

Transposition Note: Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers

This note accompanies the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017

Abbreviations

AIFMD – Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers

AO 2017 – The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017

FPO – Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529)

HMT – HM Treasury

MiFID II – Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

RAO – The Financial Services and Markets Act 2000 (Regulated Activities) Order (S.I. 2001/544)

This Transposition Note has been prepared by HM Treasury. The table below explains how the AO 2017 transposes certain provisions of MiFID 2 and AIFMD.

ARTICLE	TEXT	TRANSPPOSITION	RESPONSIBLE BODY
Article 1(4) of MiFID II	The following provisions shall also apply to investment firms and to credit institutions authorised under Directive 2013/36/EU when selling or advising clients in relation to structured deposits: (a) Article 9(3), Article 14, and Article 16(2), (3) and (6); (b) Articles 23 to 26, Article 28 and Article 29, excluding the second subparagraph of paragraph 2 thereof, and Article 30; and (c) Articles 67 to 75.	Articles 21(1), 25(1) and (2), 37 and 53 of the RAO, amended by article 4 of the AO 2017 Paragraphs 7 and 8 of the Schedule to the AO 2017 Schedule 1 to the FPO amended by paragraph 9 of the Schedule to the AO 2017	HMT
Article 2 of MiFID II	Exemptions [<i>not reproduced here</i>]	Schedule 3 to the RAO substituted by article 11 of the AO 2017	HMT

ARTICLE	TEXT	TRANSPPOSITION	RESPONSIBLE BODY
Article 4(1)(1) of MiFID II	'investment firm' means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.	Article 3(1) of the RAO amended by article 2(6) of the AO 2017	HMT
Article 4(1)(2) of MiFID II	'investment services and activities' means any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I.	Article 3(1) of the RAO amended by article 2(7) of the AO 2017	HMT
Article 4(1)(15) of MiFID II	'financial instrument' means those instruments specified in Section C of Annex I;	Article 3(1) of the RAO amended by article 2(4) of the AO 2017	HMT
Article 4(1)(18) of MiFID II	'market operator' means a person or persons who manages and/or operates the business of a regulated market and may be the regulated market itself;	Article 3(1) of the RAO amended by article 2(8) of the AO 2017	HMT
Article 4(1)(22) of MiFID II	'multilateral trading facility' or 'MTF' means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of this Directive;	Article 3(1) of the RAO amended by article 2(9) of the AO 2017	HMT
Article 4(1)(23) of MiFID II	'organised trading facility' or 'OTF' means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive;	Article 3(1) of the RAO amended by article 2(12) of the AO 2017 Schedule 1 to the FPO amended by paragraph 9 of the Schedule to the AO 2017	HMT
Article 4(1)(27) of MiFID II	'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;	Article 3(1) of the RAO amended by article 2(3) of the AO 2017	HMT
Article 4(1)(43) of MiFID II	'structured deposit' means a deposit as defined in point (c) of Article 2(1) of Directive 2014/.../EU of the European Parliament and of the Council, which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:	Article 3(1) of the RAO amended by article 2(12) of the AO 2017 Article 2 of the FPO amended by paragraph 9 of the Schedule to the AO 2017	HMT

ARTICLE	TEXT	TRANSPPOSITION	RESPONSIBLE BODY
Article 4(1)(55) of MiFID II	<p>‘home Member State’ means:</p> <ul style="list-style-type: none"> (a) in the case of investment firms: (i) if the investment firm is a natural person, the Member State in which its head office is situated; (ii) if the investment firm is a legal person, the Member State in which its registered office is situated; (iii) if the investment firm has, under its national law, no registered office, the Member State in which its head office is situated; <p>Member States shall adopt and publish, by 3 January 2018, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.</p> <p><i>[not reproduced here]</i></p>	Article 3(1) of the RAO amended by Article 2(5) of the AO 2017	HMT
Article 93(1) of MiFID II	Member States shall adopt and publish, by 3 January 2018, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.	Article 1(2)(c) of the AO 2017	HMT
Section A and C of Annex I to MiFID 2 (generally)	[not reproduced here]	Schedule 2 to the RAO amended by article 10 of the AO 2017	HMT
Paragraph 2 of Section A of Annex I to MiFID 2	Execution of orders on behalf of clients	Articles 4(4)(b), 18 and 34 of the RAO amended by article 12(2), (4) and (6) of the AO 2017	HMT
Paragraph 9 of Section A of Annex I to MiFID II	Operation of an OTF	<p>New article 25DA of the RAO inserted by article 3 of the AO 2017 (and consequential amendments in article 12(3), (5), (7) and (8))</p> <p>Article 83 of the RAO amended by article 7(5)(b) of the AO 2017</p> <p>Article 84 of the RAO amended by article 8(6)(d) of the AO 2017</p> <p>Article 85 of the RAO amended by article 9(2)(b) of the AO 2017</p> <p>The Schedule to the AO 2017 (except for paragraphs 7 and 8)</p>	HMT

ARTICLE	TEXT	TRANSPPOSITION	RESPONSIBLE BODY
Paragraph 4 of Section C of Annex I to MiFID II	Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;	Schedule 1 to the FPO amended by paragraph 9 of the Schedule to the AO 2017	
Paragraphs 4 to 7 and 10 of Section C of Annex I to MiFID II	<p>(5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;</p> <p>(6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;</p> <p>(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;</p> <p>(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;</p>	<p>Article 84 of the RAO amended by article 8(5) and (6) of the AO 2017</p> <p>Schedule 1 to the FPO amended by paragraph 9 of the Schedule to the AO 2017</p> <p>Article 85 of the RAO amended by article 9(3) of the AO 2017</p> <p>Schedule 1 to the FPO amended by paragraph 9 of the Schedule to the AO 2017</p>	HMT
Paragraph 11 of Section C of Annex I to MiFID II	Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).	<p>New article 82B of the RAO inserted by article 6 of the AO 2017</p> <p>Article 37 of, and Schedule 1 to, the FPO amended by paragraph 9 of the Schedule to the AO 2017</p>	HMT

ARTICLE	TEXT	TRANSPPOSITION	RESPONSIBLE BODY
Article 6(4) of AIFMD	<p>4. By way of derogation from paragraph 2, Member States may authorise an external AIFM to provide the following services:</p> <p>(a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;</p> <p>(b) non-core services comprising:</p> <ul style="list-style-type: none"> (i) investment advice; (ii) safe-keeping and administration in relation to shares or units of collective investment undertakings; (iii) reception and transmission of orders in relation to financial instruments. 	<p>Article 83 of the RAO amended by article 7(5)(c) of the AO 2017</p> <p>Article 84 of the RAO amended by article 8(6)(e) of the AO 2017</p> <p>Article 85 of the RAO amended by article 9(2)(c) of the AO 2017</p> <p>Schedule 1 to the FPO amended by paragraph 9 of the Schedule to the AO 2017</p>	HMT