

# Solicitors' Financial Services (Scope) Rules 2001

[with consolidated amendments to 8 June 2004]

[*Note: Amendments shown as underlined by a single line and within square brackets come into force on 31 October 2004.*

*Amendments shown as double underlined and within square brackets come into force on 31 October 2004 so far as they relate to long-term care insurance contracts and come into force generally on 14 January 2005]*

*These rules, dated 18 July 2001, are made by the Council of the Law Society with the concurrence of the Master of the Rolls under section 31 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985 and for the purposes of section 332 of the Financial Services and Markets Act 2000, regulating the practices of:*

- *solicitors and recognised bodies in any part of the world,*
- *registered European lawyers in any part of the United Kingdom, and*
- *registered foreign lawyers in England and Wales,*

*in carrying out "regulated activities" in, into or from the United Kingdom.*

## 1. Purpose

(1) The Law Society is a designated professional body under Part XX of *the Act*, and *firms* may therefore carry on certain *regulated activities* without being regulated by the FSA, if they can meet the conditions specified in section 327 of *the Act*. As a designated professional body the Law Society is required to make rules governing the carrying on by *firms* of *regulated activities*. The purpose of these rules is to set out the scope of the *regulated activities* which may be undertaken by *firms* which are not regulated by the FSA.

(2) These rules:

- prohibit *firms* which are not regulated by the FSA from carrying on certain *regulated activities*;
- set out the basic conditions which those *firms* must satisfy when carrying on any *regulated activities*;
- set out other restrictions on *regulated activities* carried on by those *firms*.

## 2. Application

These rules apply only to *firms* which are not regulated by the FSA.

## 3. Prohibited activities

A *firm* must not carry on, or agree to carry on, any of the following activities:

- (a) *market making* in *investments*;
- (b) *buying*, selling, subscribing for or underwriting *investments* as principal where the *firm*:

- (i) holds itself out as engaging in the business of *buying* such *investments* with a view to selling them;
  - (ii) holds itself out as engaging in the business of underwriting *investments* of the kind to which the *transaction* relates; or
  - (iii) regularly solicits members of the public with the purpose of inducing them, as principals or agents, to enter into *transactions* and the *transaction* is entered into as a result of the *firm* having solicited members of the public in that manner.
- (c) *buying* or selling *investments* with a view to stabilising or maintaining the market price of the *investments*;
  - (d) acting as a *stakeholder pension scheme* manager;
  - (e) entering into a *broker funds arrangement*;
  - (f) effecting and carrying out *contracts of insurance* as principal;
  - (g) establishing, operating or winding up a *collective investment scheme*;
  - (h) establishing, operating or winding up a *stakeholder pension scheme*;
  - (i) managing the underwriting capacity of a Lloyds syndicate as a managing agent at Lloyds;
  - (j) advising a person to become a member of a particular Lloyd's syndicate;
  - (k) entering as provider into a *funeral plan contract*, or
  - (l) entering into a *regulated mortgage contract* as lender or administering a *regulated mortgage contract* [unless this is in the *firm's* capacity as a trustee or personal representative and the borrower is a beneficiary under the trust, will or intestacy.]

#### 4. Basic conditions

A *firm* which carries on any *regulated activities* must ensure that:

- (a) the activities arise out of, or are complementary to, the provision of a particular *professional service* to a particular *client*;
- (b) the manner of the provision by the *firm* of any service in the course of carrying on the activities is incidental to the provision by the *firm* of *professional services*;
- (c) the *firm* accounts to the *client* for any pecuniary reward or other advantage which the *firm* receives from a third party;
- (d) the activities are not of a description, nor do they relate to an investment of a description, specified in any order made by the Treasury under section 327(6) of *the Act*;

- (e) the *firm* does not carry on, or hold itself out as carrying on, a *regulated activity* other than one which is allowed by these rules or one in relation to which the *firm* is an *exempt person*;
- (f) there is not in force any order or direction of the *FSA* under sections 328 or 329 of *the Act* which prevents the *firm* from carrying on the activities; and
- (g) the activities are not otherwise prohibited by these rules.

## 5. Other restrictions

### (1) Packaged products (except personal pension schemes)

A *firm* must not recommend, or make arrangements for, a *client* to buy a *packaged product* **except where**:

- (a) recommending, or arranging for, a *client* to buy a *packaged product* by means of an assignment;
- (b) the arrangements are made as a result of a *firm* managing assets within the exception to rule 5(4) below; or
- (c) arranging a *transaction* for a *client* where the *firm* assumes on reasonable grounds that the *client* is not relying on the *firm* as to the merits or suitability of that *transaction*.

### (2) Personal pension schemes

- (a) A *firm* must not recommend a *client* to buy or dispose of any rights or interests in a *personal pension scheme*.
- (b) A *firm* must not make arrangements for a *client* to buy any rights or interests in a *personal pension scheme* **except where** the *firm* assumes on reasonable grounds that the *client* is not relying on the *firm* as to the merits or suitability of that *transaction* but this exception does not apply where the *transaction* involves:
  - (i) a *pension transfer*; or
  - (ii) an *opt-out*.

### (3) Securities and contractually based investments (except packaged products)

- (a) A *firm* must not recommend a *client* to buy or subscribe for a *security* or a *contractually based investment* where the *transaction* would be made:
  - (i) with a person acting in the course of carrying on the business of *buying*, *selling*, *subscribing for* or *underwriting* the *investment*, whether as principal or agent;

- (ii) on an investment exchange or any other market to which that *investment* is admitted for dealing; or
  - (iii) in response to an invitation to subscribe for an *investment* which is, or is to be, admitted for dealing on an investment exchange or any other market.
- (b) This rule does not apply where the *client* is:-
- (i) not an individual;
  - (ii) an individual who acts in connection with the carrying on of a business of any kind by himself or by an undertaking of which the *client* is, or would become as a result of the *transaction* to which the recommendation relates, a *controller*, or
  - (iii) acting in his capacity as a trustee of an occupational pension scheme.

#### **(4) Discretionary management**

A *firm* must not manage assets belonging to another person in circumstances which involve the exercise of discretion **except where** the *firm* or a *partner*, *officer* or *employee* of the *firm* is a trustee, personal representative, donee of a power of attorney or receiver appointed by the Court of Protection, and either:

- (a) all routine or day to day decisions, so far as relating to that activity, are taken by an *authorised person* with permission to carry on that activity or an *exempt person*; or
- (b) any decision to enter into a transaction, which involves *buying* or subscribing for an *investment*, is undertaken in accordance with the advice of an *authorised person* with permission to give advice in relation to such an activity or an *exempt person*.

#### **(5) Corporate finance**

A *firm* must not act as any of the following:

- (a) sponsor to an issue in respect of securities to be admitted for dealing on the London Stock Exchange; or
- (b) nominated adviser to an issue in respect of securities to be admitted for dealing on the Alternative Investment Market of the London Stock Exchange.

## **[(6) Insurance mediation activities]**

[(a) Unless a *firm* is registered in the *FSA Register* it must not carry on any *insurance mediation activities*.]

[(b) Any *firm* undertaking *insurance mediation activities* must appoint a *compliance officer* whose details will be made known to the *FSA* and who will be responsible for the *firm's insurance mediation activities*.]

## **[(7) Regulated mortgage contracts]**

A *firm* must not recommend a *client* to enter as borrower into a *regulated mortgage contract* but can endorse a recommendation given by an *authorised person* with permission to advise on *regulated mortgage contracts* or an *exempt person* in relation to the giving of such advice.]

## **6. Effect of a breach of these rules**

(1) The Law Society may exercise its statutory powers in respect of any *firm* which breaches these rules.

(2) In determining whether or not there has been a breach of these rules the Law Society will take account of whether the *firm* has given due regard to the guidance issued by the Law Society on how to determine whether *regulated activities* are carried on in accordance with these rules.

(3) A *firm* which breaches these rules may:

- (a) be committing a criminal offence under section 23 of *the Act*,
- (b) be made subject to an order by the *FSA* under section 329 of *the Act* which could prevent the *firm* from carrying on any *regulated activities*.

## **7. Repeal and commencement**

(1) These rules repeal the Solicitors' Investment Business Rules 1995.

(2) These rules come into force on 1 December 2001

## **8. Interpretation**

(1) In these rules unless the context otherwise requires:

*the Act* means the Financial Services and Markets Act 2000;

*AIM* means The Alternative Investment Market of the London Stock Exchange;

*asset* means an *investment*;

*authorised person* has the meaning given in section 31 of *the Act*;

*broker funds arrangement* means an arrangement between a *firm* and a *life office* (or operator of a *regulated collective investment scheme*) under which the *life office* (or operator of the *regulated collective investment scheme*) agrees to establish a separate fund whose composition may be determined by instructions from the *firm* and in which it is possible for more than one *client* to invest;

*buy* or *buying* includes acquiring for valuable consideration;

*client*, in relation to any *regulated activities* carried on by a *firm* for a trust or the estate of a deceased person (including a controlled trust), means the trustees or personal representatives in their capacity as such and not any person who is a beneficiary under the trust or interested in the estate;

*collective investment scheme* means (in accordance with section 235 of *the Act* (Collective Investment Schemes)) any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income, which are not excluded by the Financial Services and Markets Act (Collective Investment Schemes) Order 2001 (SI 2001/1062);

[*compliance officer* means the individual within the management structure of the *firm* who is responsible for an *insurance mediation activity*.]

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[*contract of insurance* means (in accordance with article 3(1) of the *Regulated Activities Order*) any *contract of insurance* which is a *long-term insurance contract* or a *general insurance contract*.]

*contractually based investment* has the meaning given by article 3(1) of the *Regulated Activities Order* but does not include an investment which falls within the definition of a *packaged product*;

*controller* has the meaning given in section 422 of *the Act*;

*employee* means an individual who is employed in connection with the *firm's regulated activities* under a contract of service or under a contract for services such that he or she is held out as an employee or consultant of the *firm*;

*exempt person* means a person who is exempt from the *general prohibition* as a result of an exemption order made under section 38(1) or as a result of section 39(1) or 285(2) or (3) of *the Act* and who, in engaging in the activity in question, is acting in the course of business in respect of which that person is exempt;

[FSA Register means the record maintained by the FSA as required by section 347 of the Act and including those persons that carry on, or are proposing to carry on, insurance mediation activities;]

FSA means the Financial Services Authority;

*firm* means:

- (a) a sole solicitor or *registered European lawyer*,
- (b) a lawyers' *partnership* which includes at least one solicitor, *registered European lawyer* or *recognised body*, and which is permitted by rule 7(6)(a)-(c) of the Solicitors' Practice Rules 1990; or
- (c) a *recognised body*;

*funeral plan contract* has the meaning given in article 59 of the *Regulated Activities Order*;

[general insurance contract is any contract of insurance within Part 1 of Schedule 1 to the *Regulated Activities Order*;

*general prohibition* has the meaning given in section 19(2) of the Act;

*individual pension contract* means a *pension policy* or *pension contract* under which contributions are paid to:

- (a) a personal pension scheme approved under section 630 of the Income and Corporation Taxes Act 1988, whose sole purpose is the provision of annuities or lump sums under arrangements made by individuals in accordance with the scheme;
- (b) a retirement benefits scheme approved under section 591(2)(g) of the Income and Corporation Taxes Act 1988, for the provision of relevant benefits by means of an annuity contract made with an insurance company of the employee's choice;

*Individual Savings Account* means an account which is a scheme of investment satisfying the conditions prescribed in the *Individual Savings Account Regulations 1998* (S.I. 998/1870);

[insurance mediation activity means any of the following activities specified in the *Regulated Activities Order* which is carried on in relation to a contract of insurance or rights to or interests in a life policy;

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

(f) agreeing to carry on a regulated activity in (a) to (e) above]

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*investment* means any of the investments specified in Part III of the *Regulated Activities Order*;

*investment trust* means a closed-ended company which is listed in the United Kingdom or another member state and:

- (a) is approved by the Inland Revenue under section 842 of the Income and Corporation Taxes Act 1988 (or, in the case of a newly formed company, has declared its intention to conduct its affairs so as to obtain approval); or
- (b) is resident in another member state and would qualify for approval if resident and listed in the United Kingdom;

*investment trust savings scheme* means a dedicated service for investment in the securities of one or more *investment trusts* within a particular marketing group (and references to an *investment trust savings scheme* include references to securities to be acquired through that scheme);

*ISA* means an *Individual Savings Account*;

*life office* means a person with permission to effect or carry out *long term insurance contracts*;

*life policy* means a *long term insurance contract* other than a *pure protection contract* or a reinsurance contract, but including a *pension policy*;

[*long-term care insurance contract* has the meaning given in article 1 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment)(No 2) Order 2003;]

*long-term insurance contract* has the meaning given in Part II of Schedule 1 to the *Regulated Activities Order*;

*market making* means where a *firm* holds itself out as willing, as principal, to buy, sell or subscribe for *investments* of the kind to which the *transaction* relates at prices determined by the *firm* generally and continuously rather than in respect of each particular *transaction*;

[*non-investment insurance contract* means any contract of insurance which is a general insurance contract or a pure protection contract but which is not a long-term care insurance contract;]

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

*officer* means a director or secretary of a *recognised body* which is a company, or a member of a *recognised body* which is a limited liability partnership;

*opt-out* means a *transaction* resulting from a decision by an individual to opt out of or decline to join a final salary or money-purchase *occupational pension scheme* of which he or she is a current member, or which he or she is, or at the end of a waiting period will become, eligible to join, in favour of an *individual pension contract* or contracts;

*packaged product* means a *life policy*, a unit or share in a *regulated collective investment scheme*, or an *investment trust savings scheme* whether or not held within an *ISA* or *PEP*, or a *stakeholder pension scheme*;

*partner* and *partnership* refer only to an unincorporated *firm* and not to a *firm* which is incorporated as a limited liability partnership;

*pension contract* means a right to benefits obtained by the making of contributions to an *occupational pension scheme* or to a *personal pension scheme*, where the contributions are paid to a *regulated collective investment scheme*;

*pension policy* means a right to benefits obtained by the making of contributions to an *occupational pension scheme* or to a *personal pension scheme*, where the contributions are paid to a *life office*;

*pension transfer* means a *transaction* resulting from a decision by an individual to transfer deferred benefits from a final salary *occupational pension scheme*, or from a money-purchase *occupational pension scheme*, in favour of an *individual pension contract* or contracts;

*PEP* means a personal equity plan within the Personal Equity Plan Regulations 1989;

*personal pension scheme* means a scheme of investment in accordance with section 630 of the Income and Corporation Taxes Act 1988;

*professional services* means services provided by a *firm* in the course of its practice and which do not constitute carrying on a *regulated activity*;

*pure protection contract* means a *long-term insurance contract*:

- (a) under which the benefits are payable only in respect of death or of incapacity due to injury, sickness or infirmity;
- (b) which provides that benefits are payable on death (other than a death due to accident) only where the death occurs within ten years of the date on which the life of the person in question was first insured under the contract, or where the death occurs before that person attains a specified age not exceeding 70 years;
- (c) which has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and

- (d) which makes no provision for its conversion or extension in a manner which would result in its ceasing to comply with (a), (b) and (c);

*recognised body* means a body corporate recognised by the Council under the Solicitors' Incorporated Practice Rules;

*registered European lawyer* means a person whose name is on the register of European lawyers maintained by the Law Society under regulation 15 of the European Communities (Lawyer's Practice) Regulations 2000;

*Regulated Activities Order* means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

*regulated activity* means an activity which is specified in the *Regulated Activities Order*;

*regulated collective investment scheme* means:

- (a) an investment company with variable capital;
- (b) an authorised unit trust scheme as defined in section 237(3) of *the Act*; or
- (c) a scheme recognised under sections 264, 270 or 272 of *the Act*;

*regulated mortgage contract* has the meaning given by article 61(3) of the *Regulated Activities Order*;

*security* has the meaning given by article 3(1) of the *Regulated Activities Order* but does not include an *investment* which falls within the definition of a *packaged product*;

*stakeholder pension scheme* means a scheme established in accordance with Part I of the Welfare and Pensions Reform Act 1999 and the Stakeholder Pension Scheme Regulations 2000; and

*transaction* means the purchase, sale, subscription or underwriting of a particular *investment*.

(2) In these rules references to statutes, rules, codes or regulations, statements or principles etc. other than these rules include any modification or replacement thereof.

(3) As the context requires, other words and expressions shall have the meanings assigned to them by the Interpretation Act 1978, *the Act* and the Solicitors Act 1974.

(4) References in these rules to activities carried on by a *firm* include activities carried on by an individual as a principal, *officer* or *employee* of the *firm*.