20** **G** This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
- (3) *managing investments;*
- (4) *safeguarding and administering investments;*
- (4A) *managing a UK UCITS;*
- (4B) *managing an AIF;*
- (5) *establishing, operating or winding up a collective investment scheme;* and
- (6) *advising on investments.*

**2.9.21** **G** The exclusions apply, in general terms:

- (1) to a *body corporate* with limited liability:
  - (a) that is formed in accordance with the law of, and having its registered office, central administration or principal place of business in, the *United Kingdom*;
  - (b) that operates a business angel-led enterprise capital fund, being a fund that invests only in *securities* of unlisted *companies* and whose participants are made up solely of *persons* of a specified kind; and
  - (c) whose members are limited to *persons* of a specified kind.

**2.9.21A** **G** The exclusions for business angel-led enterprise capital funds are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ■ PERG 2.5.4 G (Investment services and activities)).

**Managers of UCITS and AIFs**

**2.9.22** **G** This exclusion applies to a *person* with a *Part 4A permission* to carry on the activity of *managing an AIF* or *managing a UK UCITS*. The exclusion means that activities carried on by the *person* in connection with, or for the purposes of, *managing a UK UCITS* or (as the case may be) *managing an AIF*, are excluded from being *regulated activities* (except the activities of *managing an AIF* and *managing a UK UCITS* themselves). In the *FCA's* view this is particularly likely to affect the following *regulated activities*:

- (1) *dealing in investments as agent;*
- (2) *dealing in investments as principal;*

- (3) *arranging (bringing about) deals in investments;*
- (4) *managing investments;*
- (5) *arranging safeguarding and administration of assets;*
- (6) *advising on investments (except pension transfers and pension opt-outs); and*
- (7) *agreeing to carry on specified kinds of activity.*

**Local authorities**

2.9.23

**G**

This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *accepting deposits;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments;*
- (4) *making arrangements with a view to transactions in investments;*
- (5) *arranging (bringing about) regulated mortgage contracts;*
- (6) *making arrangements with a view to regulated mortgage contracts;*
- (7) *arranging (bringing about) a home reversion plan;*
- (8) *making arrangements with a view to a home reversion plan;*
- (9) *arranging (bringing about) a home purchase plan;*
- (10) *making arrangements with a view to a home purchase plan;*
- (11) *arranging (bringing about) a regulated sale and rent back agreement;*
- (12) *making arrangements with a view to a regulated sale and rent back agreement;*
- (13) *credit broking;*
- (14) *assisting in the administration and performance of a contract of insurance;*
- (15) *debt adjusting;*
- (16) *debt counselling;*
- (17) *debt collecting;*
- (18) *debt administration;*
- (19) *advising on investments;*
- (20) *advising on regulated mortgage contracts;*



- (20A) *advising on regulated credit agreements for the acquisition of land;*
- (21) *advising on a home reversion plan;*
- (22) *advising on a home purchase plan;*
- (23) *advising on a regulated sale and rent back agreement;*
- (23A) *entering as provider into a funeral plan contract;*
- (23B) *carrying out a funeral plan contract as provider;*
- (24) *entering into a regulated credit agreement as lender;*
- (25) *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement;*
- (26) *entering into a regulated consumer hire agreement as owner;*
- (27) *exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement;*
- (28) *entering into a regulated mortgage contract;*
- (29) *administering a regulated mortgage contract;*
- (30) *entering into a home reversion plan;*
- (31) *administering a home reversion plan;*
- (32) *entering into a home purchase plan;*
- (33) *administering a home purchase plan;*
- (34) *entering into a regulated sale and rent back agreement;*
- (35) *administering a regulated sale and rent back agreement;*
- (36) *providing credit information services.*

**2.9.24**

**G**

- (1) Subject to (2), (3) and (4), the exclusions apply, in relation to any activity carried on by a *local authority*.
- (2) The exclusion relating to the *regulated activities* of:
  - (a) *dealing in investments as agents;*
  - (b) *arranging (bringing about) deals in investments;*
  - (c) *making arrangements with a view to transactions in investments;*
  - (d) *assisting in the administration and performance of a contract of insurance; and*
  - (e) *advising on investments;*applies to any activity carried on by a *local authority* which relates to a *contract of insurance* which is not a *life policy*.

(3) In essence, the *Regulated Activities Order* exempts activity in relation to *credit agreements* carried on by a *local authority* to the extent permitted by the *Consumer Credit Directive* and the *MCD*. The exclusions relating to *entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* therefore apply only in relation to an agreement within (3A) or (4).

(3A) A *credit agreement* is within this paragraph if:

- (a) it was entered into before 21 March 2016; or
- (b) it is entered into on or after that date for a purpose other than acquiring or retaining property rights in *land* or in an existing or projected building;

but a *credit agreement* is only within this paragraph in so far as the agreement is of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive (see (3B)).

(3B) In summary, the kinds of agreements to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive include *credit agreements*:

- (c) involving a total amount of credit less than £160 or more than £60,260, except where the agreement is a *residential renovation agreement*;
- (d) which are *hire-purchase agreements*, where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement (such an obligation is deemed to exist if it is so decided unilaterally by the *lender*);
- (e) in the form of an *overdraft facility* and where the *credit* has to be repaid within one month;
- (f) where the *credit* is granted free of interest and without any other charges;
- (g) under which the *credit* has to be repaid within three months and only insignificant charges are payable;
- (h) where the *credit* is granted by an employer to his employees as a secondary activity free of interest or at an *APR* lower than those prevailing on the market and which are not offered to the public generally;
- (i) which are the outcome of a settlement reached in court or before another statutory authority;
- (j) which relate to the deferred payment, free of charge, of an existing debt;
- (k) for pawnbroking where the liability of the consumer is strictly limited to the pledged item; and
- (l) which relate to loans granted to a restricted group (not the public generally) under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest, or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.

- (4) A *credit agreement* is within this paragraph if it:
  - (a) is entered into on or after 21 March 2016; and
  - (b) meets one of the following conditions:
    - (i) it is of a kind to which the *MCD* does not apply by virtue of article 3(2) of the *MCD* (in other words, it is an agreement listed in ■ PERG 4.10A.5G(1) to (6); or it is a *credit agreement* which relates to the deferred payment, free of charge, of an existing debt and is not secured by a *legal or equitable mortgage*); or
    - (ii) it is a *bridging loan* described in ■ PERG 4.13.6 G; or
    - (iii) it is a restricted public loan described in ■ PERG 4.13.7 G.

**Insolvency practitioners**

2.9.25

G

This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments;*
- (4) *making arrangements with a view to transactions in investments;*
- (5) *operating a multilateral trading facility;*
- (5A) *operating an organised trading facility;*
- (6) *managing investments;*
- (7) *assisting in the administration and performance of a contract of insurance;*
- (8) *debt adjusting;*
- (9) *debt counselling;*
- (10) *debt collecting;*
- (11) *debt administration;*
- (12) *safeguarding and administering investments;*
- (13) *sending dematerialised instructions;*
- (14) *managing a UK UCITS;*
- (15) *acting as trustee or depositary of a UK UCITS;*
- (16) *managing an AIF;*
- (17) *acting as a trustee or depositary of an AIF;*
- (18) *establishing, operating or winding up a collective investment scheme;*

- (19) *establishing, operating or winding up a stakeholder pension scheme;*
- (20) *establishing, operating or winding up a personal pension scheme;*
- (21) *advising on investments;*
- (22) *providing credit information services;*

**2.9.26** G These exclusions apply to a *person* acting as an insolvency practitioner. The term "insolvency practitioner" is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989. The exclusions relating to *debt adjusting*, *debt counselling* and *providing credit information services* also apply to any activity carried on by a *person* acting in reasonable contemplation of that *person's* appointment as an insolvency practitioner. In relation to *debt counselling*, insolvency practitioners may find ■ PERG 17.7 helpful, including examples 12, 13 and 13A.

**2.9.27** G A *person* acting as an insolvency practitioner or in reasonable contemplation of that *person's* appointment as an insolvency practitioner include anything done by the *person's* firm in connection with that *person* so acting. For these purposes, the reference to "the *person's* firm" means the *person's* employer, the *partnership* in which he is a partner or the *limited liability partnership* of which he is a member, as the case may be.

**Registered consumer buy-to-let credit firms**

**2.9.28** G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *arranging (bringing about) regulated mortgage contracts;*
- (2) *making arrangements with a view to regulated mortgage contracts;*
- (3) *credit broking;*
- (4) *advising on regulated mortgage contracts;*
- (5) *advising on regulated credit agreements for the acquisition of land;*
- (6) *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement;*
- (7) *entering into a regulated credit agreement as a lender;*
- (8) *entering into a regulated mortgage contract;*
- (9) *administering a regulated mortgage contract.*

**2.9.29** G These exclusions apply to any *CBTL business* carried on by a *CBTL firm* (see ■ PERG 4.10B).

**Persons seeking to use the exemption under Article 2.1(j) of the Markets in Financial Instruments Directive**

2.9.30

G

This exclusion applies to the activities of:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent; and*
- (3) *arranging (bringing about) deals in investments.*

It is available to a *person* who is not an *authorised person* and whose activity is one to which article 2(1)(j) of *MiFID* applies (see ■ PERG 13 Q44). Where the *person* meets the conditions of the exemption relating to article 2(1)(j) but during a calendar year is not able to perform the market threshold test in article 2 of *MiFID RTS 20* because the relevant data is not available from an *EU* institution or regulator, its activities are excluded from the activities in (1) to (3) above. Similarly, if the *person* has made an application for a *Part 4A permission* in relation to any of the activities in (1) to (3) above, to which article 2(1)(j) of *MiFID* applies, the exclusion applies for as long as that application has not been determined or withdrawn. In each case, a *person* seeking to rely on the article 2(1)(j) exemption must provide notice to the *FCA* in accordance with regulation 47 of the *MiFI Regulations*.

**2.10 Persons carrying on regulated activities who do not need authorisation**

**2.10.1** **G** There are various provisions that disapply the *general prohibition* from specific *persons* in relation to the carrying on by them of particular *regulated activities*. There is, however, no general provision for *persons* to apply for an exemption.

**2.10.2** **G** *Persons* may be exempted from the *general prohibition* in relation to one or more particular *regulated activities*. The extent of any exemption may also be limited to specified circumstances (such as where another *person* who is *authorised* and has relevant *permission* has accepted responsibility for the *regulated activities* in question) or subject to specified conditions (such as a requirement that the activity is not carried on for pecuniary gain).

**2.10.3** **G** The *Act* provides that *appointed representatives* (see ■ PERG 2.10.5 G), *recognised investment exchanges* and *recognised clearing houses* (see ■ PERG 2.10.6 G) and certain other *persons* exempt under miscellaneous provisions (see ■ PERG 2.10.7 G) are *exempt persons* (although in certain circumstances, an *appointed representative* may not be an *exempt person*, but may have a *limited permission* to carry on certain *credit-related regulated activities*). Members of Lloyds and members of the professions are not '*exempt persons*' as such, but the *general prohibition* in section 19 of the *Act* only applies to them in certain circumstances. The distinction is significant in relation to various provisions (such as those in the *Regulated Activities Order*) that apply only to transactions and other activities that involve *exempt persons*.

**2.10.4** **G** *Appointed representatives* and the *persons* exempt under miscellaneous provisions cannot be exempt in relation to some *regulated activities* and *authorised* in relation to others. If a *person* is already *authorised*, and proposes to carry on additional *regulated activities* in respect of which he would otherwise be exempt as an *appointed representative* or under miscellaneous provisions, he must seek an extension to his existing *permission* to cover those additional activities. A *person* in either of these categories who would otherwise be exempt in relation to particular activities will, if he becomes *authorised*, no longer be able to rely on the exemption.

**Appointed representatives**

**2.10.5** **G** With one exception, a *person* is exempt if they are an *appointed representative* of an *authorised person*. In some circumstances, however, a

person may be an *appointed representative* and not be exempt, if the person has a *limited permission* for certain *credit-related regulated activities*. See ■ SUP 12 (Appointed representatives). But where an *appointed representative* carries on *insurance distribution* or *reinsurance distribution*, that person will not be exempt unless they are included on the register kept by the FCA under article 93 of the *Regulated Activities Order* (Duty to maintain a record of unauthorised persons carrying on insurance distribution activities) (see ■ PERG 5.13 (Appointed representatives)).

**Recognised Investment Exchanges, Recognised Clearing Houses and Recognised Auction Platforms**

2.10.6 **G** Investment exchanges and *clearing houses* can apply for recognition under Part XVIII of the Act (Recognised investment exchanges and clearing houses). *Auction platforms* can apply for recognition under the *RAP Regulations*. See REC.

**Particular exempt persons**

2.10.7 **G** Various named *persons* are exempted by Order made by the Treasury under section 38 of the Act from the need to obtain *authorisation* (the *Exemption Order*). Some of the exemptions are subject to restrictions as to the circumstances in which they apply. For example, a *person* is only exempt when acting in a particular capacity or for particular purposes.

2.10.8 **G** The exemptions apply so as to confer exemption on *persons* from the *general prohibition* in respect of four distinct categories of *regulated activities*.

- (1) The first category is carrying on any *regulated activity*, apart from *effecting or carrying out contracts of insurance* (or agreeing to do so). *Exempt persons* here are generally supranational bodies of which the *United Kingdom* or another *EEA State* is a member.
- (2) The second category is the *regulated activity* of *accepting deposits*. *Exempt persons* here include municipal banks, local authorities, charities and *industrial and provident societies*.
- (3) The third category is carrying on any of those *regulated activities* relating to *securities* or *relevant investments* or to 'any property' (or agreeing to do so). *Exempt persons* here include *persons* whose activities are subject to a certain degree of control or oversight by the Government.
- (4) The fourth category is carrying on one or more specified *regulated activities* (or agreeing to do so). *Exempt persons* here cover a range of different *persons*.

**Members of Lloyd's**

2.10.9 **G** Several activities carried on in connection with business at Lloyds are *regulated activities* in respect of which *authorisation* must be obtained. These include the *regulated activities* of *advising on syndicate participation at Lloyd's* or *managing the underwriting capacity of Lloyd's syndicate as a managing agent at Lloyd's* or *arranging (bringing about) deals in*

*investments or making arrangements with a view to transactions in investments for another in relation to such participation or underwriting capacity.*

**2.10.10** **G** But under section 316 of the *Act* (Direction by a regulator) the *general prohibition* does not apply to a *person* who is a member of the *Society of Lloyds* unless the *FCA* or *PRA* has made a direction that it should apply. The *general prohibition* is disapplied in relation to any *regulated activity* carried on by a member relating to *contracts of insurance* written at *Lloyds*. Directions can be made by the *FCA* or *PRA* in relation to individual *members* or the *members* of the *Society of Lloyds* taken together. Alternatively, instead of being required to obtain *authorisation*, a member of the *Society of Lloyd's* may, as a result of a direction under section 316 of the *Act*, become subject to specific provisions of the *Act* even though he is not an *authorised person*.

**2.10.11** **G** A *person* who ceased to be an *underwriting member* at any time on or after 24 December 1996 may, without *authorisation*, carry out *contracts of insurance* he has underwritten at *Lloyds*. But this is subject to any requirements or *rules* that the *PRA* may impose under sections 320 to 322 of the *Act* (Former underwriting members).

**Members of the professions**.....

**2.10.12** **G** The *general prohibition* does not in certain circumstances apply to a *person* providing professional services that are supervised and regulated by a professional body designated by the Treasury under section 326 of the *Act* (Designation of professional bodies) (see *PROF*). Certain of the exclusions from *regulated activities* outlined in ■ PERG 2.8 and ■ PERG 2.9 will be relevant to members of *designated professional bodies*. The regime outlined below applies only where no exclusion applies and a *person* will be carrying on a *regulated activity*.

**2.10.13** **G** Such a *person* may carry on *regulated activities* if the conditions outlined below are met, that is the *person*:

- (1) is not affected by an order or direction made by the *FCA* under section 328 or 329 of the *Act* (Directions and orders in relation to the general prohibition) which has the effect of re-imposing the *general prohibition* in any particular case;
- (2) is, or is controlled by, a member of a profession;
- (3) does not receive any pecuniary reward or other advantage from the *regulated activities* which is given to him by any *person* other than his client (or if he does, he must account to his client for it);
- (4) provides any service in the course of carrying on the *regulated activities* in a manner which is incidental to the provision of professional services;



- (5) carries on only those *regulated activities* which are permitted by the rules of the professional body or in respect of which they are an *exempt person*; and
- (6) Is not an *authorised person*.

**2.10.14** **G** The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the Act (Exemption from the general prohibition) (the *Non-Exempt Activities Order*). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

- (1) *accepting deposits*;
- (2) *effecting or carrying out contracts of insurance*;
- (3) *dealing in investments as principal*;
- (3A) [deleted]
- (3B) *managing a UK UCITS*;
- (3C) *acting as trustee or depositary of a UK UCITS*;
- (3D) *managing an AIF*;
- (3E) *acting as trustee or depositary of an AIF*;
- (4) *establishing, operating or winding up a collective investment scheme*;
- (5) *establishing, operating or winding up a stakeholder pension scheme or a personal pension scheme*;
- (6) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (7) *entering as provider into funeral plan contracts*;
- (7A) *carrying out a funeral plan contract as provider*;
- (8) agreeing to do certain of the above activities.

**2.10.15** **G** In addition, there are restrictions on carrying on (or agreeing to carry on) certain other *regulated activities*. These relate to *managing investments, advising on investments, advising on a home finance transaction, advising on syndicate participation at Lloyd's, entering into a home finance transaction or administering a home finance transaction*.

**2.10.16** **G** A *person* carrying on *regulated activities* under the regime for members of the professions will be subject to rules made by the professional body designated by the Treasury. Such bodies are obliged to make rules governing the carrying on by their members of those *regulated activities* that they are able to carry on without *authorisation* under the Act. Where such a *person* is carrying on *insurance distribution* or *reinsurance distribution*, that *person* must also be included on the register kept by the FCA under article 93 of the

*Regulated Activities Order* (Duty to maintain a record of unauthorised persons carrying on insurance distribution activities) (see ■ PERG 5.10 (Exemptions)).



**2.11 Persons who are exempt for credit-related regulated activities**

**2.11.1** **G** Various persons are exempted by Order made by the Treasury under section 38 of the *Act* from the need to obtain *authorisation* for certain *credit-related regulated activities* in the circumstances specified in the Order (for example, in some cases, a *person* is exempt only when acting in a particular capacity or for particular purposes). *Persons* exempt under the Order cannot be exempt in relation to some *regulated activities* and *authorised* in relation to others (except where the *person* is an *authorised person* with only *interim permission*).

**Official receivers**

**2.11.2** **G** A *person* acting as:

- (1) an official receiver; or
- (2) a judicial factor;

is exempt in respect of *debt adjusting, debt counselling, debt collecting, debt administration or providing credit information services*.

**Cycle to work**

**2.11.3** **G** This exemption applies to a scheme under which an employer provides or makes available to their employees a cycle or cyclist's safety equipment up to the value of £1,000 (which is designed to allow employees to take advantage of section 244 of the Income Tax (Earnings and Pensions) Act 2003). An employer does not require *authorisation* for the *regulated activities* relating to *regulated consumer hire agreements* just because it operates such a scheme.

**Tracing agents**

**2.11.4** **G** A *person* who takes steps to ascertain the identity or location (or the means of ascertaining the identity or location) of a *borrower* or *hirer* is exempt from *debt-collecting* as long as the *person* is not the *lender* or *owner* under the agreement concerned, takes no other steps to collect debts due under the agreement and carries on no other activity which requires *authorisation*.

**Enterprise schemes**

**2.11.5** **G** There are also exemptions from *credit broking, debt adjusting, debt-counselling* and *providing credit information services* for an enterprise

scheme as long as it does not carry on the activity for, or with the prospect of, direct or indirect pecuniary gain. Sums reasonably regarded as necessary to meet the costs of carrying on the activity do not constitute a pecuniary gain for this purpose.

**Charities**

2.11.6 **G** The exemption from *operating an electronic system in relation to lending* in paragraph 44(A1) of the Schedule to the *Exemption Order* applies to a charity (as defined in article 3 to the *Exemption Order*) which carries on that activity in relation to an article 36H agreement (see ■ PERG 2.7.7HG(4)). For the exemption to apply, the only amount payable to the *lender* under, or in connection with, the agreement must be the amount of *credit* provided; no interest or other charges may be added.

**Process servers**

2.11.7 **G**

(1) Under paragraph 54A(1) of the Schedule to the *Exemption Order*, a *person* who serves, or takes steps to serve, a document on a *borrower* or a *hirer* for the purposes of legal proceedings, including arbitration and insolvency proceedings, brought or to be brought for the payment of a debt due under a *credit agreement*, a *P2P agreement* or a *consumer hire agreement* is exempted from *debt collecting*, as long as the *person*:

- (a) is not the *lender* or *owner* under the agreement; and
- (b) does not take any other steps to procure the payment of the debt or any other debt due from the *borrower* or the *hirer* under the agreement.

(2) Under paragraph 54A(2) of the Schedule to the *Exemption Order*, a *person* who serves, or takes steps to serve, a document on a *borrower* or a *hirer* for the purposes of legal proceedings, including arbitration and insolvency proceedings, brought or to be brought for the exercise or enforcement of rights under a *credit agreement*, a *P2P agreement* or a *consumer hire agreement* is exempted from *debt administration*, as long as the *person*:

- (a) is not the *lender* or *owner* under the agreement;
- (b) does not take any other steps to exercise or enforce rights under the agreement; and
- (c) does not take any steps in the performance of any duties under the agreement.

**Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated credit agreement: special purpose vehicles**

2.11.8 **G** (1) The exemption in paragraph 55 of the Schedule to the *Exemption Order* covers special purpose vehicles and other entities which are part of a structured finance transaction and which meet the specified conditions. It confers exemption from the *general prohibition* on a *person* (“P”) for the *regulated activity* of *exercising, or having the right to exercise, the lender’s rights and duties under a regulated credit agreement* (and associated *regulated activities*) where there is an arrangement for an *authorised person* who holds a relevant

*permission to service the loans, or such an arrangement has ended in the previous 30 days.*

- (2) The exemption is available to a *person* (“P”) who:
  - (a) is not the original *lender*;
  - (b) does not grant or promise to grant, and is not required to grant, *credit* under any *regulated credit agreement*;
  - (c) has entered into a servicing arrangement with an *authorised person* who has permission to carry on the *regulated activities of debt collecting, debt administration or consumer credit lending* (“the servicer”), under which the servicer is to exercise on P’s behalf P’s rights under a *regulated credit agreement* (other than P’s right to dispose of those rights); and
  - (d) does not undertake the regulated activities of *debt counselling, debt adjusting or debt collecting* in relation to a *regulated credit agreement* other than during an “*exempt period*”. An “*exempt period*” is the period of 30 *days* beginning on the *day* after the *day* on which a servicing arrangement came to an end. Where, for example, a servicing agreement comes to an end suddenly or unexpectedly, P has a grace period of 30 *days* to find a new servicer and enter into a new servicing arrangement, and may service its own loans in that period without being authorised.
- (3) In addition, P must have arranged for the servicer to comply with:
  - (a) any provision of, or made under, the *Act* applicable to *authorised persons* that relates to the exercise of the right of the *lender* under a *regulated credit agreement* to vary terms and conditions of the agreement; and
  - (b) the requirements of, or made under, section 82 of the CCA (variation of agreements).

Where P varies the agreement itself, P must comply with those provisions and requirements.

- (4) Where P is exempt (as set out above), the exemption also extends to the *regulated activities of debt counselling and debt collecting* carried on in an exempt period in relation a *regulated credit agreement* under which P exercises, or has the right to exercise, the rights of the original *lender*.
- (5) For the purposes of this exemption, activities carried on by P under, or for the purposes of, a servicing arrangement are excluded from the *regulated activities of debt counselling and debt collecting* in relation to a *regulated credit agreement*.

**Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated consumer hire agreement: special purpose vehicles**

2.11.9

**G**

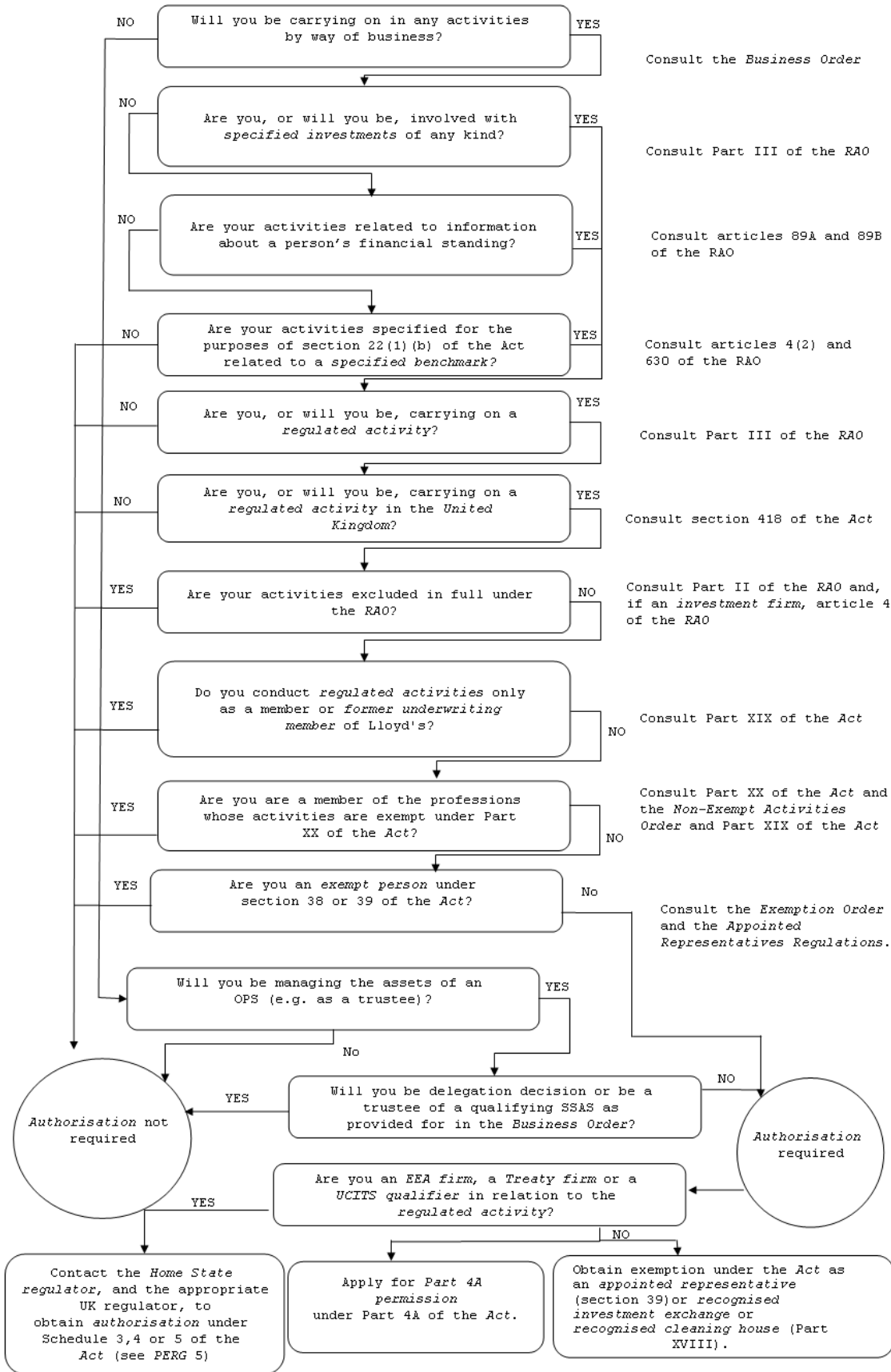
Paragraph 56 of the Schedule to the *Exemption Order* confers an exemption analogous to that in paragraph 55 of the Schedule to the *Exemption Order* and described in ■ PERG 2.11.8G. It applies to the *regulated activity of exercising, or having the right to exercise. the lender’s rights and duties under a regulated credit agreement.*



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**Authorisation and regulated activities**

Do you need authorisation?





## Regulated activities and the permission regime

### 1 Table

|       |   |
|-------|---|
| 1.1 G | Table 1 is designed to relate the <i>permission</i> regime as operated by the <i>FCA</i> to <i>regulated activities</i> . It does not explain how the <i>permission</i> regime as operated by the <i>PRA</i> relates to regulated activities. It therefore does not cover <i>PRA-regulated activities</i> which only apply to <i>PRA-authorised persons</i> . Those <i>PRA-regulated activities</i> are set out in Table 1A. Section 55E(4) of the <i>Act</i> gives the <i>FCA</i> the power to describe the <i>regulated activity</i> or <i>regulated activities</i> for which it gives <i>permission</i> in such manner as the <i>FCA</i> considers appropriate. Table 1 details how the <i>FCA</i> has chosen to describe the <i>regulated activities</i> and <i>specified investments</i> for the purposes of the <i>permission</i> regime. |
| 1.2 G | In an application for <i>Part 4A permission</i> , an applicant will need to state the <i>regulated activities</i> it requires <i>permission</i> to carry on. This will involve an applicant identifying the <i>regulated activities</i> and the <i>specified investments</i> associated with those activities for which it requires <i>Part 4A permission</i> .   |
| 1.3 G | <p>Part II of the <i>Regulated Activities Order</i> (Specified activities) specifies the activities for the purposes of section 22 of the <i>Act</i>. This section states that an activity is a <i>regulated activity</i> if it is an activity of a specified kind which is carried on by way of business and:</p> <ul style="list-style-type: none"> <li>(1) relates to an <i>investment</i> of a specified kind; or</li> <li>(2) in the case of an activity specified for the purposes of section 22(1)(b) of the <i>Act</i>, is carried on in relation to property of any kind.</li> <li>(3) relates to information about a <i>person's</i> financial standing.</li> </ul> <p>Part III of the <i>Regulated Activities Order</i> (Specified investments) specifies the <i>investments</i> referred to in (1).</p>                             |
| 1.4 G | Column 1 of Table 1 lists the <i>regulated activities</i> and column 2 lists the associated <i>specified investments</i> . Descriptions of some categories of <i>specified investments</i> are expanded in Tables 2 and 3. There are notes to all three tables which provide further explanation where appropriate.   |
| 1.5 G | A reference to an article in the tables in PERG 2 Annex 2 G is to the relevant article in the <i>Regulated Activities Order</i> .   |

### 2 Table

| Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1] |   |
|---|---|
| Regulated activity  | Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on |
| (a) [deleted]   |   |
| <b>Issuing electronic money</b>   |   |
| (aa) <i>issuing electronic money</i> (article 9B)                                     | <i>electronic money</i> (article 74A)   |
| <b>Activities of a dormant account fund operator</b>                                  |   |

**Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]**

|   |   |
|---|---|
| (ab) the <i>meeting of repayment claims and managing dormant account funds (including the investment of such funds)</i> (article 63N)   | See Note 8 to Table 1   |
| <b>Bidding in emissions auctions</b>  |   |
| (ac) <i>bidding in emissions auctions</i>   | <i>emissions auction products</i>   |
| (b) [deleted]   |   |
| (c) [deleted]   |   |
| <b>Designated investment business [see notes 1A, 1B and 1C to Table 1]</b>  |   |
| (d) <i>dealing in investments as principal</i> (article 14) [see note 2 to Table 1]   | (in relation to (d) to (g) and (h) to (l)) <i>security</i> [expanded in Table 3]; or  |
| (e) <i>dealing in investments as agent</i> (article 21) [see notes 1B and 2 to Table 1] [also see Section of Table 1 headed 'Activities relating to structured deposits']   | <i>contractually based investment</i> [expanded in Table 3].<br><br>(in relation to (e) to (g) and (j) only) a <i>long-term care insurance contract</i> which is a <i>pure protection contract</i> .                |
| (f) <i>arranging (bringing about) deals in investments</i> (article 25(1)) [see note 1B to Table 1] [also see Sections of Table 1 headed 'The Lloyd's market', and 'Regulated mortgage activity' and 'Activities relating to structured deposits']            |   |
| (g) <i>making arrangements with a view to transactions in investments</i> (article 25(2)) [see note 1B to Table 1] [also see Sections of Table 1 headed 'The Lloyd's market', 'Regulated mortgage activity' and 'Activities relating to structured deposits'] |   |
| (ga) operating a <i>multilateral trading facility</i> (article 25D) [see note 2A]   | <i>securities</i> or <i>contractually based investments</i> which are <i>financial instruments</i> (see PERG 13 Annex 2 G Table 2 and note 2A to Table 1)).   |
| (gb) operating an <i>organised trading facility</i> (article 25DA) [see note 2A]  | certain kinds of <i>securities</i> or <i>contractually based investments</i> which are <i>financial instruments</i> . PERG 2.7.7DDG lists the <i>securities</i> and <i>contractually based investments</i> covered. |
| (h) <i>managing investments</i> (article 37) [see note 3 to Table 1] [also see Section of Table 1 headed 'Activities relating to structured deposits']  |   |
| (i) <i>safeguarding and administering investments</i> (article 40) [see note 3 Table 1]   |   |
| For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:  |   |
| (i) <i>safeguarding and administration of assets (without arranging)</i> ; and  |   |
| (ii) <i>arranging safeguarding and administration of assets</i> .   |   |
| (j) <i>advising on investments (except P2P agreements)</i> (article 53(1)) [see note 1B to Table 1] [also see Sections of Table 1 headed 'Regulated mortgage activity' and 'Activities relating to structured deposits']                                      |   |
| For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> :  |   |

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]

- (i) does not apply to advice given in the course of carrying on the *regulated activity of providing basic advice on a stakeholder product*; and
- (ii) is subdivided into:
  - (A) *advising on investments (except pension transfers and pension opt-outs)*; and
  - (B) *advising on pension transfers and pension opt-outs* [see note 4 to Table 1]
- (ja) *advising on P2P agreements* (article 53(2)) [see note 9 to Table 1]
- (jb) *advising on conversion or transfer of pension benefits* (article 53E) is contained in the permission of *advising on pension transfers and pension opt-outs* [see note 4 to Table 1]
- (k) *sending dematerialised instructions* (article 45(1))
- (l) *causing dematerialised instructions to be sent* (article 45(2))
- (m) [deleted] [see note 5 to Table 1]
- (ma) *managing a UK UCITS* (article 51ZA);
- (mb) *acting as trustee or depositary of a UK UCITS* (article 51ZB);
- (mc) *managing an AIF* (article 51ZC);
- For the purposes of the *permission* regime, this *regulated activity* is subdivided into:
  - (i) *managing an AIF* where the AIF is an *authorised AIF*; and
  - (ii) *managing an AIF* where the AIF is an *unauthorised AIF*.
- (md) *acting as trustee or depositary of an AIF* (article 51ZD);
- For the purposes of the *permission* regime, this *regulated activity* is subdivided into:
  - (i) *acting as trustee or depositary of an AIF* where the AIF is an *authorised AIF*; and
  - (ii) *acting as trustee or depositary of an AIF* where the AIF is an *unauthorised AIF*.
- (me) *establishing, operating or winding up a collective investment scheme* (article 51ZE);
- (n) [deleted]
- (na) [deleted]
- (o) [deleted]
- (p) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a))

**Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]**

|   |  |
|---|--|
| <p>(pa) <i>providing basic advice on a stakeholder product</i> (article 52B)</p>                            | <p>those <i>specified investments</i> that are also a <i>stakeholder product</i> [see note 7]</p>  |
| <p>(p-a) <i>establishing, operating or winding up a personal pension scheme</i> (article 52(b))</p>         |  |
| <p><b>Insurance distribution activity [see note 5A to Table 1]</b></p>                                      |  |
| <p>(pb) <i>dealing in investments as agent</i> (article 21)</p>   | <p><i>life policy</i> [see note 5B to Table 1]<br/><i>non-investment insurance contract</i> [see note 5C to Table 1]</p>   |
| <p>(pc) <i>arranging (bringing about) deals in investments</i> (article 25(1))</p>                          | <p><i>rights to or interests in investments</i> (article 89) in so far as they relate to a <i>life policy</i></p>  |
| <p>(pd) <i>making arrangements with a view to transactions in investments</i> (article 25(2))</p>           |  |
| <p>(pe) <i>assisting in the administration and performance of a contract of insurance</i> (article 39A)</p> |  |
| <p>(pf) <i>advising on investments (except P2P agreements)</i> (article 53(1))</p>                          |  |
| <p>For the purpose of the <i>permission</i> regime, this <i>regulated activity</i> is sub-divided into:</p> |  |
| <p>(i) <i>advising on investments (except pension transfers or pension opt-outs)</i>;</p>                   |  |
| <p>(ii) <i>advising on pension transfers or pension opt-outs</i> [See note 5D to Table 1].</p>              |  |
| <p><b>The Lloyd's market</b></p>  |  |
| <p>(q) <i>advising on syndicate participation at Lloyd's</i> (article 56)</p>                               | <p>membership of a Lloyd's syndicate (article 86(2))</p>   |
| <p>(r) [deleted]</p>  |  |
| <p>(s) <i>arranging (bringing about) deals in investments</i> (article 25(1))</p>                           | <p><i>underwriting capacity of a Lloyd's syndicate</i> (article 86(1))</p>   |
| <p>(t) <i>making arrangements with a view to transactions in investments</i> (article 25(2))</p>            | <p>membership of a Lloyd's syndicate (article 86(2))<br/><i>rights to or interests in investments</i> (article 89) in so far as they relate to <i>underwriting capacity of a Lloyd's syndicate</i> or <i>membership of a Lloyd's syndicate</i></p> |
| <p><b>Funeral plan providers</b></p>  |  |
| <p>(u) <i>entering as provider into a funeral plan contract</i> (article 59(1))</p>                         | <p><i>funeral plan contract</i> (article 87) [see Note 1A to Table 1]</p>  |
| <p>(ua) <i>carrying out a funeral plan contract as provider</i> (article 59(1A))</p>                        |  |
| <p><b>Regulated home finance activity</b></p>   |  |
| <p>(v) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25A(1) and (2A))</p>         | <p><i>regulated mortgage contract</i> (article 88)</p>   |
| <p>(w) <i>making arrangements with a view to regulated mortgage contracts</i> (article 25A(2))</p>          |  |
| <p>(x) <i>advising on regulated mortgage contracts</i> (article 53A)</p>                                    |  |
| <p>(xa) [deleted]</p>   |  |
| <p>(y) <i>entering into a regulated mortgage contract</i> (article 61(1))</p>                               |  |

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]

|  |   |
|--|---|
| (z) administering a regulated mortgage contract (article 61(2))  |   |
| (za) arranging (bringing about) a home reversion plan (article 25B(1))   | rights under a home reversion plan (article 88A)  |
| (zb) making arrangements with a view to a home reversion plan (article 25B(2))   |   |
| (zc) advising on a home reversion plan (article 53B)   |   |
| (zd) entering into a home reversion plan (article 63B(1))  |   |
| (ze) administering a home reversion plan (article 63B(2))  |   |
| (zf) arranging (bringing about) a home purchase plan (article 25C(1))  | rights under a home purchase plan (article 88B)   |
| (zg) making arrangements with a view to a home purchase plan (article 25C(2))  |   |
| (zh) advising on a home purchase plan (article 53C)  |   |
| (zi) entering into a home purchase plan (article 63F(1))   |   |
| (zj) administering a home purchase plan (article 63F(2))   |   |
| (zk) arranging (bringing about) a regulated sale and rent back agreement (article 25E(1))  | rights under a regulated sale and rent back agreement (Article 88C)   |
| (zl) making arrangements with a view to a regulated sale and rent back agreement (article 25E(2))                                    |   |
| (zm) advising on a regulated sale and rent back agreement (article 53D))   |   |
| (zn) entering into a regulated sale and rent back agreement (article 63J(1))   |   |
| (zo) administering a regulated sale and rent back agreement (Article 63(J)(2))   |   |
| <b>Credit-related regulated activity</b>   |   |
| (zp) entering into a regulated credit agreement as lender (article 60B(1))   | Rights under a credit agreement (article 88D) (see note 9 to Table 1), except for (zwa): see note 11 to Table 1 |
| (zq) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B(2)) |   |
| (zr) credit broking (article 36A)  |   |
| (zs) operating an electronic system in relation to lending (article 36H)   |   |
| (zt) debt adjusting (article 39D(1))   |   |
| (zu) debt counselling (article 39E(1))   |   |
| (zv) debt collecting (article 39F(1))  |   |
| (zw) debt administration (article 39G(1))  |   |

**Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]**

|   |   |
|---|---|
| (zwa) <i>advising on regulated credit agreements for the acquisition of land</i> (article 53DA)   |   |
| (zx) <i>entering into a regulated consumer hire agreement as owner</i> (article 60N(1))   | Rights under a <i>consumer hire agreement</i> (article 88E) |
| (zy) <i>exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement</i> (article 60N(2)) |   |
| (zz) <i>credit broking</i> (article 36A)  |   |
| (zaa) <i>debt adjusting</i> (article 39D(2))  |   |
| (zab) <i>debt counselling</i> (article 39E(2))  |   |
| (zac) <i>debt collecting</i> (article 39F(2))   |   |
| (zad) <i>debt administration</i> (article 39G(2))   |   |
| (zae) <i>providing credit information services</i> (article 89A)  | (see note 10 to Table 1)                                    |
| (zaf) <i>providing credit references</i> (article 89B)  |   |
| <b>Activities relating to structured deposits</b>   |   |
| (zag) <i>dealing in investments as agent</i> (article 21)   | <i>structured deposits</i>                                  |
| (zah) <i>arranging (bringing about) deals in investments</i> (article 25(1))  |   |
| (zai) <i>making arrangements with a view to transactions in investments</i> (article 25(2))   |   |
| (zaj) <i>managing investments</i> (article 37) [see note 3 to Table 1]  |   |
| (zak) <i>advising on investments (except P2P agreements)</i> (article 53(1))  |   |

3 Table

Notes to Table 1

Note 1:

In addition to the *regulated activities* listed in Table 1, article 64 of the *Regulated Activities Order* specifies that *agreeing to carry on a regulated activity* is itself a *regulated activity* in certain cases. This applies in relation to all the *regulated activities* listed in Table 1 apart from:

- *issuing electronic money* (article 9B);
- *operating a multilateral trading facility* (article 25D)
- *operating an organised trading facility* (article 25DA)
- *managing a UK UCITS* (article 51ZA);
- *acting as trustee or depositary of a UK UCITS* (article 51ZB);
- *managing an AIF* (article 51ZC);
- *acting as trustee or depositary of an AIF* (article 51ZD);
- *establishing, operating or winding up a collective investment scheme* (article 51ZE);
- *establishing, operating or winding up a stakeholder pension scheme or establishing, operating or winding up a personal pension scheme* (article 52); and
- *the meeting of repayment claims and/or managing dormant account funds (including the investment of such funds)* (article 63N).

*Permission to carry on the activity of agreeing to carry on a regulated activity will be given automat*

Notes to Table 1

ically by the FCA in relation to those other *regulated activities* for which an applicant is given *permission* (other than those activities in articles 9B, 51 and 52 detailed above).

Note 1A:

*Funeral plan contracts* are *contractually based investments*. Accordingly, the following are *regulated activities* when carried on in relation to a *funeral plan contract*: (a) *dealing in investments as agent*, (b) *arranging (bringing about) deals in investments*, (c) *making arrangements with a view to transactions in investments*, (d) *managing investments*, (e) *safeguarding and administering investments*, (f) *advising on investments (except P2P agreements)*, (g) *sending dematerialised instructions* and (h) *causing dematerialised instructions to be sent* (as well as agreeing to carry on each of the activities listed in (a) to (h)). However, they are not *designated investment business*.

Note 1B:

*Life policies* are *contractually based investments*. Where the *regulated activities* listed as *designated investment business* in (e) to (g) and (j) are carried on in relation to a *life policy*, these activities also count as *insurance mediation activities*. The full list of *insurance distribution activities* is set out in (pb) to (pf). The *regulated activities* of agreeing to carry on each of these activities will, if carried on in relation to a *life policy*, also come within both *designated investment business* and *insurance distribution activities*.

Note 1C:

Although *MiFID business bidding* (part of *bidding in emissions auctions*) is *designated investment business*, it is not separately listed in this table under *designated investment business* because *bidding in emissions auctions* is already referred to above.

Note 2:

For the purposes of the *regulated activity* of *dealing in investments as principal* (article 14), the definition of *contractually based investments* [expanded in Table 3] excludes a *funeral plan contract* (article 87) and rights to or interests in *funeral plan contracts*.

Note 2A:

PERG 13 Ann 2 Table 2 contains a map indicating which *securities* and *contractually based investments* correspond to *financial instruments*. A *firm's permission* should comprise each of the categories of *security* and *contractually based investment* in relation to which it carries on the activity of *operating a multilateral trading facility*.

Note 3:

The *regulated activities* of *managing investments* (article 37) and *safeguarding and administering investments* (article 40) may apply in relation to any assets, in particular circumstances, if the assets being managed or safeguarded and administered include, (or may include), any *security*, *contractually based investment* or (in the case of *managing investments*) *structured deposit*.

Note 4:

For the purposes of the *permission* regime, the activity in (j)(ii) of *advising on pension transfers and pension opt-outs* includes the following two *regulated activities*: (1) *advising on investments (except P2P agreements)* where it is carried on in respect of the following *specified investments*:

- unit* (article 81);
- stakeholder pension scheme* (article 82(1));
- personal pension scheme* (article 82(2));
- life policy* (explained in note 5); and
- rights to or interests in investments* in so far as they relate to a *unit*, a *stakeholder pension scheme*, a *personal pension scheme* or a *life policy*;

(2) *advising on conversion or transfer of pension benefits* where it is carried on in respect of rights or interests under a pension scheme which provides *safeguarded benefits*.

Note 5:

Article 4(2) of the *Regulated Activities Order* specifies the activities (ma) to (p) for the purposes of section 22(1)(b) of the Act. That is, these activities will be *regulated activities* if carried on in relation to any property and are not expressed as relating to a *specified investment*.

Notes to Table 1

Note 5A:

Where they are carried on in relation to a *life policy*, the activities listed as *insurance distribution activities* in (pb) to (pf) (as well as the *regulated activity* of agreeing to carry on those activities) are also *designated investment business*.

Note 5B:

In *PERG*, *life policy* is the term used in the *Handbook* to mean 'qualifying contract of insurance' (as defined in article 3(1) of the *Regulated Activities Order*). For the purpose of the *permission* regime, the term also includes a *long-term care insurance contract* which is a *pure protection contract* and a *pension term assurance policy*.

Note 5C:

*Non-investment insurance contract* is the term used in firms permissions to mean *pure protection contract* or *general insurance contract*. *Pure protection contract* is the term used in the *Handbook* to mean a *long-term insurance contract* which is not a *life policy*. *General insurance contract* is the term used in the *Handbook* to mean *contract of insurance* within column 1 of Table 2.

Note 5D:

[deleted]

Note 5E:

For the purposes of the *permission* regime, the activity in (pf)(ii) of *advising on pension transfers and pension opt-outs* is carried on in respect of the following *specified investments*:  
*life policy* (explained in note 5A); and  
*rights to or interests in investments* in so far as they relate to a *life policy*.

Note 6:

[deleted]

Note 7:

A *stakeholder product* is defined in the *Glossary* as:  
 an investment of a kind specified in the *Stakeholder Regulations*:  
 a *stakeholder pension scheme*; and  
 a *stakeholder CTF*.

Note 8:

Article 4(2) of the *Regulated Activities Order* specifies the activity at (ab) for the purposes of section 22(1)(b) of the Act, that is, these activities will be *regulated activities* if carried on in relation to any property and are not expressed as related to a *specified investment*.

Note 9:

For the purposes of the *permission* regime with respect to the *regulated activities* of *entering into a regulated credit agreement as lender* and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement, this is sub-divided into:

- (i) a *regulated credit agreement* (excluding *high-cost short-term credit*, a *home credit loan agreement* and a *bill of sale loan agreement*);
- (ii) *high-cost short-term credit*;
- (iii) a *home credit loan agreement*;
- (iv) a *bill of sale loan agreement*.

For the purposes of *operating an electronic system in relation to lending*, rights under a *credit agreement* include rights under an article 36H agreement within the meaning of article 36H (4) of the *Regulated Activities Order*.

For the purposes of *advising on P2P agreements*, rights under a *credit agreement* include rights under a relevant article 36H agreement within the meaning of article 53(4) of the *Regulated Activities Order*.

Note 10:



Notes to Table 1

Article 4 (2A) of the *Regulated Activities Order* specifies the activities (zae) and (zaf) for the purposes of section 22(1A)(a) of the *Act* (these activities are expressed as relating to information about a person's financial standing rather than to a *specified investment*) and accordingly will be *regulated activities* when carried on by way of business.

Note 11:

The specified investment in relation to which the regulated activity of *advising on regulated credit agreements for the acquisition of land* (article 53DA) may be carried on, is a *regulated credit agreement* which meets the description in PERG 2.7.16F G.

4 Table

Table 1A: PRA-only regulated Activities [See notes 1 and 2 to Table 1A]

| Regulated activity  | Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on |
|---|---|
| <b>Accepting deposits</b>   |   |
| (a) <i>accepting deposits</i> (article 5)   | <i>deposit</i> (article 74)<br>See note (3)   |
| <b>Insurance business</b>   |   |
| (b) <i>effecting contracts of insurance</i> (article 10(1))   | <i>contract of insurance</i> (article 75) [expanded in Table 2]   |
| (c) <i>carrying out contracts of insurance</i> (article 10(2))  |   |
| <b>The Lloyd's market</b>   |   |
| (d) <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> (article 57)          | <i>underwriting capacity of a Lloyd's syndicate</i> (article 86(1))   |
| (e) the activity of arranging, by the <i>Society</i> , of deals in contracts of insurance written at Lloyd's (article 58) | <i>contract of insurance</i>  |

5 Table

Notes to Table 1A

Note 1:

In addition to the *regulated activities* listed in Table 1A, article 64 of the *Regulated Activities Order* specifies that *agreeing to carry on a regulated activity* is itself a *regulated activity* in certain cases. This only applies in relation to the Lloyd's market activities in paragraphs (d) and (e).

Note 2:

The activity of *dealing in investments as principal* is also a PRA regulated activity where carried on by a person designated by the *PRA*.

Note 3:

*Accepting deposits* is not the only *regulated activity* relating to *deposits*. For a *deposit* that is a *structured deposit*, certain other *regulated activities* apply. These are listed in Table 1.

6 Table

Table 2: Contracts of insurance

Contract of insurance (article 75 of the RAO)

Table 2: Contracts of insurance

| (a) <i>general insurance contract</i> (Part I of Schedule 1 to the Regulated Activities Order) |  | (b) <i>long-term insurance contract</i> (Part II of Schedule 1 to the Regulated Activities Order) |
|--|--|---|
| Number   |  |   |
| 1  | <i>Accident</i> (paragraph 1)                      | <i>life and annuity</i> (paragraph I)   |
| 2  | <i>Sickness</i> (paragraph 2)                      | <i>marriage or the formation of a civil partnership and birth</i> (paragraph II)                  |
| 3  | <i>Land vehicles</i> (paragraph 3)                 | <i>linked long-term</i> (paragraph III)   |
| 4  | <i>Railway rolling stock</i> (paragraph 4)         | <i>permanent health</i> (paragraph IV)  |
| 5  | <i>Aircraft</i> (paragraph 5)                      | <i>tontines</i> (paragraph V)   |
| 6  | <i>Ships</i> (paragraph 6)                         | <i>capital redemption</i> (paragraph VI)  |
| 7  | <i>Goods in transit</i> (paragraph 7)              | <i>pension fund management</i> (paragraph VII)  |
| 8  | <i>fire and natural forces</i> (paragraph 8)       | <i>collective insurance</i> (paragraph VIII)  |
| 9  | <i>damage to property</i> (paragraph 9)            | <i>social insurance</i> (paragraph IX)  |
| 10   | <i>motor vehicle liability</i> (paragraph 10)      |   |
| 11   | <i>aircraft liability</i> (paragraph 11)           |   |
| 12   | <i>liability of ships</i> (paragraph 12)           |   |
| 13   | <i>general liability</i> (paragraph 13)            |   |
| 14   | <i>credit</i> (paragraph 14)                       |   |
| 15   | <i>suretyship</i> (paragraph 15)                   |   |
| 16   | <i>miscellaneous financial loss</i> (paragraph 16) |   |
| 17   | <i>legal expenses</i> (paragraph 17)               |   |
| 18   | <i>assistance</i> (paragraph 18)                   |   |

7 Table

Table 3: Securities, contractually based investments and relevant investments [see notes 1 and 2 to Table 3]

| Security (article 3(1))                            | Contractually based investment (article 3(1))  | Relevant investments (article 3(1))                               |
|--|--|---|
| <i>share</i> (article 76)                          | <i>option</i> (article 83)   | <i>contractually based investments</i> (article 3(1))             |
| <i>debenture</i> (article 77)                      | For the purposes of the <i>permission</i> regime, <i>option</i> is subdivided into:                  | <i>non-investment insurance contract</i> [see note 5C to Table 1] |
| <i>alternative debenture</i> (article 77A)         | (i) <i>option</i> (excluding a <i>commodity option</i> and an <i>option on a commodity future</i> ); |   |
| <i>government and public security</i> (article 78) | (ii) <i>commodity option</i> and <i>option on a commodity future</i> .                               |   |
| <i>warrant</i> (article 79)                        |  |   |

Table 3: Securities, contractually based investments and relevant investments [see notes 1 and 2 to Table 3]

|   |  |
|---|--|
| <p><i>certificate representing certain security</i> (article 80)</p> <p><i>unit</i> (article 81)</p> <p><i>stakeholder pension scheme</i> (article 82(1))</p> <p><i>personal pension scheme</i> (article 82(2));</p> <p><i>emission allowance</i> (article 82B)</p> <p><i>rights to or interests in investments</i> (article 89) in so far as they relate to any of the above categories of <i>security</i></p> | <p><i>future</i> (article 84)</p> <p>For the purposes of the <i>permission</i> regime, <i>future</i> is subdivided into:</p> <p>(i) <i>future</i> (excluding a <i>commodity future</i> and a <i>rolling spot forex contract</i>);</p> <p>(ii) <i>commodity future</i>;</p> <p>(iii) <i>rolling spot forex contract</i>.</p> <p><i>contract for differences</i> (article 85)</p> <p>For the purposes of the <i>permission</i> regime, <i>contract for differences</i> is subdivided into:</p> <ul style="list-style-type: none"> <li>• <i>contract for differences</i> (excluding a <i>spread bet</i>, a <i>binary bet</i> and a <i>rolling spot forex contract</i>);</li> <li>• <i>spread bet</i>;</li> <li>• <i>rolling spot forex contract</i>;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>• <i>binary bet</i>.</li> </ul> <p><i>life policy</i> (but excluding a <i>long-term care insurance contract</i> which is a <i>pure protection contract</i>) [see note 5B to Table 1]</p> <p><i>funeral plan contract</i> (article 87) [see note 1A to Table 1]</p> <p><i>rights to or interests in investments</i> (article 89) in so far as they relate to any of the above categories of <i>contractually based investment</i>.</p> |
|---|--|

**Notes to Table 3**

Note 1:

*Security, contractually based investment* and *relevant investment* are not, in themselves, *specified investments* they are defined as including a number of *specified investments* as set out in Table 3. *Relevant investments* is the term that is used to cover *contractually based investments* together with rights under a *general insurance contract* and a *pure protection contract*.

Note 2:

For the purposes of the *regulated activity of dealing in investments as principal* (article 14), the definition of *contractually based investments* excludes a *funeral plan contract* (article 87) and rights to or interests in *funeral plan contracts*.

