

REVISED GUIDANCE

The use of the group exclusion and the CREST regulated activity

1. This note gives the Financial Conduct Authority's views on the availability of the group exclusion for the CREST regulated activity in article 45 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544 (RAO).
2. The precise issue covered by this note is this. Say that a firm (Firm A) acts as a broker or a portfolio manager for its clients. The investments are held by a nominee company in Firm A's group (Firm N). The question is whether the RAO group exclusion means that Firm A is not carrying on the article 45 activity when it sends instructions through CREST in relation to the investments held by Firm N for Firm A's clients.
3. Under article 45 of the RAO the following are regulated activities:
 - i. Sending, on behalf of another person, dematerialised instructions relating to certain types of investment where those instructions are sent using the CREST system.
 - ii. Causing dematerialised instructions relating to certain types of investment to be sent on behalf of another person using the CREST system where the person causing them to be sent is a system-participant.
4. Under article 69(7) of the RAO, a person who is a member of a group does not carry on the article 45 activity where he sends a dematerialised instruction, or causes one to be sent, on behalf of another member of the same group, if the investment to which the instruction relates is one for which a member of the same group is registered as holder in the appropriate register of securities, or will be so registered as a result of the instruction.
5. It can be argued that, in some circumstances, the group exclusion is not available because Firm A should still be treated as acting on behalf of its clients. However, we have come to the conclusion that it is necessary to look at the Treasury's original proposals for regulating the activity currently covered by article 45 of the RAO (the activity first became regulated under the predecessor legislation of the Financial Services and Markets Act 2000 (the Financial Services Act 1986)) and for determining under what circumstances the exclusion is available.
6. These proposals show that the intention was only to regulate a person sending instructions on behalf of the legal owner. The legal owner of the securities, such as a nominee, was not meant to be treated as acting on behalf of the beneficial owners.

7. On this approach the group exclusion is available to Firm A because Firm N is the legal owner of the securities and Firm A is treated as acting on behalf of Firm N. As Firm N is in the same group as Firm A, the group exclusion is available.

Financial Conduct Authority
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