
STATUTORY INSTRUMENTS

2010 No. 86

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2010**

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010.

(2) This Order comes into force on 24th February 2010.

(3) In this Order, “the Act” means the Financial Services and Markets Act 2000 and “the Principal Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽¹⁾.

Amendment of the Principal Order

2.—(1) The Principal Order is amended as follows.

(2) In article 77 (instruments creating or acknowledging indebtedness)—

(a) in paragraph (1), for “article 78” substitute “article 77A or 78”;

(b) in paragraph (2), after sub-paragraph (d) insert—

“(e) an instrument which does not fall within article 77A by reason only of failing to meet the requirements of either sub-paragraph (e) or (f) (or both) of paragraph (2) of that article.”

(3) After article 77 insert—

“Alternative finance investment bonds

77A.—(1) Rights under an alternative finance investment bond, to the extent that they do not fall within article 78.

(2) For the purposes of this article, arrangements constitute an alternative finance investment bond if—

(a) the arrangements provide for a person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”);

(b) the arrangements identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”);

(c) the arrangements specify a period at the end of which they cease to have effect (“the bond term”);

(d) the bond-issuer undertakes under the arrangements—

(i) to make a repayment in respect of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond term (whether or not in instalments); and

⁽¹⁾ S.I. 2001/544; relevant amendments are noted under paragraph 5 of the Schedule.

- (ii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“the additional payments”);
- (e) the amount of the additional payments does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital; and
- (f) the arrangements are a security admitted to—
 - (i) an official list (in accordance with the provisions of Directive [2001/34/EC](#) of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities)⁽²⁾; or
 - (ii) trading on a regulated market (within the meaning of Article 4.1(14) of Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments)⁽³⁾ or on a recognised investment exchange (within the meaning of section 285 of the Act).
- (3) For the purposes of paragraph (2)—
 - (a) the bond-issuer may acquire the bond assets before or after the arrangements take effect;
 - (b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer;
 - (c) the identification of the bond assets mentioned in paragraph (2)(b) and the undertakings mentioned in paragraph (2)(d) may (but need not) be described as, or accompanied by a document described as, a declaration of trust;
 - (d) the reference to a period in paragraph (2)(c) includes any period specified to end upon the redemption of the bond by the bond-issuer;
 - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term;
 - (f) the amount of the additional payments may be—
 - (i) fixed at the beginning of the bond term;
 - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets; or
 - (iii) determined in some other way;
 - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in paragraph (2)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments;
 - (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them; and
 - (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.
- (4) An instrument excluded from paragraph (1) of article 78 by paragraph (2)(b) of that article is not thereby taken to fall within paragraph (1) of this article.”
- (4) In article 78(2), before the words “There are excluded” insert “Subject to paragraph (3).”

(2) OJ L184, 6.7.2001, p.1.

(3) OJ L145, 30.4.2004, p.1.

(5) After article 78(2) insert—

“(3) Paragraph (2)(a) does not exclude an instrument which meets the requirements set out in sub-paragraphs (a) to (e) of article 77A(2).”.

Amendment of the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001

3.—(1) The Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001(4) is amended as follows.

(2) In paragraph 5(1)(a) after “77” insert “or 77A” and for “(instruments creating or acknowledging indebtedness)” substitute “(debt instruments)”.

Consequential amendments

4. The Schedule (which contains consequential amendments) has effect.

19th January 2010

Dave Watts
Tony Cunningham
Two of the Lords Commissioners of Her
Majesty’s Treasury

(4) [S.I. 2001/1062](#), amended by [S.I. 2006/3384](#); there are other amending instruments but none is relevant.