



FINANCIAL SERVICES ACT [year]

REGULATED ACTIVITIES ORDER [year]

Approved by Tynwald [date]

Coming into operation [date]

In exercise of the powers conferred on the Treasury by section [no.] of the Financial Services Act [date]¹, and all other powers enabling it in that behalf, the following Order is hereby made:-

Citation and Commencement

1. This Order may be cited as the Regulated Activities Order [year] and shall come into operation on [date].

Specified Activities and Excluded Activities

2. (1) The activities specified in Schedule 1 constitute regulated activities for the purposes of the Financial Services Act [year] ("the specified activities").
(2) The Financial Services Act [year] shall not apply to certain specified activities ("the excluded activities").

Accordingly any reference in this Order to an activity of the kind specified by a particular provision is to be read subject to any such exclusions.

Definition of "Specified Products and Services"

3. For the purposes of the Financial Services Act [year] and this Order, "specified products and services" means any product or service falling within Schedule 2.

Interpretation

4. Schedule 3 shall have effect for the interpretation of this Order.

¹ 1991 c.18

SCHEDULE 1
SPECIFIED ACTIVITIES
ACTIVITIES CONSTITUTING REGULATED ACTIVITIES

BANKING BUSINESS

Banking Business Activities

1. The following are specified activities -
 - (1) Accepting *deposits* is a specified activity if -
 - (a) the money received by way of *deposit* is lent to others; or
 - (b) any other activity of the person accepting the *deposit* is financed wholly, or to a material extent, out of the capital of or interest on money received by way of *deposit*.
 - (2) A building society, established in the Island under the Industrial and Building Societies Act 1892 ("the 1892 Act") or in the United Kingdom under any enactment of Parliament relating to building societies carries on a specified activity if –
 - (a) it accepts the deposit of, or otherwise borrows, any money; or
 - (b) it accepts any payment representing the whole or any part of the amount due by way of subscription for a share in the society.
 - (3) The administration of another licenceholder established on the Island or elsewhere which is licensed under this paragraph ("approved manager") is a specified activity.

Exclusions

The following activities are not specified activities for the purpose of this Order.

Sums received or paid by certain persons

2. (1) A sum is not a *deposit* for the purposes of paragraph 1 if it is -

Comment [IOMG1]:
Includes exemptions from
Exemption Regs 1999

- (a) received or paid by -
 - (i) the Government of the Island;
 - (ii) the Government of any member State of the European Community;
 - (iii) the European Investment Bank established under the European Community Treaty;
 - (iv) the central bank of an "EEA" State including the Bank of England, or the European Central Bank;
 - (v) the Isle of Man Post Office Authority; or
 - (vi) the National Savings Bank of the United Kingdom;
 - (b) paid by a person other than one mentioned in sub-paragraph (a) in the course of carrying on a business consisting wholly or to a significant extent of lending money; or
 - (c) paid by a person who, at the time when it is paid, is a *close relative* of the person receiving it or who is, or is a *close relative* of, a director or *manager* of that person or who is, or is a *close relative* of, a *controller* of that person.
- (2) For the purposes of sub-paragraph (1)(c), an individual is a majority shareholder *controller* of a *company* if he is a *controller* of the *company* by virtue of section (??) of the Act, and if in his case the greatest percentage of those referred to in that sub-paragraph is 50 or more.
- (3) In the application of sub-paragraph (1)(d) to a sum paid by a *partnership*, that sub-paragraph is to have effect as if, for the reference to the person paying the sum, there were substituted a reference to each of the partners.

Sums received in consideration for the trading of debt securities

3. (1) Subject to sub-paragraph (2), a sum is not a *deposit* for the purposes of paragraph 1 if it is received by a person as consideration for the trading by him of any investment of the kind specified by paragraph 4 or 5 of schedule 2.
- (2) The exclusion in sub-paragraph (1) does not apply to the receipt by a person of a sum as consideration for the issue by him of commercial paper unless -
- (a) the commercial paper is issued to persons -

- (i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or *agent*) for the purposes of their businesses; or
 - (ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or *agent*) for the purposes of their businesses; and
- (b) the redemption value of the commercial paper is not less than £100,000 (or an amount of equivalent value denominated wholly or partly in a currency other than sterling), and no part of the commercial paper may be transferred unless the redemption value of that part is not less than £100,000 (or such an equivalent amount).
- (3) In sub-paragraph (2), "commercial paper" means an investment of the kind specified by paragraph 4 or 5 of Schedule 2 having a maturity of less than one year from the date of issue.

Sums received in exchange for electronic money

4. A sum is not a *deposit* for the purposes of paragraph 1 if it is immediately exchanged for electronic money.

Groups

5. A person ("the first person") does not carry on an activity specified by paragraph 1, if the first person and such other person are companies in the same group or when the same individual is a majority shareholder *controller* of both of them.

INVESTMENT BUSINESS

Investment Business Activities

6. The following are specified activities:-

- (1) Dealing in Specified Investment Products by a *professional dealer* as Principal.
- (2) Dealing in Specified Investment Products as Agent.
- (3) Arranging Deals in Specified Investment Products.

For the purposes of this sub-paragraph, arranging deals includes -

- (a) Making arrangements for another person (whether as principal or *agent*) to buy, sell, subscribe for or underwrite specified investment products is a specified activity.
 - (b) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting specified investment products (whether as principal or *agent*) is also a specified activity.
- (4) Managing Specified Investment Products belonging to another person, in circumstances involving the exercise of discretion. For the purposes of this sub-paragraph, managing investments includes an *attorney* managing investments under a power of attorney.
- (5) Safeguarding and Administering Specified Investment Products.
For the purposes of this sub-paragraph the activity includes both -
 - (a) the safeguarding of investments belonging to another, and
 - (b) the administration of those investments,or arranging for one or more other persons to carry on that activity. It is immaterial that title to the investments safeguarded and administered is held in uncertificated form.
- (6) Advising on or Promoting Specified Investment Products to –
 - (a) persons in their capacity as an investor or potential investors;
or
 - (b) persons acting as attorney for an investor or a potential investor,in respect of the merits of their –
 - (i) buying, selling, subscribing for or underwriting specified investment products; or
 - (ii) exercising any right conferred by such specified investment products to buy, sell, subscribe for or underwrite other specified investment products.This sub-paragraph does not apply to communications emanating from persons outside the Island.
- (7) Administering the activities of another licenceholder which is a "*managed manager*".

Exclusions

The following activities are not specified activities for the purpose of this Order.

Acceptance of instruments creating or acknowledging indebtedness

7. (1) Paragraph 6 shall not apply to a person who accepts an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.
- (2) The reference in sub-paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Issue by a company of its own shares or debentures

8. Paragraph 6 shall not apply where –
- (a) a company issues its own *shares* or *share warrants*; or
- (b) a person issues his own *debentures* or *debenture warrants*.

Groups and Joint Enterprises

9. Paragraph 6 shall not apply to a specified activity where a person and such other person:-
- (a) are companies in the same group; or
- (b) are, or propose to become, participators in a joint enterprise and the transaction is, or is to be, entered into for the purposes of, or in connection with, that joint enterprise.

Unsolicited or legitimately solicited transactions etc. with overseas persons

10. (1) Paragraph 6 shall not apply to a specified activity where the activity is transacted with an overseas person who is authorised by the Financial Services Authority pursuant to the Financial Services and Markets Act 2000 (of Parliament), to carry on such an activity.
- (2) Paragraph 6 shall not apply to a specified activity, if the activity constitutes engaging in a transaction with:
- (a) an exempt person under the Financial Services (Exemption) Regulations [year]; or
- (b) a person of a class referred to under paragraphs 35 or 36.

- (3) Paragraph 6 shall not apply to a specified activity, if the activity is carried on by an overseas person and such activity is the direct result of an approach made to the overseas person by or on behalf of a person on the Island which has not been in any way solicited by the overseas person.

Venture Capital

11. (1) Paragraph 6 shall not apply to the acquisition or *disposal* of, or to anything done for the purposes of the acquisition or *disposal* of, *shares* in a *company*, if:
- (a) the *shares* consist of or include *shares* carrying 75 per cent or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the *company*; or
 - (b) the *shares*, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
 - (c) in either case, the acquisition and *disposal* is, or is to be, between parties each of whom is a *body corporate*, a *partnership*, a single individual or *a group of connected individuals*; or
 - (d) whether or not sub-paragraphs (a), (b), and (c), shall be complied with, the acquisition and *disposal* is, or is to be, between parties who are together *a group of connected individuals*.

Employees' Share Schemes

12. (1) Paragraph 6 shall not apply to a specified activity if the activity is done by a company, any *group company* of it or a relevant trustee for the purpose of enabling or facilitating transactions in *shares* in or *debentures* of the first mentioned *company* between or for the benefit of any of the persons mentioned in sub-paragraph (2) or the holding of such *shares* or *debentures* by or for the benefit of any such persons.
- (2) The persons referred to in sub-paragraph (1) are:
- (a) the bona fide employees or former employees of the *company* or of another *group company*; or
 - (b) the wives, husbands, widows, widowers, or children or stepchildren under the age of 18 of such employees or former employees.

- (3) In this paragraph "a relevant trustee" means a person holding *shares* in or *debentures* of a *company* as trustee in pursuance of arrangements made for the purpose mentioned in sub-paragraph (l) by that *company*, or by a *group company* of that *company*.
- (4) In this paragraph "*shares*" and "*debentures*" include any *warrants* or *certificates representing securities* and include rights to, or interests in, the foregoing.

Corporate Services

13. Paragraph 6 shall not apply to a specified activity if the activity is licensed under paragraph 55 of this Schedule.

Trustees, Nominees and Personal Representatives

14. (1) Paragraph 6(1), 6(2) or 6(5) shall not apply to a company ("the nominee company") by reason of its dealing in a specified investment product if:-
- (a) the specified investment product comprises *shares* or *debentures* issued by a *private company*, including *warrants* and *certificates representing securities* and interests in, and rights to, the foregoing; and
 - (b) the specified investment product is, or, as the case may be, is to be held by the nominee company as bare trustee or nominee.
- (2) Carrying on an activity specified by paragraph 6(1), 6(2), 6(4) or 6(5) does not apply to anything done by a trustee (other than as bare trustee or nominee) or as personal representative unless that person holds himself out as prepared to offer such services in addition to the discharge of his duties as trustee or personal representative.
- (3) Carrying on an activity specified by paragraph 6(4) does not apply to anything done by a trustee (other than as bare trustee or nominee) or personal representative with a view to:-
- (a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within sub-paragraph (1) above; or
 - (b) a beneficiary under the trust, will or intestacy engaging in any such activity,

unless that person holds himself out as as prepared to offer such services in addition to the discharge of his duties as trustee or personal representative.

- (4) Carrying on an activity specified by paragraph 6(6) does not apply to advice given by a person as trustee (other than as bare trustee or nominee) or personal representative to:-
- (a) a fellow trustee or personal representative for the purposes of the *trust* or estate; or
 - (b) a beneficiary under the *trust*, will or intestacy concerning his interest in the trust fund or estate,

unless that person holds himself out as prepared to offer such services in addition to the discharge of his duties as trustee or personal representative.

Any reference to a trustee in this paragraph shall not include the trustee of a collective investment scheme.

Enabling parties to communicate

15. Paragraph 6(3) shall not apply to persons who merely provide the means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

Arranging transactions to which the arranger is a party

16. Paragraph 6 shall not apply to any arrangements which a person makes with a view to a transaction where he himself will be a party, except in the case of a *professional dealer* or *attorney*.

Introducing

17. Paragraph 6(3) shall not apply to arrangements where -

- (a) they are arrangements under which persons ("clients") will be introduced to another person;
- (b) the person to whom introductions are to be made is -
 - (i) a person licensed under the Financial Services Act [year] to carry on specified activities under paragraph 6 of this Order; or
 - (ii) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; and

- (iii) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to specified products generally or in relation to any class of specified product to which the arrangements relate.

Professional Services

18. Paragraph 6(3), 6(5) or 6(6) shall not apply to any activity which –

- (a) is undertaken by a person who is or practices as an accountant, an advocate or a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986;
- (b) is wholly incidental to, or forms part of, advice given or any other professional activity undertaken by such persons in their respective professional capacities; and
- (c) is undertaken at the time at which, or within a reasonable period after, the advice is given or the professional activity is completed,

but carrying out a specified activity shall not be regarded as falling within this paragraph if the person holds himself out as being available to provide such services in addition to the other professional services.

Introduction to Eligible Custodians

19. (1) Paragraph 6(5) shall not apply to any arrangements by another person pursuant to which introductions are made to a person licensed to carry on activities specified in paragraph 6(5).

Activities not constituting administration

20. Paragraph 6(5) shall not apply to -

- (a) providing information as to the number of units or the value of any assets safeguarded;
- (b) converting currency;
- (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

Advice given in newspapers etc.

21. (1) Paragraph 6(6) shall not apply to the giving of advice in writing or other legible form if the advice is contained in a newspaper,

journal, magazine, or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any *advertisements* or other promotional material contained in it, is neither -

- (a) that of giving advice of a kind mentioned in paragraph 6(6); nor
 - (b) that of leading or enabling persons to buy, sell, subscribe for or underwrite securities or other specified products.
- (2) Paragraph 6(6) shall not apply to the giving of advice in any service consisting of the broadcast or transmission of television or radio programmes, if the principal purpose of the service, taken as a whole and including any *advertisements* or other promotional material contained in it, is neither of those mentioned in subparagraph (1).
- (3) For the purposes of this paragraph, "advertisement" includes every form of advertising and includes advertising -
- (a) in any form of publication;
 - (b) by the display of notices;
 - (c) by means of circulars or other documents;
 - (d) by an exhibition of photographs or cinematograph films;
 - (e) by means of broadcasting sounds or pictures (including transmission by cable), telecommunications or any electronic media.

COLLECTIVE INVESTMENT SCHEMES

Services to collective investment schemes

22. The following services to collective investment schemes are specified activities -

- (1) Acting as a manager of a collective investment scheme.
- (2) Acting as an administrator of a collective investment scheme.
- (3) Acting as a *custodian of a collective investment scheme*.
- (4) Acting as a *trustee of a collective investment scheme*.
- (5) Acting as an investment adviser to a collective investment scheme.

- (6) Acting as an investment manager to a collective investment scheme.
- (7) Acting as a manager/administrator of another manager licensed to carry on activities as defined in sub-paragraph (1) above.
- (8) Providing the following services to regulated collective investment schemes that are not established on the Island–
 - (a) administration services including accounting services; or
 - (b) share registration services.
- (9) Providing administration services to operators of collective investment schemes that are not established on the Island.
- (10) Providing wholly incidental services under paragraphs 55 or 62 in relation to collective investment schemes.

For the purposes of this paragraph, with the exception of sub-paragraphs (8) and (9), collective investment scheme includes those established on the Island or elsewhere.

Exclusions

The following activities are not specified activities for the purpose of this Order.

Excluded Scheme Managers, Trustees and Custodians

- 23.(1) Paragraph 22(1) shall not apply to a person whose sole activity consists of acting as a manager (“an excluded scheme manager”) of no more than one collective investment scheme excluded under section [] of the Financial Services Act [year] (“an excluded domestic collective investment scheme”) in respect of any activity carried out by virtue of that position.
- (2) Paragraph 22(3) and 22(4) shall not apply to a person whose sole activity consists of acting as a trustee or custodian of no more than one collective investment scheme excluded under section [] of the Financial Services Act [year] (“an excluded domestic collective investment scheme”) in respect of any activity carried out by virtue of that position.

Where there are a number of different entities within the same economic group, these exclusions will only be applicable to one entity within that group.

CORPORATE SERVICE PROVIDERS

Acting as a Corporate Service Provider

24. Acting as a Corporate Services Provider means engaging in any of the following activities -

- (1) The provision of services with respect to the formation of *companies*.
- (2) The sale, transfer or *disposal* of *companies*.
- (3) The provision of premises for use as a registered office for a *company*, other than in the capacity of landlord, property manager or estate agent.
- (4) The provision of accommodation address facilities for a *company*, other than in the capacity of landlord, property manager or estate agent.
- (5) Acting as a director, alternate director or secretary of *companies* and includes -
 - (a) any individual occupying the position of director by whatever name called;
 - (b) any individual in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that individual in a professional capacity;
 - (c) in relation to a limited liability *company* constituted under the Limited Liability Companies Act 1996, the *company's manager* and the registered *agent*; and
 - (d) a registered *agent* under the Companies Act 2006.
- (6) Arranging for others to be officers of *companies* and for this purpose officer includes -
 - (a) any person occupying the position of company secretary, by whatever name called; and
 - (b) any director within the meaning of sub-paragraph (5).
- (7) Acting or arranging for others to act as nominee shareholders or nominee members of *companies*.

[c.19]

- (8) The provision of *company* administration services.
- (9) The provision of services with respect to the formation of *partnerships*.
- (10) The provision of premises for use as a place of business by a *partnership* other than in the capacity of landlord, property manager or estate agent.
- (11) The provision of accommodation address facilities for a *partnership* other than in the capacity of landlord, property manager or estate agent.
- (12) Acting as or arranging for others to act as a person authorised to accept on behalf of a *partnership* service of any process or documents under section 48A of the Partnership Act 1909. VIII p.327
- (13) Arranging for others to act as a partner in a *partnership*.
- (14) (a) Holding units on behalf of another in a unit trust scheme within the meaning of section [??] of the Financial Services Act [year]. [c.16]
 (b) Arranging for others to hold units on behalf of another in such a unit trust scheme.
- (15) For the purposes of this paragraph, "accommodation address facilities" means any of the following services – [c.11]
 - (a) the receipt or dispatch on behalf of a *company* of any communication or parcel by means of the postal service, a courier service, hand delivery, a telecommunications system (which has the same meaning as in the Telecommunications Act 1984), wireless telegraphy or any electronic media;
 - (b) the redirection of communications or parcels received on behalf of a *company*;
 - (c) the provision of an address at which such services are provided;
 - (d) the provision of an address at which service of process and notices may be served on a *company* as provided by section 313(1)(c) of the Companies Act 1931.

Exclusions

The following activities are not specified activities for the purpose of this Order.

Professional Services

25. Paragraph 24 shall not apply in respect of any specified activity which –
- (a) is undertaken by a person who is and practices as an accountant, an advocate or a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986;
 - (b) is wholly incidental to, or forms part of, advice given or any other professional activity undertaken by such persons in their respective professional capacities; and
 - (c) is undertaken at the time at which, or within a reasonable period after, the advice is given or the professional activity is completed,

but carrying out a specified activity shall not be regarded as falling within this paragraph if the person holds himself out as being available to provide such services in addition to the other professional services.

Group transactions

26. (1) Paragraph 24 shall not apply in respect of any specified activity when it is undertaken by –
- (a) a *company* which is part of a *group*; or
 - (b) an individual who is a member (legal or equitable), officer or employee of a *company* which is part of a *group*,
- and the specified activity is undertaken for or in respect of a *company* which is a member of that *group*.
- (2) For the purposes of sub-paragraph (1), a specified activity is not undertaken for or in respect of a *company* which is a member of that *group* if that member is acting –
- (a) as a trustee and each beneficiary (direct or indirect) under the trust is a third party;
 - (b) in a *fiduciary* capacity and the activity is undertaken wholly or partly in the interests of a third party;
 - (c) as a nominee of a third party;
 - (d) as *attorney* for a third party;
 - (e) as the *agent* of a third party; or

- (f) otherwise on behalf of or with the consent of a third party.
- (3) In sub-paragraph (2), "third party" means -
 - (a) an individual who is not a member (legal or equitable), officer or employee of any *company* which is a member of the *group*;
 - (b) a *company* which is not a member of the *group*;
 - (c) a *company* which is a member of the *group* but is acting (directly or indirectly) for, or on behalf of, or for the benefit of, a person who is not a member of the *group*.

Joint Enterprises

- 27.** (1) Paragraph 24 shall not apply in respect of any specified activity when the activity is undertaken by a person who is, or proposes to become, a participator in a joint enterprise and the activity is wholly incidental to that joint enterprise.
- (2) For the purposes of this paragraph, joint enterprise means an enterprise into which two or more persons ("the participators") enter for commercial reasons related to a business or businesses (other than investment business) carried on by them; and where a participator is a body corporate and a member of a group, each other member of the group shall also be regarded as a participator in the enterprise.
- (3) In this paragraph, joint enterprise does not include an enterprise the whole or main purpose of which is to undertake any specified activity.

Introducers

28. Paragraph 24 shall not apply to a person by reason only that he arranges for the introduction of others to a person who holds a licence issued under section ? of the Financial Services Act [year] to carry on activities prescribed in paragraph 24 of this Schedule.

Employment agencies

29. Paragraph 24 shall not apply in respect of any activity prescribed in paragraph 24 of this Order, when the activity is undertaken by the holder of an employment agency licence or employment business licence under the Employment Agencies Act 1975 and the activity is wholly incidental to the business which it is licensed to carry on under that Act.

Officers

[c. 2]

30. Paragraph 24 shall not apply in respect of any activity prescribed in paragraph 24 of this Order, if the individual in question is acting as a director or secretary of a *company* which is wholly beneficially owned by -

- (a) that director or secretary alone; or
- (b) any members of his close family; or
- (c) the director or secretary together with any members of his close family

and for this purpose, "close family" means the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the director or secretary.

TRUST SERVICE PROVIDERS

Acting as a Trust Service Provider

31. Acting as a Trust Serviced Provider means engaging in any of the following activities -

- (1) (a) Acting as trustee in relation to an express trust.
- (b) The provision of trust administration services in relation to an express trust,

and for the purposes of this paragraph, an express trust is one created by the intentional act of the settlor either orally or evidenced in writing.

- (2) Acting as a trust corporation within the meaning of section 65A(b) of the Trustee Act 1961. [X1X p..215]
- (3) Acting as a protector (meaning a person other than a trustee who, as the holder of an office created by or under the terms of an express trust, is authorised or required to participate in the administration of the trust).
- (4) Acting as an *enforcer* within the meaning of section 1(1)(d) of the Purpose Trusts Act 1996. [c.9]

[c.16]

Exclusions

The following activities are not specified activities for the purpose of this Order.

Professional Services

32. Paragraph 31 shall not apply in respect of any specified activity which –

- (a) is undertaken by a person who is or practices as an accountant, an advocate or a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986;
- (b) is wholly incidental to, or forms part of, advice given or any other professional activity undertaken by such persons in their respective professional capacities; and
- (c) is undertaken at the time at which, or within a reasonable period after, the advice is given or the professional activity is completed,

but carrying out a specified activity shall not be regarded as falling within this paragraph if the person holds himself out as being available to provide such services in addition to the other professional services.

Group transactions

33. (1) Paragraph 31 shall not apply in respect of any specified activity when it is undertaken by –

- (a) a *company* which is part of a *group*; or
- (b) an individual who is a member (legal or equitable), officer or employee of a *company*, which is part of a *group*,

and the specified activity is undertaken for or in respect of an express trust (as defined in paragraph 62(1)(c)), which is established for the benefit of that *group*.

(2) For the purposes of sub-paragraph (1), a *trust* is not established for the benefit of that *group* if the person undertaking the activity is acting –

- (a) as a trustee and any beneficiary under the *trust* is a third party;
- (b) in a fiduciary capacity and the activity is undertaken wholly or partly in the interests of a third party;
- (c) as a nominee of a third party;
- (d) as an *attorney* for a third party;
- (e) as the *agent* of a third party; or

- (f) otherwise on behalf of or with the consent of a third party.
- (3) In sub-paragraph (2), 'third party' means –
 - (a) an individual who is not a member (legal or equitable), officer or employee of any *company*, which is a member of the *group*;
 - (b) a *company*, which is not a member of the *group*;
 - (c) a *company* which is a member of the *group* but is acting (directly or indirectly) for, or on behalf of, or for the benefit of, a person who is not a member of the *group*.

Joint Enterprises

- 34. (1) Paragraph 31 shall not apply in respect of any specified activity when the activity is undertaken by a person who is, or proposes to become, a participator in a joint enterprise and the activity is wholly incidental to that joint enterprise.
- (2) In this paragraph, joint enterprise does not include an enterprise the whole or main purpose of which is to undertake any specified activity.

OTHER EXCLUSIONS

Activities carried on by the following persons do not constitute specified activities for the purpose of this Order.

Insurance and Retirement Benefit Schemes

- 35. Paragraph 6 shall not apply in respect of the following persons -
 - (a) a person who is authorised under section 6 of the Insurance Act 1986²;
 - (a) a person who is the holder of a permit issued under section 25 of the Insurance Act 1986;
 - (b) a person who is registered under section 27 of the Insurance Act 1986;
 - (c) a person who is the subject of an exemption under section 3(3)(d) of the Insurance Act 1986; and
 - (e) a person who is registered as a scheme administrator under section 36 (1) of the Retirement Benefits Schemes Act 2000³,

² 1986 c.24

³ 2000 c.14

as respects any business he may carry on by virtue of that authorisation, permit, registration, or, as the case may be, section.

Friendly Society

36. Paragraph 6 shall not apply in respect of a body registered as a friendly society (but not as a branch of a society) under the law of, or any part of, the United Kingdom relating to friendly societies in respect of any business which it carries on for or in connection with any of the purposes for which friendly societies may, under that law, provide.

Court officers etc.

37. Paragraph 6 shall not apply in respect of the Judges of the High Court, the Chief Registrar and any receiver or officer of the High Court in respects of any business, which they carry on by virtue of their position.

Diocesan Board of Finance

38. The Sodor and Man Diocesan Board of Finance shall not be treated as carrying on any specified activity defined by paragraph 6 as respects any business, which they carry on for the purposes of the Church of England.

ELECTRONIC MONEY

This section will change following implementation of new legislation in the UK following amendments to the EU Directive

Issuing electronic money

39. Issuing electronic money is a specified activity.

SCHEDULE 2

SPECIFIED PRODUCTS AND SERVICES

Specified Banking Services

Deposit

1. (1) "*Deposit*" means a sum of money, other than one excluded by any of paragraphs 2 to 6 of schedule 1, paid on terms -
 - (a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
 - (b) which are not referable to the provision of *property* (other than currency) or services or the giving of security, and references in this Order to money deposited and to the making of a *deposit* shall be construed accordingly.
- (2) For the purposes of paragraph (1), money is paid on terms which are referable to the provision of *property* or services or the giving of security if, and only if -
 - (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of *property* or services, and is repayable only in the event that the *property* or services is or are not in fact sold, hired or otherwise provided;
 - (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
 - (c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up or return of any *property*, whether in a particular state of repair or otherwise.
- (3) The active management of money on behalf of third parties. (New Addition)

Specified Investment Products

Shares etc.

2. *Shares*, including stock, in the share capital of a *company* ("*shares*").

Debentures

3. (1) *Debentures*, including debenture stock, loan stock, bonds and certificates of deposit and other instruments creating or acknowledging indebtedness ("*debentures*");
- (2) Sub-paragraph (1) does not apply to:-
 - (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) a cheque or other bill of exchange, a banker's draft or a letter of credit;
 - (c) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of *property*, a heritable security or an insurance policy;
 - (d) government securities.

Government and Public Securities

4. (1) Loan stock, bonds and other instruments ("government securities") creating or acknowledging indebtedness issued by or on behalf of:-
 - (a) the government of the Island or of any country or territory outside the Island;
 - (b) a local authority in the Island or elsewhere;
 - (c) any international organisation the members of which include the United Kingdom or another Member State of the European Union.
- (2) Sub-paragraph (1) does not apply to:-
 - (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) a cheque or other bill of exchange, a banker's draft or a letter of credit;
 - (c) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of *property*, a heritable security or an insurance policy.

Instruments entitling to shares and securities

5. *Warrants* or other instruments entitling the holder to, or to subscribe for *shares, debentures* or government securities ("*share warrants*", "*debenture warrants*" (including *warrants* to subscribe for government securities), and together "*warrants*")

Certificates representing securities

6. Certificates or other instruments ("*certificates representing securities*"), which confer -

- (a) property rights in respect of any *shares, debentures*, government securities or *warrants*;
- (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
- (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

Units in Collective Investment Schemes

7. Units in a collective investment scheme, including *shares* in, or securities of, an open-ended investment *company*.

Options

8. Options to acquire or dispose of -

- (a) an investment falling within any other paragraph of this Schedule;
- (b) currency of the Island or of any other country or territory;
- (c) gold, palladium, platinum or silver; or
- (d) an option to acquire or dispose of an investment falling within sub-paragraph (a), (b) or (c).

Futures

9. (1) Subject to sub-paragraph (2), rights under a contract for the sale of a commodity or *property* of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.
- (2) There are excluded from sub-paragraph (1) rights under any contract which is made for commercial and not investment purposes.

Contracts for differences and other Derivatives

10. (1) Rights under a contract for differences, or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of *property* of any description or in an index or other factor designated for that purpose in the contract.
- (2) Other derivative products - further consideration to be given.

Long-Term Insurance Contracts

11. Rights under a contract the effecting or carrying out of which constitutes long-term insurance business. For the purposes of this paragraph, long-term insurance business means the effecting or carrying out of contracts of insurance of the following descriptions, namely life, annuity, marriage, birth, permanent health, tontines, capital redemption and pension fund management, but does not include contracts under which :-
 - (a) the benefits are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding 70 years;
 - (c) there is no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (d) there is no provision for its conversion or extension in a manner that would result in its ceasing to comply with paragraphs (a), (b) and (c).

Rights and Interests in Investments

12. (1) Rights to and interests in anything which is an investment falling within any other paragraph of this Schedule;
- (2) This paragraph does not apply to interests under the trusts of an occupational pension scheme.

Specified Fiduciary Services

Company Administration

13. Administration services in relation to a company which includes a *body*

corporate whether constituted under the law of the Island or elsewhere and also any unincorporated body constituted under the law of a country or territory outside the Island, but does not include:-

- (a) an open-ended investment company; or
- (b) except for the purposes of paragraphs 9, 11 and 13 of Schedule 1 and, except in relation to shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 (of Parliament), a building society incorporated under the laws of, or any part of, the United Kingdom or the Island; or
- (c) except for the purposes of paragraphs 9, 11 and 13 of Schedule 1 and any body incorporated under the law of the Island or of, or of any part of, the United Kingdom relating to building societies, industrial and provident societies or credit unions.

Trust Administration

14. Administration services in relation to a trust which includes a legal relationship which falls within Paragraph 2 of the "Convention on the Law Applicable to Trusts and on Their Recognition" as set out in the Schedule to the Recognition of Trusts Act 1988 whether such relationship was created in, or under the law of, the Island or elsewhere.

Electronic money

15. "Electronic Money" means monetary value, as represented by a claim on the issuer, which is –
- (a) stored on an electronic device;
 - (b) issued on receipt of funds; and
 - (c) accepted as a means of payment by persons other than the issuer

SCHEDULE 3 INTERPRETATION

Definitions

1. In this Order:

"agent" includes an *attorney* and a nominee.

"attorney" means the donee of a power of attorney acting under the power.

"body corporate" includes

[c.19]

- (a) a limited liability *company* constituted under the Limited Liability Companies Act 1996; and
- (b) a body corporate constituted under the law of a country or territory outside the Island;
- (c) a stiftung (foundation) established under the laws of Austria, Germany or Liechtenstein;
- (d) an anstalt established under the law of Liechtenstein;
- (e) a foundation established under the laws of Panama;
- (f) such other bodies established under the law of a country or territory outside the Island as are specified in regulations under section [] of the Act.

"certificates representing securities" has the meaning given by paragraph 7 of schedule 2.

"close relative" means a person's spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters.

"collective investment scheme" has the meaning given in section [] of the Financial Services Act [year] and **"scheme"** shall be construed accordingly.

"company" has the meaning given by paragraph 13 of Schedule 2.

"controller" has the meaning given by section [?] of the Financial Services Act [year].

"custodian of a collective investment scheme" means any person to whom the property subject to the collective investment scheme is entrusted for safekeeping.

"debentures" has the meaning given by paragraph 4 of Schedule 2.

"debenture warrants" has the meaning given by paragraph 6 of Schedule 2.

"deposit" has the meaning given by paragraph 1 of Schedule 2.

"disposal" includes:

- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;
- (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
- (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.

"electronic money" has the meaning given by paragraph 2 of Schedule 2.

"government securities" has the meaning given by paragraph 3 of Schedule 2.

"a group" shall be treated as including any company in which a member of the group holds a qualifying capital interest, and for this purpose:-

- (a) a qualifying capital interest means an interest in relevant *shares* of the company which the member holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest;
- (b) relevant *shares* means *shares* comprised in the ordinary share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the body; and
- (c) a holding of 20 per cent or more of the nominal value of the relevant *shares* of a company shall be presumed to be a qualifying capital interest unless the contrary is shown;

and in relation to any company, any other company being a member of the same group shall be a *group company*.

"group company", in relation to a company, means that company, any other company which is its holding company (as construed in accordance with section 1 of the Companies Act 1974) or *subsidiary* and any other company which is a *subsidiary* of that holding company.

"a group of connected individuals" means -

- (a) in relation to the party disposing of the *shares*, persons each of whom is, or is a close relative of, a director or *manager* of the company; and
- (b) in relation to the party acquiring the *shares*, persons each of whom is, or is a close relative of, a person who is to be a director or *manager* of the company.

"fiduciary" has the meaning given by section ? of the Financial Services Act [year].

"investment" means any asset, right or interest falling within any paragraphs 3 to 11 of Schedule 2.

"manager" has the meaning given by section ? of the Financial Services Act [year].

"an open-ended investment company" means a collective investment scheme under which -

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and
- (b) the rights of the participants are represented by shares in or securities of that body which -
 - (i) the participants are entitled to have redeemed or repurchased, or which (otherwise than by repurchase under Part 1 of the Companies Act 1986) are redeemed or repurchased from them by, or out of funds provided by, that body; or
 - (ii) the body ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate.

For the purposes of this definition, participant has the meaning given in section [??] of the Financial Services Act [year].

"overseas person" means a person who:

- (a) does not carry on a specified activity from a permanent place of business maintained by him in the Island; and
- (b) is not:
 - (i) a company incorporated in the Island under the Companies Acts 1931 to 2004; or
 - (ii) a company incorporated outside the Island which is registered under Part XI of the Companies Act 1931⁴; or
 - (iii) a limited *partnership* registered in the Island under Part II of the Partnership Act 1909⁵.

"partnership" has the same meaning as in the Partnership Act 1909 and includes similar relationships formed outside the Island. [VIII]

"private company" means a company where -

- (a) the law of the country or territory in which it is incorporated; or
- (b) prohibit it from making an offer (either in that country or territory, or elsewhere) to the public or any section of it to subscribe for *shares* in or debentures of the company.

⁴ XIII p. 235

⁵ VIII p.327

"professional dealer" means any person who:-

- (a) is a market maker in investments; or
- (b) regularly solicits members of the public (whether in the Island or elsewhere) to deal in investments.

A market maker in relation to an investment means a person who (otherwise than in his capacity as the operator of a collective investment scheme) holds himself out as able and willing to enter into transactions of sale and purchase in investments of that description at prices determined by him generally and continuously rather than in respect of each particular transaction.

"property" includes currency of the Island or any other country or territory.

"shares" has the meaning given in paragraph 3 of Schedule 2.

"share warrants" has the meaning given in paragraph 6 of Schedule 2.

"subsidiary" shall be construed in accordance with section 1 of the Companies Act 1974.

"trust" has the meaning given in paragraph 13 of Schedule 2.

"trustee of a collective investment scheme" in relation to a unit trust scheme or a collective investment scheme required to appoint a trustee means a person holding the property in question on trust for the participants.

"units" means the rights or interests (however described) of the participants in a collective investment scheme.

"warrants" has the meaning given in paragraph 6 of Schedule 2.

References

2. In this Order, references to -

"buying or selling" include references to any acquisition or disposal for valuable consideration;

"dealing", "making", "managing" and **"giving"** include offering or agreeing to deal, make, manage or give respectively;

an **"instrument"** include references to any record whether or not in the form of a document; and

an **"offer"** include references to an invitation to treat.

Gaming

3. In determining whether anything constitutes an investment or the carrying on of investment business the provisions of any enactment relating to gaming, betting and lotteries shall be disregarded.

Made:

Signed: _____

by authority of the

Minister for the Treasury

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order defines the terms "specified products and services" and those activities that constitute "regulated activities". It also defines those activities that are excluded from the scope of the Financial Services Act [date], together with miscellaneous interpretation.