

Chapter 2

Authorisation and regulated activities

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* (except rights under a *funeral plan contract*).

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 *auction regulation* together generate three broad categories of *person* in relation to bidding for *emission allowances* on an *auction platform*:

- (1) The first category consists of an *investment firm* to which *MiFID* applies, a *CRD credit institution* and a third country *credit institution* where the *firm* is bidding on behalf of its *clients* or on its own account for *emissions auction products*. For these purposes a third country *credit institution* refers to a *credit institution* that would qualify to be a *CRD credit institution* if its registered or head office were in the *EEA*.
- (1A) The first category also consists of a *person* that is exempt from *MiFID* under article 2(1) (j) 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 public bodies or state-owned entities of Member States that control any of those operators (as set out in article 18 of the *auction regulation*). 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 *auction regulation* prevents 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.
- (4) Article 24B(2) of the RAO includes in the second category (see (2)) an *investment firm* to which *MiFID* applies, a *CRD credit institution* or a third country *credit institution* where it is bidding on its own account for *emissions auction products* that are not *financial instruments* under *MiFID*. This part of the RAO no longer has effect as all *emissions auction products* are now *financial instruments*. When it was brought into force, a *two-day emissions spot* was not a *financial instrument*.

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 *auction regulation*, 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 *auction regulation*:
 - (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 *auction regulation* 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)).

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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)).

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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

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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 G 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 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 *multilateral trading facility* covers:

- (1) a multilateral trading facility as defined by *MiFID* (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 *EEA*; and
 - (b) would come within (1) if its operator was set up in the *EEA*.

Operating an 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 *organised trading facility* covers:

- (1) an organised trading facility as defined by *MiFID* (see ■ PERG 13, Q24A) 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 *EEA*; and
 - (b) would come within the *MiFID* definition if its operator was set up in the *EEA*.

2.7.7DD **G**

- (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 **G** 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

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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 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 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 UCITS*;
- (2) *acting as trustee or depositary of a UCITS*;
- (3) *managing an AIF*;

(4) *acting as trustee or depositary of an AIF; and*

(5) *establishing, operating and winding up a collective investment scheme.*

2.7.13B **G** The activity of *managing a UCITS* is derived from the *UCITS Directive*. A person will *manage a UCITS* where they carry on *collective portfolio management* of a *UCITS*. A *UCITS* is a type of *collective investment scheme* which is authorised by a *competent authority* in an *EEA State* as meeting the requirements under the *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 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** *Operators, trustees or depositaries* of *UCITS* established in other *EEA States* are also *authorised persons* under Schedule 5 of the *Act* if those *schemes* are *recognised schemes* for the purposes of section 264 of the *Act*.

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 funeral plan contracts

2.7.18 **G** *Entering as provider into a funeral plan contract is a regulated activity. The 'provider' 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. He may be the funeral director or a third party who arranges for another person to provide the funeral. Certain types of funeral plan contract are excluded (see ■ PERG 2.8.14 G).*

2.7.19 **G** *In addition, other activities carried on in relation to rights under certain funeral plan contracts are regulated (see ■ PERG 2.7.5 G to ■ PERG 2.7.11 G and ■ PERG 2.7.15 G and ■ PERG 2.7.16 G). This is because such rights are classified as contractually based investments.*

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 *MCD article 3(1)(b) credit agreement*.
- (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*, 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 2.7.19F G will 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 G will 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

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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 *MCD regulated mortgage contract* or an *article 3(1)(b) credit agreement*; or
 - (b) the agreement is an *MCD regulated mortgage contract* or an *article 3(1)(b) credit agreement* but:
 - (i) the agreement 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
 - (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 *MCD regulated mortgage contract* or 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

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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 than:
 - (i) the renovation of residential property; or

- (ii) to acquire or retain property rights in *land* or in an existing or projected building;
- (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; and
- (6) a copy of that statement was provided to the *lender* before the agreement was entered into.

2.7.19JA G The exclusion referred to in ■ PERG 2.7.19J G will not 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

2.7.190 **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 two *regulated activities* associated with the activities of a *dormant account fund operator* under the Dormant Bank and Building Society Accounts Act 2008:

- (1) the *meeting of repayment claims*; and
- (2) *managing dormant account funds (including the investment of such funds)*.

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 G

- (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 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*.

2.7.20N G

- (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

G

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 account funds, the meeting of repayment claims, managing a UCITS, acting as trustee or depositary of a 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*).*