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## STATUTORY INSTRUMENTS

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# 2013 No. 1881

## The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013

### PART 4

#### Amendments of secondary legislation made under the Act

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

**17.—**(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 <sup>F1</sup> is amended as follows.

(2) In article 28B (real time communications: introductions) <sup>F2</sup>, in paragraph (1)(a)—

(a) after “paragraph” insert “ 4B, 4C, 5A, 5B, ”;

(b) after “10B,”, insert “ 10BA, 10BB, ”.

(3) In article 30(2) (overseas communications: solicited real time communications), in the definition of “relevant investment activities”, after “10 to 10B” insert “ , 10BA or 10BB ”.

(4) In article 46 (qualifying credit to bodies corporate), for “or 10B” substitute “ 10B, 10BA or 10BB ”.

(5) After article 46, insert—

#### **“Promotions of credit etc. for business purposes**

**46A.—**(1) The financial promotion restriction does not apply to a communication which relates to a controlled activity falling within paragraph 4C of Schedule 1 and which—

(a) indicates clearly (by express words or otherwise) that a person is willing to facilitate another person (“B”) becoming the borrower under a paragraph 4C agreement for the purposes of B's business, and

(b) does not indicate (by express words or otherwise) that the person is willing to facilitate B becoming the borrower under such an agreement for any other purpose.

(2) The financial promotion restriction does not apply to a communication which relates to a controlled activity falling within paragraph 10BA of Schedule 1 and which—

(a) indicates clearly (by express words or otherwise) that a person is willing to enter into a relevant credit agreement as lender for the purposes of another person's business, and

(b) does not indicate (by express words or otherwise) that the person is willing to enter into a relevant credit agreement as lender for any other purpose.

(3) The financial promotion restriction does not apply to a communication which relates to a controlled activity falling within paragraph 10BB of Schedule 1 and which—

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- (a) indicates clearly (by express words or otherwise) that a person is willing to enter into a regulated consumer hire agreement as owner for the purposes of another person's business, and
  - (b) does not indicate (by express words or otherwise) that the person is willing to enter into a regulated consumer hire agreement as owner for any other purpose.
- (4) In this article—
- (a) references to a “business” do not include a business carried on by—
    - (i) the person communicating the promotion, or
    - (ii) a person carrying on an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) in relation to the relevant credit agreement, paragraph 4C agreement or regulated consumer hire agreement to which the promotion relates;
  - (b) “paragraph 4C agreement” has the meaning given in paragraph 4C of Schedule 1;
  - (c) “relevant credit agreement” has the meaning given in paragraph 28 of Schedule 1.”.
- (6) In Schedule 1 (controlled activities and controlled investments)—
- (a) after paragraph 4A (operating a multilateral trading facility) <sup>F3</sup>, insert—

**“Credit broking**

**4B.—**(1) Each of the following is a controlled activity—

- (a) effecting an introduction of an individual or relevant recipient of credit to a person who enters into as lender relevant credit agreements by way of business;
- (b) effecting an introduction of an individual or relevant recipient of credit to a person who enters into as lender regulated consumer hire agreements by way of business;
- (c) effecting an introduction of an individual or relevant recipient of credit to a person who carries on an activity of the kind specified in paragraph (a) or (b) by way of business;
- (d) presenting or offering an agreement which would (if entered into) be a relevant credit agreement to an individual or relevant recipient of credit;
- (e) assisting an individual or relevant recipient of credit by undertaking preparatory work in respect of a relevant credit agreement;
- (f) entering into a relevant credit agreement on behalf of a lender.

(2) For the purposes of paragraph (1) it is immaterial whether the relevant credit agreement or regulated consumer hire agreement is subject to the law of a country outside the United Kingdom.

**Operating an electronic system in relation to lending**

**4C.—**(1) Where the condition in paragraph (2) is satisfied, operating an electronic system which enables the operator (“A”) to facilitate persons (“B” and “C”) becoming the lender and borrower under a paragraph 4C agreement is a controlled activity.

(2) The condition is that the system operated by A is capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise).

(3) The following are controlled activities if carried on by A in the course of, or in connection with, the carrying on by A of the activity specified by paragraph (1)—

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- (a) presenting or offering paragraph 4C agreements to B and C with a view to B becoming the lender under the paragraph 4C agreement and C becoming the borrower under the paragraph 4C agreement,
  - (b) furnishing information relevant to the financial standing of a person (“Y”) with a view to assisting in the determination as to whether another person should—
    - (i) enter into, as the lender, a paragraph 4C agreement with Y, or
    - (ii) assume the rights of the lender under a paragraph 4C agreement under which Y is the borrower,
  - (c) taking steps to procure the payment of a debt due under a paragraph 4C agreement,
  - (d) performing duties, or exercising or enforcing rights under a paragraph 4C agreement on behalf of the lender,
  - (e) ascertaining whether a credit information agency (within the meaning given by article 89A(6)) holds information relevant to the financial standing of an individual or relevant person,
  - (f) ascertaining the contents of such information,
  - (g) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information, or
  - (h) securing that a credit information agency which holds such information—
    - (i) stops holding the information, or
    - (ii) does not provide it to any other person.
- (4) A “paragraph 4C agreement” is an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit and in relation to which either the condition in paragraph (5) or (6) is satisfied.
- (5) The condition in this paragraph is that the lender is an individual or relevant person.
- (6) The condition in this paragraph is that the borrower is an individual or relevant person and—
- (a) the lender provides the borrower with credit less than or equal to £25,000, or
  - (b) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.
- (7) Paragraphs (5) and (6) of article 60C of the Regulated Activities Order (exempt agreements: exemptions relating to nature of agreement) apply for the purposes of paragraph (6)(b).
- (8) It is immaterial for the purposes of this paragraph whether the lender is carrying on a regulated activity.
- (9) In this paragraph, “relevant person” means—
- (a) a partnership consisting of two or three persons not all of whom are bodies corporate, or
  - (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.”;
- (b) after paragraph 5 (managing investments), insert—

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### **“Debt adjusting**

**5A.**—(1) The following activities are, when carried on in relation to debts due under a relevant credit agreement, controlled activities—

- (a) negotiating with the lender, on behalf of the borrower, terms for the discharge of a debt;
- (b) taking over, in return for payments by the borrower, that person's obligation to discharge a debt;
- (c) any similar activity concerned with the liquidation of a debt.

(2) The following activities are, when carried on in relation to debts due under a consumer hire agreement, controlled activities—

- (a) negotiating with the owner, on behalf of the hirer, terms for the discharge of a debt;
- (b) taking over, in return for payments by the hirer, that person's obligation to discharge a debt;
- (c) any similar activity concerned with the liquidation of a debt.

### **Debt-counselling**

**5B.**—(1) Advising a borrower about the liquidation of a debt due under a relevant credit agreement is a controlled activity.

(2) Advising a hirer about the liquidation of a debt due under a consumer hire agreement is a controlled activity.”;

- (c) after paragraph 10B (advising on qualifying credit etc.) <sup>F4</sup>, insert—

### **“Providing relevant consumer credit**

**10BA.** Entering into a relevant credit agreement as lender, or exercising or having the rights to exercise the rights of the lender under such an agreement, is a controlled activity.

### **Providing consumer hire**

**10BB.** Entering into a regulated consumer hire agreement as owner or exercising or having the right to exercise the rights of the owner under such an agreement is a controlled activity.”;

- (d) after paragraph 26C <sup>F5</sup>, insert—

### **“Relevant credit agreements**

**26D.** Rights under a relevant credit agreement

### **Consumer hire agreements**

**26E.** Rights under a consumer hire agreement”;

- (e) in paragraph 28 (interpretation) <sup>F6</sup>, insert in the appropriate place the following definitions—

“borrower” has the meaning given by article 60L of the Regulated Activities Order;

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“consumer hire agreement” has the meaning given by article 60N of the Regulated Activities Order;

“hirer” has the meaning given by article 60N of the Regulated Activities Order;

“lender” has the meaning given by article 60L of the Regulated Activities Order;

“regulated consumer hire agreement” has the meaning given by article 60N of the Regulated Activities Order;

“relevant credit agreement” means a credit agreement (within the meaning given by article 60B of the Regulated Activities Order) other than a regulated mortgage contract (within the meaning of that Order);

“regulated credit agreement” has the meaning given by article 60B of the Regulated Activities Order;

“relevant recipient of credit” has the meaning given by article 60L of the Regulated Activities Order.

**F1** [S.I. 2005/1529](#).

**F2** Amended by [S.I. 2006/2383](#) and 2009/1342.

**F3** Inserted by [S.I. 2006/3384](#).

**F4** Inserted by [S.I. 2006/2383](#).

**F5** Inserted by [S.I. 2009/1342](#).

**F6** There are amending instruments but none is relevant to this Order.

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Order power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)