

AUTHORISATION MANUAL (AMENDMENT NO 3) INSTRUMENT 2001

Powers exercised

- A. The Financial Services Authority amends the Authorisation manual in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
 - (2) section 157(1) (Guidance);
 - (3) paragraph 17(1) of Schedule 1 to the Act (Fees); and
 - (4) paragraph 5(4) of Schedule 4 (Treaty Rights: Notice to Authority) (and sections 51(3) and (6) (Applications under this Part)).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) of the Act (Rule making instruments).

Commencement

- C. This instrument comes into force:
- (1) in relation to AUTH 1, 2, 3, 4 and 7, immediately; and
 - (2) in relation to AUTH 5, at the beginning of the day on which section 19 of the Act (The general prohibition) comes into force.

Amendments to the Authorisation manual

- D. The Authorisation manual is amended:
- (1) in accordance with Annex A to this instrument;
 - (2) by deleting the existing AUTH 1 Annex 1G, and replacing it with the material in Annex B to this instrument (AUTH 1 Annex 1G); and
 - (3) by inserting the provisions in Annex C to this instrument.

Citation

- E. This instrument may be cited as the Authorisation Manual (Amendment No 3) Instrument 2001.

Annex A Amendments to made text

- 2.7.12G In the final sentence, after " schemes are unregulated schemes.", insert:
"The process for applying for authorisation of a *collective investment scheme* is described in CIS 16 (Application and notification)."
- 3.6.4G After (3), insert:
"(4) In relation to *accepting deposits*, the *limitations* which may be applied for or imposed include a *limitation* that the *firm* may *accept deposits* from *wholesale depositors* only. A *firm* with such a *limitation* may receive less intensive supervision by the *FSA*, because of the reduced risk it poses to the *regulatory objective* of protecting *consumers*. However, the precise arrangements that would apply would be determined case by case and would be based on an assessment of the risks the *firm* posed to all four of the *regulatory objectives*."
- 3.8.2G(1) After "*threshold conditions*", insert:
"and certain additional conditions"
- 3.8.2G(1)(e) At end of the sentence, remove "." and insert ";"
After (e), insert:
"(f) Additional conditions apply to non-EEA insurers."
- 3.8.2G(2) Replace the existing text with the following:
"*Threshold conditions* 3,4 and 5 enable the *FSA* to assess the applicant in the light of the activities it wishes to carry on and, in particular, make it clear that suitability to carry on one *regulated activity* does not mean that the applicant is suitable to carry on all *regulated activities*. These *threshold conditions* do not apply to *Swiss general insurance companies*."
- 3.8.2G(4) Replace the existing text with the following:
"The application of the *threshold conditions* to *Swiss general insurance companies* was varied by the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001."
- 3.12.1G After "*incorporated company*", insert "*other than a limited liability partnership*"
- 3.12.2G Replace "[to be finalised]" with "1.3 R(1)"
- 3.12.3G(2) After "*IPRU(FSOC)*" insert "1.3 R (1)"

- 3.12.15G After "*authorised UK representative*", insert:
- "(see *COND 2.6 (Additional Conditions)* for the additional conditions which apply to non-*EEA insurers* and *SUP 15.4 (Notified persons)* for rules on notifications by *overseas firms*)"
- 4.1.1R (1) Delete "and" at the end of (1)
- (2) In (2), replace "." with ";", and insert "and" at end of sentence
- (3) After (2), insert:
- "(3) an applicant for a certificate under article 54 of the *Regulated Activities Order*."
- 4.3 For 4.3, insert:
- "4.3 Obligation to pay certification fees
- General
- 4.3.1R An applicant for a certificate under article 54 of the *Regulated Activities Order* must pay to the *FSA* the application fee specified in Part 6 of *AUTH 4 Ann 1R*.
- Due date and method of payment
- 4.3.2R The application fee must be paid:
- (1) by bankers draft, cheque or other payable order;
- (2) in full without deduction; and
- (3) on or before the date on which the application is made.
- 4.3.3G An application for an article 54 certificate will be treated as incomplete until the application fee has been paid."
- AUTH 4
Annex 1R After "Part 5 – Activity Groupings", insert:
- "Part 6 Application for a certificate under article 54 of the *Regulated Activities Order*
- The amount payable in relation to each application is £2,000."
- 5.3.2G(3) At end of the sentence, insert:

"For example, it will reflect any limitations or requirements which are included in the *firm's Home State* authorisation."

- 5.3.5G(1) Replace "(under paragraph 3(2), a" with "(under paragraph 3(2)). A"
- 5.3.6G In the second sentence, italicise "EEA State"
- 5.3.7G In the second sentence, replace "*firm's Home Sate*" with "*firm's Home State*"
- 5.3.8G (1) In the first and second sentences, replace "schedule" with "Schedule"
- (2) In the first sentence, italicise " authorisation"
- 5.3.9D(3)(b) Replace "AUTH 5.3.11Gbelow)" with "*AUTH* 5.3.11G below"
- 5.3.11G(1)(b) Replace " Corporate Authorisation department The Financial Services Authority 25 The North Colonnade Canary Wharf London E14 5HS" with:
- "Corporate Authorisation department, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS"
- AUTH 5 Ann 3G In the row for COB, before the full stop in column (2), add "(*COB* 1.2.1R(1))".
- In the row for COB, replace the text in column (3) with the following:
- "Where the activity:
- (a) would fall within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*; or
 - (b) would not be regarded as carried on in the *United Kingdom*; or
 - (c) is not carried on with or for a *client* in the *United Kingdom*;
- then only the following apply:
- (d) *COB* 3 (Financial promotion), but see the territorial scope in *COB* 3.3 (Where?);
 - (e) *COB* 5.5.7R and *COB* 5.5.8R (Overseas business); and
 - (f) *COB* 6.5, *COB* 6.7 and *COB* 6.8 (Content of key features, Cancellation and withdrawal, Insurance contracts – life and general) but only in relation to *long-term insurance business* carried on with a *customer* habitually resident in the *United Kingdom*.
- Otherwise, as column (2) (*COB* 1.4.3R.)"

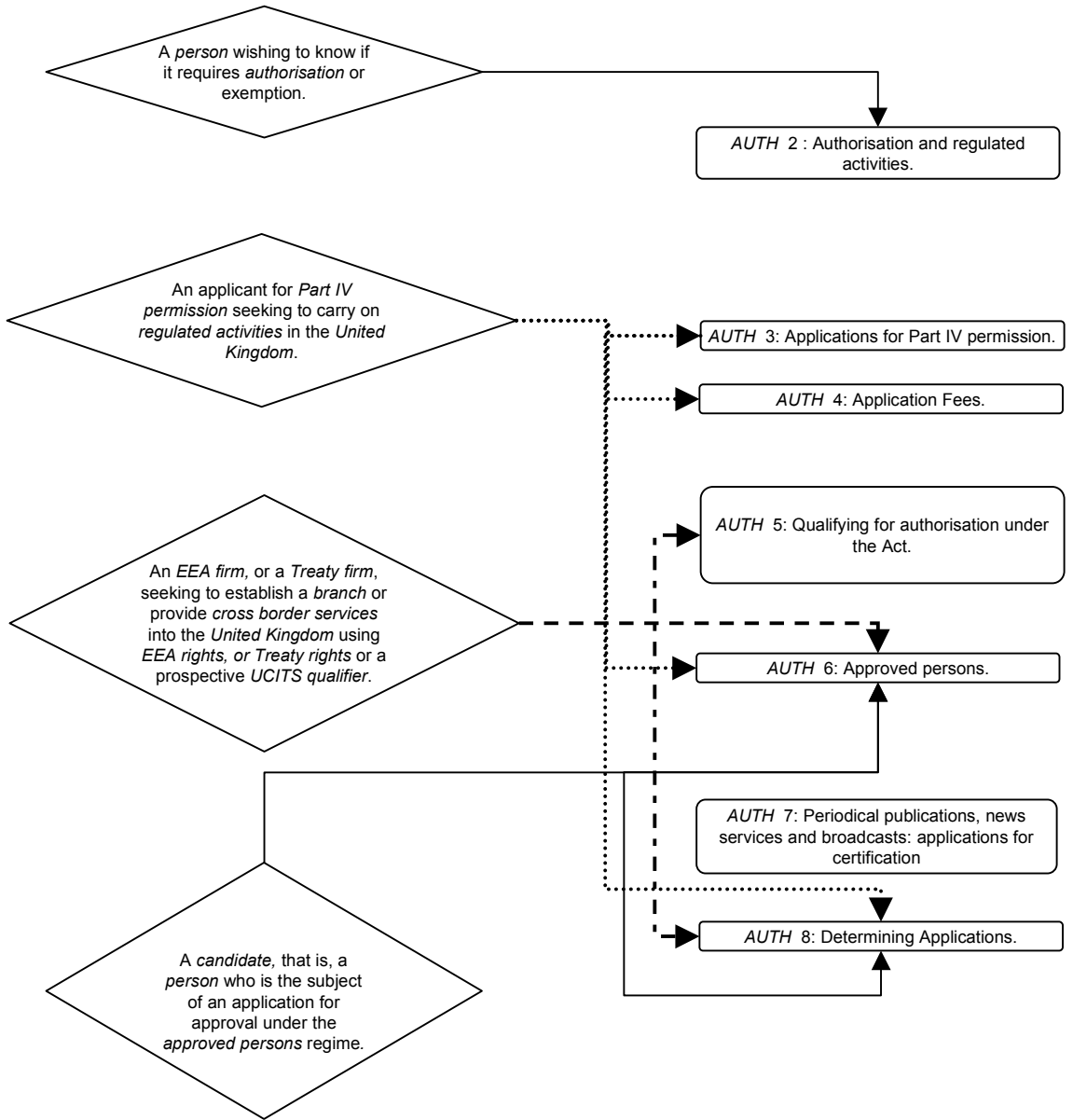
In the row for COMP, delete current wording in column (1) and (2) and replace with the following:

In column (1)

"Applies, except in relation to the *passport*ed activities of an *ISD investment firm* or a *BCD credit institution* (see the definition of "*participant firm*"). However, such a *firm* may be able to apply for *top-up cover* in relation to its *passport*ed activities (see *COMP 14* (Participation by EEA firms))."

In column (2):

"Does not apply in relation to the *passport*ed activities of an *ISD investment firm* or a *BCD credit institution* (see the definition of "*participant firm*"). Otherwise, *COMP* may apply, but the coverage of the *compensation scheme* is limited for non-*UK* activities (see *COMP 5*)."



Annex C

AUTH 7

Chapter 7

Periodical publications, news services and broadcasts : applications for certification

7

PAGE
1



7.1 Application and purpose

Application

- 7.1.1** G_{/1} This chapter applies to anyone involved in publishing periodicals, or in providing news services or broadcasts, who gives (or proposes to give) advice about *securities* or *contractually based investments* and who wishes to determine whether he will be carrying on the *regulated activity of advising on investments*.

Purpose

- 7.1.2** G_{/1} The purpose of this chapter is to provide *guidance* as to:
- (1) when a *person* involved in publishing periodicals, or in providing news services or broadcasts, requires *authorisation* to carry on the *regulated activity of advising on investments* (see ■ AUTH 7.3 (Does the activity require authorisation));
 - (2) If he does, whether he qualifies for the exclusion from that activity that applies to a periodical publication, a regularly updated news or information service or a television or radio service (see ■ AUTH 7.4 (Does the article 54 exclusion apply));
 - (3) If he does, whether his circumstances are an appropriate case for a certificate given by the *FSA* as conclusive evidence that he does qualify (see ■ AUTH 7.5 (When is it appropriate to apply for a certificate));
 - (4) how to apply for a certificate (see ■ AUTH 7.6.1G to ■ AUTH 7.6.5G); and
 - (5) how the *FSA* will use its power to give certificates (see ■ AUTH 7.6.6 G to ■ AUTH 7.6.10 G).
- 7.1.3** G_{/1} This *guidance* is issued under section 157 of the *Act*. The *guidance* represents the *FSA*'s views and does not bind the courts, for example in relation to an action for damages brought by a *private person* for breach of a *rule* (see section 150 of the *Act* (Actions for damages)), or in relation to the enforceability of a contract where there has been a breach of section 19 (The general prohibition) of the *Act* (see section 26 of the *Act* (Enforceability of agreements)). Although the *guidance* does not bind the courts, it may be of persuasive effect for a court considering whether it would be just and equitable to allow a contract to be enforced (see section 28(3) of the *Act*). Anyone reading this *guidance* should refer to the *Act* and to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (the *Regulated Activities Order*) to find out the precise scope and effect of any particular provision referred to in the *guidance* and should consider seeking legal advice if doubt remains. If a *person* acts in accordance with the *guidance* in the

circumstances contemplated by it, then the *FSA* will proceed on the footing that the *person* has complied with the aspects of the requirement to which the *guidance* relates.

7.2 Introduction

Exclusion for advice given in certain publications and services

7.2.1

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Advice is excluded by article 54 of the *Regulated Activities Order* from the *regulated activity of advising on investments* if :

- (1) the advice is given in a publication or service that is in one of three formats (see ■ AUTH 7.4.3 G and ■ AUTH 7.4.4 G); and
- (2) the principal purpose of the particular format is neither to give advice nor to lead to (or enable) certain transactions to be carried out (see ■ AUTH 7.4.5 G and ■ AUTH 7.4.10 G).

Certificate that the exclusion applies

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If a *person* would, but for the exclusion, be carrying on the *regulated activity of advising on investments*, and will be doing so as a business in the *United Kingdom* (see ■ AUTH 7.3), he may wish to apply to the *FSA* for a certificate that the exclusion applies (see ■ AUTH 7.6). However, a *person* does not need a certificate to get the benefit of the exclusion. In many cases it will be clear that the exclusion in article 54 applies and a certificate is not called for. A certificate may be appropriate, however, where the exclusion appears to apply but there may be an element of doubt. The granting of a certificate would remove any such doubt.

Certificates under the Financial Services Act 1986

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Certificates given under paragraph 25 of Schedule 1 to the *Financial Services Act 1986* (exclusion for periodical publications giving investment advice) do not have effect after 1 December 2001. Holders of such certificates must consider their position under the terms of the new exclusion. If a *person* considers that a certificate might be appropriate, a new application must be made.

7.3 Does the activity require authorisation?

Advising on investments

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Under article 53 of the *Regulated Activities Order*, advising a *person* is a specified kind of activity if :

- (1) the advice is given to the *person* in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
- (2) it is advice on the merits of his doing any of the following (whether as *principal* or agent) :
 - (a) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security* or a *contractually based investment*; or
 - (b) exercising any right conferred by such an *investment* to *buy, sell*, subscribe for or underwrite such an *investment*.

7.3.2

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Article 53 of the *Regulated Activities Order* contains a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on this *regulated activity*, see ■ AUTH App 1 (Financial promotion and related activities [to be issued later]).

Carrying on the regulated activity by way of business

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Under section 22 of the *Act* (Regulated activities), for an activity to be a *regulated activity* it must be carried on 'by way of business'. There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. It has exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI No 2001/1177)). The result is that the business element differs depending on the activity in question. Where *regulated activities* carried on in relation to *securities* or *contractually based investments* are concerned, the business element is not to be regarded as satisfied unless a *person* carries on the business of engaging in one or more of the activities. This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right. This is the test which will apply to the *regulated activity* of *advising on investments*. ■ AUTH 2.3 (The Business element) and ■ AUTH 2.4 (Link between activities and the United Kingdom) provide further detail on this.

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In the *FSA's* view, for a *person* to be carrying on the business of *advising on investments* he will usually need to be doing so with a degree of regularity and for

commercial purposes – that is to say, he will normally be expecting to gain some kind of a direct or indirect financial benefit. But, in the FSA's view it is not necessarily the case that advice provided free of charge will not amount to a business. Advice is often given 'free' by a journalist or presenter, or in a publication or website, in the sense that no charge is made or commission received. For example, a newspaper may reply to readers' letters to generate goodwill or to generate a supply of further material that it can publish or a website that is 'free' to the user will be sponsored or paid for by advertising. In such cases, if *advice on investments* is given, then in the FSA's view the business of *advising on investments* is being carried on. In addition, non-commercial motives may be relevant in determining whether a *person* can be said to be carrying on the business of giving advice. For example, an investigative journal or journalist may occasionally feel that it is necessary to warn investors against the purchase of a particular investment because there are suspicions of fraud in connection with that investment. The FSA takes the view that, in such circumstances, the journal or journalist would not be regarded as carrying on the business of *advising on investments* as he would be acting to prevent crime rather than in the carrying on of a business.

Carrying on the regulated activity in the United Kingdom

7.3.5 G_{/1} Advice given in periodicals published from an establishment in the *United Kingdom* is regarded by the FSA as given in the *United Kingdom*. A similar approach is taken to advice given in, or by way of, a service provided from such an establishment.

7.3.6 G_{/1} In other circumstances, advice issued remotely may still be given in the *United Kingdom*. For example, the FSA considers that advice is given in the *United Kingdom* if :

- (1) it is contained in a non-UK periodical that is posted in hard copy to *persons* in the *United Kingdom*;
- (2) it is contained in a non-UK periodical (or given in or by way of a service) which is made available electronically to such *persons*.

7.3.7 G_{/1} But even if advice is given in the United Kingdom, the *general prohibition* will not be contravened if the giving of advice does not amount to the carrying on, in the *United Kingdom*, of the business of *advising on investments*. Also, the general prohibition will not be contravened if the exclusion for *overseas persons* in article 72 of the *Regulated Activities Order* (Overseas Persons) applies. That exclusion applies in relation to the giving of advice by an *overseas person* as a result of a 'legitimate approach' (defined in article 72(7)). In many cases where publications or services are provided from outside the *United Kingdom* it is likely that they will fall within the terms of this exclusion. For example, this will exclude any advice in a publication or service from being a *regulated activity* if it is given in response to an approach that has not been solicited in any way.

Exclusions and exempt persons

7.3.8 G_{/1} Finally, if a *person* is carrying on the business of *advising on investments* in the *United Kingdom*, he will not require *authorisation* if:

- (1) he is able to rely on an exclusion; in addition to the exclusions already mentioned (in articles 54 and 72 of the *Regulated Activities Order*), other exclusions that may be relevant are in Chapter XVII of Part II of the Order; or

- (2) he is an *exempt person* (see ■ AUTH 2.11 (What to do Now?)); since *persons* are exempt only in relation to specified *regulated activities*, his exemption must apply to the *regulated activity* of *advising on investments*.

Which person is required to be authorised?

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Many people may be involved in the production of a periodical publication, news service or broadcast. But if the *regulated activity* of *advising on investments* is being carried on so that *authorisation* is required, the FSA's view is that the *person* carrying on the activity (and who will require *authorisation*) is the *person* whose business it is to have the editorial control over the content. In the case of a periodical publication, this will often be the proprietor. But particular circumstances may vary so that the responsibility for content and editorial control rests with a freelance journalist rather than with the proprietor. In such cases it may well be that the journalist may properly be viewed as carrying on his own business, using the periodical publication as the vehicle for doing so – in which case it is likely to be the journalist alone who needs the *authorisation*.

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Similar principles apply to news services and broadcasts.



7.4 Does the article 54 exclusion apply?

The formats

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The exclusion applies to advice given in one of the following formats:

- (1) advice in writing or other legible form which is contained in a newspaper, journal, magazine, or other periodical publication;
- (2) advice in writing or other legible form which is given by way of a service comprising regularly updated news or information;
- (3) advice given in any service consisting of the broadcast or transmission of a television or radio programme.

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But the exclusion applies only if the principal purpose of the publication or service is neither to *advise on investments* (that is, *securities* or *contractually based investments*) nor to lead or enable *persons* to *buy, sell, subscribe for or underwrite securities* or *contractually based investments*.

Formats in writing or other legible form

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- (1) There are two specified formats for advice appearing in writing or other legible form.
- (2) The first is that of a newspaper, journal, magazine or other periodical publication. For these purposes it does not matter what form the periodical publication takes as long as it can be read. This will include, for example, a newspaper appearing as a hard copy or electronically on a website. It will also include any periodical published on an intranet site.
- (3) The second is that of a regularly updated news or information service. As with periodical publications, it does not matter how the service is accessed by, or delivered to, the user as long as it can be read. This will include, for example, a service provided through teletext, a fax retrieval system or a website (including websites that are used through handheld devices). The fact that it must be a 'regularly updated' service means that the provision of up-to-date news or information must be a primary feature of the service (for example, where it is likely to be of commercial value to the recipient). But, in the FSA's view, a news or information 'service' is not restricted to the giving of only news or information since this would not generally constitute the *regulated activity of advising on investments* (see ■ AUTH App 1 (Financial promotion and related activities)[to be issued later]). So the exclusion applies to services providing material in addition to news or information, such as comment or advice.

Television and Radio

7.4.4 **G**_{/1} The third specified format is for advice in any service consisting of the broadcast or transmission of television or radio programmes. This will encompass the transmission through cable of interactive television programmes. In the FSA’s view, ‘service’ in this context goes beyond any particular series of programmes broadcast or transmitted through a given medium. It refers instead to the administrative system (usually aimed at a particular audience) through which a range of different programmes is provided, for example any particular TV or radio channel. In the FSA’s view, it is unlikely that a TV or radio service will have one of the principal purposes that would prevent its being able to rely on the exclusion unless the complete service is designed to focus on financial or investment matters.

The principal purpose

7.4.5 **G**_{/1} The exclusion applies only if the principal purpose of the publication or service is neither :

- (1) to give advice on investments (see ■ AUTH 7.3.1G).
- (2) to lead or enable *persons* to *buy, sell*, subscribe for or underwrite *securities* or *contractually based investments*, or to exercise any rights conferred by *securities* or *contractually based investments* (abbreviated in ■ AUTH 7.4.9G and ■ AUTH 7.4.11G as ‘to engage in a relevant transaction’).

7.4.6 **G**_{/1} Any assessment of the principal purpose of a periodical publication, news service or broadcast needs to be carried out against the background that:

- (1) they all share the characteristic of being available over a sustained period and, within that period, appearing from time to time with a different content;
- (2) the same periodical publication will have many different editions;
- (3) the regular updating of the news or information service will produce differences in the material provided, comparing the content of the service as it appears at any one time with its content as it appears at any other; and
- (4) the programmes in a TV or radio service are bound to have a different content from each other.

7.4.7 **G**_{/1} To address this feature of variation in content, article 54 requires that the principal purpose of a publication or service is to be assessed by looking at the publication or service taken as a whole and including any advertisements or other promotional material contained in it. This requirement of an overall assessment of purpose or purposes goes beyond the content of any particular example of the publication or service (such as a particular edition or programme). It fixes instead on the characteristic content of the publication or service looked at over time. This judgment depends on the overall impression of content. One way of approaching this is to consider what an average consumer of a publication or service might expect to find when making a decision whether to buy a particular edition or to use the service.

7.4.8 **G**_{/1} Looking at the first disqualifying purpose set out in the exclusion, all the matters relevant to whether the *regulated activity of advising on investments* is being carried on must be taken into account (see ■ AUTH App 1.22 to ■ AUTH App 1 (Financial promotion and related activities [to be issued later])). If the principal purpose of a

publication or service is to give to *persons*, in their capacity as investors (or potential investors), advice as referred to in ■ AUTH 7.4.5 G(1), then the publication or service will not be able to benefit from this exclusion.

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For the second disqualifying purpose, the focus switches to assessing whether the principal purpose of a publication or service is to lead a person to engage in a relevant transaction or enable him to do so. This disqualifying purpose is an alternative to the first. So it extends to material not covered by the first. In this respect :

- (1) material in a publication or service that invites or seeks to procure *persons* to engage in a relevant transaction can be said to “lead” to those transactions even if it would not constitute the *regulated activity* of *advising on investments*; this includes, for example, material that consists of generic buy or sell recommendations, corporate brochures or invitations to invest in particular products or with a particular broker or fund manager; and
- (2) material enables *persons* to engage in a relevant transaction if it facilitates the transactions, for example by giving a user the forms that enable him to carry out relevant transactions; so this limb of the second disqualifying purpose would apply to the material providing an online dealing facility on an interactive website or to facilities for on-screen dealing through digital television.

In the FSA’s view, material will not lead or enable a *person* to engage in a relevant transaction where the material is intended merely to raise people’s awareness of matters relating to *securities* or *contractually based investments*.

7.4.10

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The test for determining the principal purpose of any publication which appears on a website, or of any news or information service which appears on a website, is no different from any other medium. An overall view will need to be taken of all the contents of the publication or service, including any features such as chatrooms, advertisements or other promotional material.

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In the context of the second disqualifying purpose, whether or not the presence of a hypertext link to another website indicates that the purposes of a publication or service include that of leading to relevant transactions (or enabling them to be entered into) will depend on all the circumstances. It will, in particular, be necessary to consider the form of the link and the content of the destination website. In the FSA’s view, the simple presence on a host publication or service of a hypertext link consisting only of the name or logo of another website is unlikely itself to indicate that a purpose of the host website is to lead to relevant transactions (or enable them to be entered into). But if more sophisticated links, such as banners or changeable text, contain promotional material inviting or seeking to procure persons to enter into relevant transactions, then those links will have to be weighed in the balance in determining the principal purpose of the publication or service hosting the link. The same applies if the host publication or service hosting the link itself contains material inviting persons to activate the link with a view to entering into relevant transactions.

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In reaching a view of the principal purpose of the publication or service as a whole, all the material that falls within either the first or second disqualifying purpose must be considered together.

Who can benefit from the exclusion?

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The *persons* who directly benefit from the exclusion will be the *persons* who would otherwise require *authorisation* (see ■ AUTH 7.3.9 G), that is, the *person* whose business it is to have editorial control over the content of the publication or service. The exclusion will apply regardless of the legal form of the *person* giving the advice so, for example, it will extend to *advice on investments* given by a *company* through its employees.



7.5 When is it appropriate to apply for a certificate?

7.5.1

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To decide whether the exclusion in article 54 applies, three assessments need to be made :

- (1) first, an assessment whether the vehicle for giving the advice is a newspaper, journal, magazine or other periodical publication, a service comprising regularly updated news or information or a service consisting of the broadcast or transmission of television or radio programmes;
- (2) second, an assessment of the purpose or purposes of any particular publication or service; and
- (3) third, an assessment of the relative significance of each purpose compared with any others.

7.5.2

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Because opinions may differ in circumstances close to the borderline, giving rise to doubt as to whether or not the exclusion applies, the *Regulated Activities Order* makes provision for a certification process. The purpose of this process is not to provide certification for every publication or service to which the exclusion in article 54 applies.

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In many cases it will be clear whether or not a publication or service benefits from the exclusion. A publication or service may provide reports on such a wide range of matters that it is not possible to say that it has any purpose other than to provide coverage of a wide range of matters. Alternatively, it may be clear that the principal purpose of a publication or service is something other than those specified in the article 54 exclusion. Examples of cases where, in the FSA's view, the exclusion is capable of applying include :

- (1) national or local newspapers providing the normal range of non-financial news and coverage of other matters (such as sports, arts and leisure) and which simply contain financial journalism (such as reports on particular investments or markets) as one element of their all-round coverage;
- (2) weekly or monthly journals aimed at a particular subject (such as computing or sport) but which have some coverage of, or promotional material relating to, investments and financial matters;
- (3) websites which provide financial news or information;
- (4) closed user group communication systems specialising in financial or investment matters; and
- (5) television or radio channels dedicated to consumer affairs which devote a small number of programmes to financial planning.

7.5.4

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It is only where there are grounds to think that there is a significant doubt as to the principal purpose of a publication or service that the question of whether or not to apply to the FSA for a certificate under article 54 of the *Regulated Activities Order* is expected to arise. For example, this may happen where a publication or service has several significant purposes and one of them is a disqualifying purpose referred to in the exclusion in article 54. It may on occasion be difficult to assess the relative importance of the purposes compared with each other, particularly given that over time there will be a variation in the content of the publication or service. In such cases, an application for a certificate would be appropriate.

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7.6 Applications for a certificate

Pre-application contact

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A *person* considering applying for a certificate should, before sending in any application, contact the Authorisation Enquiries Department of the *FSA* to discuss whether a certificate may be appropriate.

Form of application

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- (1) An application should be made by the proprietor of the relevant publication or service using a form which can be obtained from the Authorisation Enquiries Department of the *FSA*. The form asks for general information about the applicant and gives guidance notes on completion and other details of how the *FSA* can help.
- (2) An applicant will be asked to state his own view of the principal purpose of the publication or service. This should include an explanation why the applicant believes that he qualifies for the exclusion and why he believes that a certificate may be called for.
- (3) The applicant will be asked to define the extent of the publication or service for which he is seeking a certificate.
- (4) The applicant will be asked to supply material to demonstrate the content of the publication or service or, in the case of a new publication or service, its proposed content. For an existing publication or service, past samples should be supplied in the form most appropriate to the medium for which certification is sought. The samples should be chosen on the basis that they are representative of the publication or service as a whole and as it appears from time to time. The applicant will be asked to justify the selection of the particular samples as being representative. For a new publication or service, samples of proposed content should be supplied. These should be as comprehensive as possible.
- (5) The applicant will be asked to supply material to demonstrate that the principal purpose is not liable to change over the foreseeable future. This may, for example, include business plans, a statement of editorial policy and marketing literature.
- (6) The application must be accompanied by the application fee (see ■ AUTH 7.6.5 G).

Requests for further information

- 7.6.3 **G**_{/1} After an application is sent in, the *FSA* may, on occasion, need to obtain additional information from the applicant or elsewhere to enable it to process the application.

Time for processing applications

- 7.6.4 **G**_{/1} The *Act* does not specify a time limit for processing the application but the *FSA* intends to deal with an application as quickly as possible. The more complete and relevant the information provided by an applicant, the more quickly a decision can be expected. But on occasion it may be necessary to allow time in which the *FSA* can monitor the content of the service. This might happen where, for example, a service is in a form that makes record keeping difficult (such as a large website with a number of hypertext links).

Application Fees

- 7.6.5 **G**_{/1} The fee for an application for a certificate under article 54 of the *Regulated Activities Order* is £2,000 (see ■ AUTH 4 Annex 1R).

The FSA's approach to considering applications

- 7.6.6 **G**_{/1} The *FSA* will consider any application for a certificate on its merits.
- 7.6.7 **G**_{/1} Before it gives a certificate, the *FSA* must be satisfied that the principal purpose of the publication or service is neither of the purposes referred to in the exclusion (see ■ AUTH 7.4.5 G). If there is insufficient evidence, a certificate cannot be given.
- 7.6.8 **G**_{/1} The *FSA* will form an overall view as to the purpose (or purposes) underlying the publication or service. It will then determine whether the principal purpose is neither of those referred to in article 54 of the *Regulated Activities Order*. Because the possible range of subject matter covered by different publications or services is very wide it is not possible to apply standard tests. The *FSA* will form a judgment as to the overall impression created by the publication or service. For example, the proportion of advice, compared with other material in the publication or service, will be relevant in determining the principal purpose of the publication or service. But this will not necessarily be conclusive one way or the other. The purpose of a publication or service may still be to give advice even if only a small proportion of the space is devoted to advice as such. This might happen if, for example, a publication were marketed primarily on the basis that it contains advice on investments.
- 7.6.9 **G**_{/1} In reaching a view, the *FSA* will take into account both editorial and promotional material in the publication or service. It will also have regard to the stated purpose of the publication or service and to any other material relevant to its purpose.
- 7.6.10 **G**_{/1} Other factors relevant to an assessment of purpose or content of the publication or service may vary depending on the nature of the publication or service. For example, if a service is provided by a website, consideration of the content of the publication or service will take account of hypertext links and other features such as e-mail addresses, bulletin boards and chat rooms.

Grant of application

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If the *FSA* decides to grant the application it will issue a certificate. The certificate will normally be granted for an indefinite period. It will state what it is that the *FSA* considers constitutes the periodical or service in relation to which the *FSA* is satisfied that the exclusion in article 54 of the *Regulated Activities Order* applies. In many cases this will be self-evident. But it may sometimes be necessary to include further details in the certificate indicating what the certificate covers. For example, in the case of a large website, a distinct publication or service may form part of the website. In such a case a certificate may be given for that part only.

Refusal of application

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An application may be refused on the grounds that the *FSA* is not satisfied that the principal purpose of the publication or service is neither of those mentioned in article 54(1)(a) or (b) of the *Regulated Activities Order* (see ■ AUTH 7.4.5G). An application may also be refused on the grounds that the *FSA* considers that the vehicle through which advice is to be given is not a newspaper, journal, magazine or other periodical publication, a regularly updated news or information service or a service consisting of the broadcast or transmission of television or radio programmes. Where an application is refused, the *FSA* will issue a notice which will give a statement of the reasons for the refusal in that case. If the application is refused, the applicant, if he is an *unauthorised person*, will need to consider whether it is appropriate to continue to publish the periodical or provide the service without *authorisation* or exemption.

7.7 Post-certification issues

Ongoing monitoring

- 7.7.1** **G**_{/1} If a certificate is granted then, until it is revoked, it is conclusive evidence that the exclusion under article 54 of the *Regulated Activities Order* applies. A *person* to whom a certificate is given should notify the *FSA* of any significant changes to the purpose or nature of the content of the relevant publication or service. The *FSA* will need to keep the content of the publication or service in question under review.
- 7.7.2** **G**_{/1} An annual fee of £1,000 will be charged to meet the costs of ongoing monitoring (see ■ SUP 20 Annex 1R).

Revocation of certificate

- 7.7.3** **G**_{/1} The *FSA* may revoke a certificate at the request of its holder or on the *FSA*'s own initiative if the *FSA* considers that it is no longer justified. If the *FSA* revokes a certificate on its own initiative, it would normally expect to give advance notice to the holder of the certificate together with a statement of the reasons for the proposed revocation, and give the holder of the certificate an opportunity to make representations. Where a certificate is revoked, the holder of the certificate, if he is an *unauthorised person*, will need to consider whether it is appropriate to continue to publish the periodical or provide the service without *authorisation* or exemption.

Publication of details of certificate holders

- 7.7.4** **G**_{/1} The fact of a *person* holding a certificate granted under article 54(3) is information which may be of relevance to other *persons* (including investors or potential investors). For this reason, the *FSA* considers it appropriate that details of certificates granted under article 54(3) should be included in a list on the public record which the *FSA* is required to maintain under section 347 of the *Act* (The record of authorised persons, etc).

Further information

- 7.7.5** **G**_{/1} For further information contact the Authorisation Enquiries Department at the *FSA* (see ■ AUTH 1.9.2G).