

SCHEDULE 1

PART II

Controlled Investments

Contracts for differences etc.

- 23.**—(1) Subject to sub-paragraph (2), rights under—
- (a) a contract for differences; or
 - (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
 - (i) the value or price of property of any description;
 - (ii) an index or other factor designated for that purpose in the contract.
- (2) There are excluded from sub-paragraph (1)—
- (a) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates;
 - (b) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor;
 - (c) rights under any contract under which—
 - (i) money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank; or
 - (ii) money is raised under the National Loans Act 1968 under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972;
 - (d) rights under a qualifying contract of insurance.
- [^{F1}(3) Subject to sub-paragraph (4), derivative instruments for the transfer of credit risk—
- (a) to which neither paragraph 21 nor sub-paragraph (1) applies; and
 - (b) to which paragraph 8 of [^{F2}Part 1 of Schedule 2] applies.
- (4) Sub-paragraph (3) only applies to derivatives in relation to which—
- [^{F3}(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;
 - (d) a full-scope UK AIFM which has a Part 4A permission to do so is 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.]

[

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Paragraph 23. (See end of Document for details)

^{F4}(4A) Subject to sub-paragraph (4B), a derivative contract of a binary or other fixed outcomes nature—

- (a) to which sub-paragraph (1) does not apply;
- (b) which is settled in cash; and
- (c) which is a financial instrument to which paragraph 4, 5, 6, 7 or 10 of [^{F5}Part 1 of Schedule 2] read with Articles 5 to 8 and 10 of the Commission Regulation applies.

(4B) Sub-paragraph (4A) only applies to derivatives in relation to which—

- [^{F6}(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;
- (d) a full-scope UK AIFM which has a Part 4A permission to do so is 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.]
- (e) a person is carrying on the controlled activity referred to in paragraph 4(2).]

^{F7}(5)]

Textual Amendments

- F1** Sch. 1 para. 23(3)-(5) 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(5)**
- F2** Words in Sch. 1 para. 23(3)(b) 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(6)(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** Sch. 1 para. 23(4)(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(6)(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)
- F4** Sch. 1 para. 23(4A)(4B) 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)(i)(ii)**
- F5** Words in Sch. 1 para. 23(4A)(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(6)(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** Sch. 1 para. 23(4B)(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(6)(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)
- F7** Sch. 1 para. 23(5) 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(6)(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)

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Paragraph 23.