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STATUTORY INSTRUMENTS

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**2006 No. 3384**

The Financial Services and Markets Act 2000  
(Regulated Activities) (Amendment No. 3) Order 2006

PART 4

CONSEQUENTIAL AMENDMENTS OF SECONDARY LEGISLATION

**Amendment of the Financial Promotion Order**

**40.**—(1) The Schedule to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005<sup>(1)</sup> is amended as follows.

(2) In Part I (controlled activities)—

(a) after paragraph 4 insert—

**“Operating a multilateral trading facility**

**4A.** Operating a multilateral trading facility on which MiFID instruments are traded is a controlled activity.”;

(b) in paragraph 11 after “10B above” insert “(other than paragraph 4A)”.

(3) In Part II (controlled investments), in paragraph 21 (options)—

(a) the existing text becomes sub-paragraph (1);

(b) in sub-paragraph (1)—

(i) at the end of paragraph (c) omit “or”;

(ii) at the end of paragraph (d) insert—

“;

(e) subject to sub-paragraph (4), an option to acquire or dispose of an option to which paragraph 5, 6, 7 or 10 of Section C of Annex I to the markets in financial instruments directive applies”;

(c) after sub-paragraph (1) insert—

“(2) Subject to sub-paragraph (4), options—

(a) to which sub-paragraph (1) does not apply;

(b) which relate to commodities;

(c) which may be settled physically; and

(d) either—

(i) to which paragraph 5 or 6 of Section C of Annex I to the markets in financial instruments directive applies, or

- (ii) which in accordance with Article 38 of the Commission Regulation are to be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes, and to which paragraph 7 of Section C of Annex I to the markets in financial instruments directive applies.
- (3) Subject to sub-paragraph (4), options—
  - (a) to which sub-paragraph (1) does not apply;
  - (b) which may be settled physically; and
  - (c) to which paragraph 10 of Section C of Annex I to the markets in financial instruments directive (read with the Commission Regulation) applies.
- (4) Sub-paragraphs (1)(e), (2) and (3) only apply to options in relation to which—
  - (a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,
  - (b) a management company is providing, in accordance with Article 5(3) of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, or
  - (c) a market operator is providing the investment service specified in paragraph 8 of Section A of Annex I to the markets in financial instruments directive.
- (5) Expressions used in sub-paragraphs (1)(e), (2) and (3) and in the markets in financial instruments directive have the same meaning as in that directive.”.
- (4) In Part II, in paragraph 22 (futures), after sub-paragraph (1) insert—
  - “(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 Section C of Annex I to the markets in financial instruments directive 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 38 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 Section C of Annex I to the markets in financial instruments directive 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 Section C of Annex I to the markets in financial instruments directive (read with the Commission Regulation) applies.
  - (1D) Sub-paragraphs (1A), (1B) and (1C) only apply to futures or forwards in relation to which—

- (a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,
  - (b) a management company is providing, in accordance with Article 5(3) of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, or
  - (c) a market operator is providing the investment service specified in paragraph 8 of Section A of Annex I to the markets in financial instruments directive.
- (1E) Expressions used in sub-paragraphs (1A) to (1C) and in the markets in financial instruments directive have the same meaning as in that directive.”.
- (5) In Part II, in paragraph 23 (contracts for differences etc.) after sub-paragraph (2) insert—
- “(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 Section C of Annex I to the markets in financial instruments directive applies.
  - (4) Sub-paragraph (3) only applies to derivatives in relation to which—
    - (a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,
    - (b) a management company is providing, in accordance with Article 5(3) of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, or
    - (c) a market operator is providing the investment service specified in paragraph 8 of Section A of Annex I to the markets in financial instruments directive.
  - (5) ”Derivative instruments for the transfer of credit risk” has the same meaning as in the markets in financial instruments directive.”.
- (6) In Part II, in paragraph 28, in the appropriate places, insert—
- ““Commission Regulation” means Commission Regulation 1287/2006 of 10 August 2006;
  - “credit institution” has the meaning given in the Regulated Activities Order;
  - “investment firm” has the meaning given in the Regulated Activities Order;
  - “investment services and activities” has the meaning given in the Regulated Activities Order;
  - “management company” has the meaning given in the Regulated Activities Order;
  - “market operator” has the meaning given in the Regulated Activities Order;
  - “MiFID instrument” has the meaning given in article 25D(2) of the Regulated Activities Order;
  - “multilateral trading facility” has the meaning given in the Regulated Activities Order;”.