

SRA Financial Services (Scope) Rules 2001

These rules, dated 18 July 2001, are made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of schedule 4 to the Legal Services Act 2007, and for the purposes of section 332 of the Financial Services and Markets Act 2000 regulating the practices of:

- **Authorised bodies** and **recognised sole practitioners** in any part of the world,
- **REs** in any part of the United Kingdom, and
- **RFLs** in England and Wales,

in carrying out **regulated activities** in the United Kingdom, for the purposes of the Financial Services and Markets Act 2000.

Part 1: Rules

Rule 1: Purpose

1.1 The Law Society is a designated professional body under Part XX of **FSMA**, and **firms** may therefore carry on certain **regulated activities** without being regulated by the **FCA**, if they can meet the conditions specified in section 327 of **FSMA**. 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 **FCA**.

1.2 These rules:

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

Note

- (i) **FSMA** makes the **FCA** and the Prudential Regulation Authority (PRA) the statutory regulators of financial services business. Under **FSMA** anyone carrying on **regulated activities** needs to be regulated by the **FCA**. Part XX of **FSMA** enables **firms** authorised and regulated by the **SRA** to be treated as exempt professional firms and to carry on activities known as exempt regulated activities provided that these **firms** are able to comply with the SRA Financial

Services (Scope) Rules 2001 as these Rules set out the scope of the activities which may be undertaken.

Rule 2: Application

- 2.1 These rules apply only to *firms* which are not regulated by the *FCA*.
- 2.2 Where a *firm* is a *licensed body*, these rules apply only in respect of:
- (a) any *reserved legal activity*;
 - (b) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;
 - (c) any other activity in respect of which the *licensed body* is regulated pursuant to Part 5 of the *LSA*.

Note

- (i) Any *firm* which undertakes *regulated activities* and cannot comply with the Part XX exemption must be authorised by the *FCA* and comply with the *FCA's* requirements.

Rule 3: Prohibited activities

- 3.1 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* or a *personal 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*;
- (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);
- (m) entering into a *regulated home purchase plan* as provider or administering a *regulated home purchase plan* (unless this is in the *firm's* capacity as a trustee or personal representative and the *home purchaser* is a beneficiary under the trust, will or intestacy);
- (n) entering into a *regulated home reversion plan* as a provider or administering a *regulated home reversion plan* (unless this is in the *firm's* capacity as a trustee or personal representative and the reversion seller is a beneficiary under the trust, will or intestacy);
- (o) entering into a *regulated sale and rent back agreement* as an *agreement provider* or administering a *regulated sale and rent back agreement* (unless this is in the *firm's* capacity as a trustee or personal representative and the *agreement seller* is a beneficiary under the trust, will or intestacy);
- (p) entering into a *regulated credit agreement* as lender except where the *regulated credit agreement* relates exclusively to the payment of *disbursements* or professional fees due to the *firm*;
- (q) exercising, or having the right to exercise, the lender's rights and duties under a *regulated credit agreement* except where the *regulated credit agreement* relates exclusively to the payment of *disbursements* or professional fees due to the *firm*;
- (r) entering into a *regulated consumer hire agreement* as owner;
- (s) exercising, or having the right to exercise, the owner's rights and duties under a *regulated consumer hire agreement*;
- (t) operating an electronic system in relation to lending within the meaning of article 36H of the *Regulated Activities Order*;
- (u) carrying on the activity of providing credit references within the meaning of article 89B of the *Regulated Activities Order*;
- (v) *insurance distribution activities* in relation to *insurance-based investment products*; or

- (w) creating, developing, designing and/or underwriting a **contract of insurance**.

Note

- (i) The Treasury has made the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 which sets out those activities which cannot be provided by professional firms under the Part XX exemption. These activities are also restricted in Rules 3 and 5 of the SRA Financial Services (Scope) Rules 2001.

Rule 4: Basic conditions

4.1 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 **FSMA**;
- (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 **FCA** under sections 328 or 329 of **FSMA** which prevents the **firm** from carrying on the activities; and
- (g) the activities are not otherwise prohibited by these rules.

Notes

- (i) In order to comply with rule 4(a) you must ensure that the **regulated activity** in question arises out of, or is complementary to, other **professional services** to a particular **client**. The effect of this is that it is not possible to undertake a **regulated activity** in isolation for a **client**.
- (ii) In order to comply with rule 4(b) the exempt **regulated activities** cannot be a major part of the practice of the **firm**. The **FCA** considers that the following factors are relevant to this: the scale of **regulated activity** in proportion to other **professional services** provided; whether and to what extent activities that are **regulated activities** are held out as separate services; and the impression

given of how the *firm* provides *regulated activities*, for example through its advertising or other promotion of its services.

- (iii) In order to comply with rule 4(c) you must account for any commission or other *financial benefit* to the *client*. Accounting to the *client* does not mean simply telling the *client* that the *firm* will receive commission. It means that the commission etc must be held to the order of the *client* and the *client* gives you informed consent to keep it. To comply with the rule you should, in advance of the arrangement and/or provision of the third party financial service:
 - (a) inform the *client* of their rights to any commission etc;
 - (b) inform the *client* that the arrangement and/or provision of the service is not dependant on their agreement to waive their right to any commission etc;
 - (c) seek and record agreement from the *client* as to whether any commission etc should be passed to the *client*, retained by the *firm* to offset client fees, or retained by the *firm* with the *client* waiving their right to it.

Rule 5: Other restrictions

5.1 Retail investment products (except personal pension schemes)

- (a) A *firm* must not recommend, or make arrangements for, a *client* to buy a *retail investment product* except where:
 - (i) recommending, or arranging for, a *client* to buy a *retail investment product* by means of an assignment;
 - (ii) the arrangements are made as a result of a *firm* managing assets within the exception to rule 5(4) below; or
 - (iii) 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*.

5.2 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*.

5.3 Securities and *contractually based investments* (except *retail investment 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*.

5.4 Discretionary management

- (a) A *firm* must not manage assets belonging to another person in circumstances which involve the exercise of discretion except where the *firm* or a *manager* 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:
 - (i) 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
 - (ii) 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*.

5.5 Corporate finance

- (a) A *firm* must not act as any of the following:

- (i) sponsor to an issue in respect of **securities** to be admitted for dealing on the London Stock Exchange; or
- (ii) nominated adviser to an issue in respect of **securities** to be admitted for dealing on the Alternative Investment Market of the London Stock Exchange; or
- (iii) corporate adviser to an issue in respect of **securities** to be admitted for dealing on the PLUS Market.

5.6 Insurance distribution activities

- (a) A **firm** may only carry on **insurance distribution activities** as an **ancillary insurance intermediary**.
- (b) A **firm** must not carry on any **insurance distribution activities** unless the **firm**:
 - (i) is registered in the **Financial Services Register**; and
 - (ii) has appointed an **insurance distribution officer** who will be responsible for the **firm's insurance distribution activities**.
- (c) If a **firm** is carrying on, or proposing to carry on, **insurance distribution activities** it must notify the **SRA** in the **prescribed** form.
- (d) The **SRA** may give the **FCA** any of the information collected on the **prescribed** form and the **firm** must notify the **SRA** without undue delay of any changes to this information or to any information about the **firm** that appears on the **Financial Services Register**.
- (e) Rule 5.6(c) does not apply to a **firm** that has been registered in the **Financial Services Register** and was able to carry on insurance mediation activities before 1 October 2018.

5.7 Regulated mortgage contracts

- (a) 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.

5.8 Regulated home purchase plans

- (a) A **firm** must not recommend a **client** to enter as **home purchaser** into a **regulated home purchase plan** with a particular person but can endorse a recommendation given by an **authorised person** with permission to advise on **regulated home purchase plans** or an **exempt person** in relation to the giving of such advice.

5.9 Regulated home reversion plans

- (a) A *firm* must not recommend a *client* to enter as *reversion seller* or *plan provider* into a *regulated home reversion plan* with a particular person but can endorse a recommendation given by an *authorised person* with permission to advise on *regulated home reversion plans* or an *exempt person* in relation to the giving of such advice.

5.10 Regulated sale and rent back agreements

- (a) A *firm* must not recommend a *client* to enter as *agreement seller* or *agreement provider* into a *regulated sale and rent back agreement* with a particular person but can endorse a recommendation given by an *authorised person* with permission to advise on *regulated sale and rent back agreements* or an *exempt person* in relation to the giving of such advice.

5.11 Credit-related regulated activities

- (a) A *firm* must not enter into any transaction with a *client* in which it:
 - (i) provides the *client* with credit card cheques, a credit or store card, *credit tokens*, *running account credit*, a current account or *high-cost short-term credit*;
 - (ii) holds a *continuous payment authority* over the client's account; or
 - (iii) takes any article from the *client* in *pledge* or *pawn* as security for the transaction.
- (b) A *firm* must not:
 - (i) enter into a *regulated credit agreement* as lender; or
 - (ii) exercise, or have the right to exercise, the lender's rights and duties under a *regulated credit agreement*,which is secured on land by a *legal or equitable mortgage*.
- (c) A *firm* must not:
 - (i) enter into a *regulated credit agreement* as lender; or
 - (ii) exercise, or have the right to exercise, the lender's rights and duties under a *regulated credit agreement*,which includes a variable rate of interest.
- (d) A *firm* must not provide a *debt management plan* to a *client*.
- (e) A *firm* must not charge a separate fee for, or attribute any element of the *firm's* fees to, *credit broking* services.

Rule 6: Effect of a breach of these rules

- 6.1 The **SRA** may exercise its statutory powers in respect of any **firm** which breaches these rules.
- 6.2 In determining whether or not there has been a breach of these rules the **SRA** will take account of whether the **firm** has given due regard to the guidance issued by the Law Society or the **SRA** on how to determine whether **regulated activities** are carried on in accordance with these rules.
- 6.3 A **firm** which breaches these rules may:
- (a) be committing a criminal offence under section 23 of **FSMA**; and
 - (b) be made subject to an order by the **FCA** under section 329 of **FSMA** which could prevent the **firm** from carrying on any **regulated activities**.

Part 2: Repeal, commencement and transitional provisions

Rule 7: Repeal, commencement and transitional provisions

- 7.1 These rules repeal the Solicitors' Investment Business Rules 1995.
- 7.2 These rules come into force on 1 December 2001.
- 7.3 [Deleted]
- 7.4 [Deleted]
- 7.5 [Deleted]

Rule 8: Interpretation

- 8.1 The SRA Handbook Glossary 2012 shall apply and, unless the context otherwise requires:
- (a) all italicised terms shall be defined; and
 - (b) all terms shall be interpreted,
- in accordance with the **Glossary**.
- 8.2 In these rules references to statutes, rules, codes or regulations, statements or principles etc other than these rules include any modification or replacement thereof.
- 8.3 As the context requires, other words and expressions shall have the meanings assigned to them by the Interpretation Act 1978, **FSMA** and the **SA**.
- 8.4 References in these rules to activities carried on by a **firm** include activities carried on by an individual as sole principal, **manager** or **employee** of the **firm**.