

## SCHEDULE 1

### PART II

#### *Controlled Investments*

##### **Futures**

**22.**—(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.

[<sup>F1</sup>(1A) Subject to sub-paragraph (1D), futures—

- (a) to which sub-paragraph (1) does not apply;
- (b) which relate to commodities;
- (c) which may be settled physically; and
- (d) to which paragraph 5 or 6 of [<sup>F2</sup>Part 1 of Schedule 2][<sup>F3</sup>(read with Articles 5 and 6 of the Commission Regulation)] applies.

(1B) Subject to sub-paragraph (1D), futures and forwards—

- (a) to which sub-paragraph (1) does not apply;
- (b) which relate to commodities;
- (c) which may be settled physically;
- (d) which in accordance with Article [<sup>F4</sup>7] of the Commission Regulation are to be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes; and
- (e) to which paragraph 7 of [<sup>F5</sup>Part 1 of Schedule 2] applies.

(1C) Subject to sub-paragraph (1D), futures—

- (a) to which sub-paragraph (1) does not apply;
- (b) which may be settled physically; and
- (c) to which paragraph 10 of [<sup>F6</sup>Part 1 of Schedule 2] (read with [<sup>F7</sup>Articles 7 and 8 of] the Commission Regulation) applies.

[<sup>F8</sup>(1CA) Subject to sub-paragraph (1D), any other derivative contract, relating to currencies to which paragraph 4 of [<sup>F9</sup>Part 1 of Schedule 2] read with Article 10 of the Commission Regulation applies.]

(1D) Sub-paragraphs (1A), (1B)[<sup>F10</sup>, (1C) and (1CA)] only apply to futures[<sup>F11</sup>, forwards or derivative contracts] in relation to which—

- [<sup>F12</sup>(a) an investment firm or qualifying credit institution is providing or performing investment services and activities on a professional basis;
- (b) a management company which has a Part 4A permission to do so is providing the investment service specified in paragraph 4 or 5 of Part 3 of Schedule 2 or the ancillary service specified in paragraph 1 of Part 3A of that Schedule;
- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Part 3 of that Schedule;

**Changes to legislation:** There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Paragraph 22. (See end of Document for details)

- (d) a full-scope UK AIFM which has a Part 4A permission to do so providing the investment service specified in paragraph 1, 4 or 5 of Part 3 of that Schedule or the ancillary service specified in paragraph 1 of Part 3A of that Schedule.]

<sup>F13</sup>(1E) . . . . .]

(2) There are excluded from sub-paragraph (1) rights under any contract which is made for commercial and not investment purposes.

(3) For the purposes of sub-paragraph (2), in considering whether a contract is to be regarded as made for investment purposes or for commercial purposes, the indicators set out in article 84 of the Regulated Activities Order shall be applied in the same way as they are applied for the purposes of that article.

**Textual Amendments**

- F1** Sch. 1 para. 22(1A)-(1E) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **40(4)**
- F2** Words in Sch. 1 para. 22(1A)(d) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **176(5)(a)** (with reg. 162(2)) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 33(u) and with savings in S.I. 2019/680, reg. 11 (as amended by S.I. 2019/1212, regs. 1(3), 22(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Sch. 1 para. 22(1A)(d) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), **Sch. para. 9(10)(h)(i)**
- F4** Word in Sch. 1 para. 22(1B)(d) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), **Sch. para. 9(10)(h)(ii)**
- F5** Words in Sch. 1 para. 22(1B)(e) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **176(5)(a)** (with reg. 162(2)) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 33(u) and with savings in S.I. 2019/680, reg. 11 (as amended by S.I. 2019/1212, regs. 1(3), 22(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Sch. 1 para. 22(1C)(c) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **176(5)(a)** (with reg. 162(2)) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 33(u) and with savings in S.I. 2019/680, reg. 11 (as amended by S.I. 2019/1212, regs. 1(3), 22(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Sch. 1 para. 22(1C)(c) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), **Sch. para. 9(10)(h)(iii)**
- F8** Sch. 1 para. 22(1CA) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), **Sch. para. 9(10)(h)(iv)**
- F9** Words in Sch. 1 para. 22(1CA) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **176(5)(b)** (with reg. 162(2)) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 33(u) and with savings in S.I. 2019/680, reg. 11 (as amended by S.I. 2019/1212, regs. 1(3), 22(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in Sch. 1 para. 22(1D) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), **Sch. para. 9(10)(h)(v)(aa)**
- F11** Words in Sch. 1 para. 22(1D) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), **Sch. para. 9(10)(h)(v)(bb)**

**Changes to legislation:** *There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Paragraph 22. (See end of Document for details)*

- F12** Sch. 1 para. 22(1D)(a)-(d) substituted (31.12.2020) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **176(5)(c)** (with reg. 162(2)) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 33(u) and with savings in S.I. 2019/680, reg. 11 (as amended by S.I. 2019/1212, regs. 1(3), 22(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Sch. 1 para. 22(1E) omitted (31.12.2020) by virtue of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(3), **176(5)(d)** (with reg. 162(2)) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 33(u) and with savings in S.I. 2019/680, reg. 11 (as amended by S.I. 2019/1212, regs. 1(3), 22(3)); 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:**

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Paragraph 22.