

## Chapter 2

# Authorisation and regulated activities

**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

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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

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(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

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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

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- (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

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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

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- (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

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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

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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

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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*.