

**2010 No. 86**

**FINANCIAL SERVICES AND MARKETS**

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

*Approved by both Houses of Parliament*

*Made - - - - 19th January 2010*

*Laid before Parliament 19th January 2010*

*Coming into force - - 24th February 2010*

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000(a)) will become a regulated activity;

The Treasury make the following Order in exercise of the powers conferred on them by sections 22(1) and (5), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000:

**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(b).

**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.”.

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(a) 2000 c.8.

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

(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
  - (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)(a); 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)(b) 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;

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

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

- (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),”.
- (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(a) 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

**SCHEDULE**

Article 4

**Consequential Amendments**

**The Insolvency Act 1986**

1. Part 1 of Schedule A1 to the Insolvency Act 1986(b) (moratorium where directors propose voluntary arrangement) is amended as follows—

(a) in paragraph 4E(1)(a) after “article 77” insert “or 77A”;

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(a) S.I. 2001/1062, amended by S.I. 2006/3384; there are other amending instruments but none is relevant.  
(b) 1986 c. 45; Schedule A1 was inserted by the Insolvency Act 2000 (2000 c.39), s.1, Sch 1, paras 1,4; paragraphs 4A to 4K were inserted by S.I. 2002/1990, reg 3(1), (3).

- (b) in the definition of “bond” in paragraph 4F(3) after “article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001” insert “, and includes any instrument falling within article 77A of that Order”.

2. Schedule 2A to the Insolvency Act 1986(a) (exceptions to prohibition on appointment of administrative receiver: supplementary provisions) is amended as follows—

- (a) in paragraph 2(1)(a) after “article 77” insert “or 77A”;
- (b) in the definition of “bond” in paragraph 3(2) after “article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001” insert “, and includes any instrument falling within article 77A of that Order”.

### **The Insolvency (Northern Ireland) Order 1989**

3. Part 1 of Schedule A1 to the Insolvency (Northern Ireland) Order 1989(b) (moratorium where directors propose voluntary arrangement) is amended as follows—

- (a) in paragraph 9(1)(a) after “article 77” insert “or 77A”;
- (b) in the definition of “bond” in paragraph 10(3) after “article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001” insert “, and includes any instrument falling within article 77A of that Order”.

4. Schedule 1A to the Insolvency (Northern Ireland) Order 1989(c) (exceptions to prohibition on appointment of administrative receiver: supplementary provisions) is amended as follows—

- (a) in paragraph 2(1)(a) after “article 77” insert “or 77A”;
- (b) in the definition of “bond” in paragraph 3(2) after “article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001” insert “, and includes any instrument falling within article 77A of that Order”.

### **The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

5. The Principal Order is amended as follows—

- (a) in article 18(2)(b) for “or 77” substitute “, 77 or 77A”;
- (b) in article 25D(2)(a)(d) after “77,” insert “77A,”;
- (c) in article 71(6)(a)(i) for “or 77” substitute “, 77 or 77A”;
- (d) in article 71(6)(a)(ii) for “and 77” substitute “, 77 and 77A”;
- (e) in article 72F(1)(e) after sub-paragraph (a)(ii) in the definition of “Business Angel-led Enterprise Capital Fund” insert—
  - “(iia) article 77A, being rights under an alternative finance investment bond issued by an unlisted company;”;
- (f) in article 79(1) after “77” insert “, 77A”.

### **The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001**

6.—(1) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(f) is amended as follows.

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- (a) Schedule 2A was inserted by the Enterprise Act 2002 (2002 c.40), s. 250, Sch 18.
  - (b) S.I. 1989/ 2405 (N.I. 19). Schedule A1 was inserted by the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6), art 3 and Sch 1.
  - (c) Schedule 1A was inserted by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), art 5(2) and Sch 3.
  - (d) Article 25D was inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006, S.I. 2006/3384, arts 2 and 13.
  - (e) Article 72F was inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2005, S.I. 2005/1518, art 2(1) and (3).
  - (f) S.I. 2001/1177, to which there are amendments not relevant to this Order.

- (2) In article 1(2)(c) for “or 77” substitute “, 77 or 77A”.

#### **The Financial Services and Markets Act 2000 (Exemption) Order 2001**

7.—(1) The Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001(a) is amended as follows.

- (2) In paragraph 41(3)(a)(i)—

- (a) for “or 77” substitute “, 77 or 77A”;
- (b) after the words “instruments creating or acknowledging indebtedness” insert “or alternative finance investment bonds”.

#### **The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003**

8.—(1) The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003(b) are amended as follows.

- (2) After paragraph 8(2) of Schedule 2 insert the following—

“(3) In article 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the reference to an alternative finance investment bond includes a reference to uncertificated units of eligible debt securities.”

#### **The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005**

9. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(c) is amended as follows—

- (a) in the following articles for “or 15”, wherever those words occur, substitute “, 15 or 15A”—
- (i) article 3(3)(c);
- (ii) article 41(2)(a) and (b);
- (iii) article 43(3)(a);
- (iv) article 52(2)(c);
- (v) article 59(4)(a);
- (vi) article 60(1)(a);
- (vii) article 69(1)(a);
- (b) in article 35(c) after “paragraph 15” insert “or 15A”;
- (c) in article 44(1)(d) and (2)(b) and (d) after “paragraph 15,”, wherever those words occur, insert “15A,”;
- (d) after article 48(8)(b) insert—
- “(ba) it is an investment falling within paragraph 15A of Schedule 1 being an investment constituting an alternative finance investment bond issued by an unlisted company;”;
- (e) after article 50A(8)(b) insert—
- “(ba) it is an investment falling within paragraph 15A of Schedule 1 being an investment constituting an alternative finance investment bond issued by an unlisted company;”;
- (f) in Part 2 of Schedule 1—
- (i) in paragraph 15(1) for “paragraph 16” substitute “paragraph 15A or 16”;

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(a) S.I. 2001/1201, to which there are amendments not relevant to this Order.  
(b) S.I. 2003/1633, to which there are amendments not relevant to this Order.  
(c) S.I.2005/1529, to which there are amendments not relevant to this Order.

- (ii) in paragraph 15(2) after paragraph (d) insert—
  - “(e) an instrument which does not fall within paragraph 15A by reason only of failing to meet the requirements of either paragraph (e) or (f) (or both) of sub-paragraph (2) of paragraph 15A”;
- (iii) after paragraph 15 insert—

**“Alternative finance investment bonds**

**15A.**—(1) Rights under an alternative finance investment bond, to the extent that they do not fall within paragraph 16.

(2) For the purposes of this paragraph, 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
  - (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); 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) or on a recognised investment exchange (within the meaning of section 285 of the Act).

(3) For the purposes of sub-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 sub-paragraph (2)(b) and the undertakings mentioned in sub-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 sub-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 sub-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 sub-paragraph (1) of paragraph 16 by sub-paragraph (2)(b) of that paragraph is not thereby taken to fall within sub-paragraph (1) of this paragraph. ”;
- (iv) in paragraph 16(2), before the words “There are excluded” insert “Subject to sub-paragraph (3),”;
  - (v) after paragraph 16(2) insert—
- “(3) Sub-paragraph (2)(a) does not exclude an instrument which meets the requirements set out in paragraphs (a) to (e) of paragraph 15A(2).”.

#### **The Money Laundering Regulations 2007**

**10.**—(1) The Money Laundering Regulations 2007(a) are amended as follows.

(2) In regulation 12(2)(a) after “article 77” insert “or 77A”.

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(a) S.I. 2007/2157, to which there are amendments not relevant to this Order.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order inserts a new article 77A into the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Principal Order”) to make alternative finance investment bonds a specified investment for the purposes of the Financial Services and Markets Act 2000 (c.8) (“the Act”).

New article 77A(2) provides that arrangements fall within article 77A if they meet a number of conditions, as set out in sub-paragraphs (a) to (f).

New article 77A(3) expands upon and qualifies the conditions set out in new article 77A(2), allowing for a range of types of alternative finance investment bond.

Article 2(2) of the Order amends article 77 of the Principal Order to ensure that (a) an instrument cannot fall within both article 77 and article 77A and (b) instruments do not fall within article 77 if the only reason they do not fall within article 77A is because they do not satisfy the commercial rate of return or mandatory listing conditions (article 77A(2)(e) and (f)).

Article 2(4) and (5) of the Order amend article 78 of the Principal Order to ensure that public debt of any sort, including an alternative finance investment bond, will fall within article 78 rather than article 77A.

Article 3 of the Order amends the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062) (“the Collective Investment Schemes Order”) so that alternative finance investment bonds that satisfy the conditions of the new article 77A of the Principal Order are afforded the equivalent treatment to conventional bonds which are specified investments under article 77 of the Principal Order.

The Schedule to the Order contains consequential amendments to primary and secondary legislation the broad aim of which is to treat alternative finance investment bonds in the same manner as conventional bonds.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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