
STATUTORY INSTRUMENTS

2014 No. 2080

**The Financial Services and Markets Act 2000
(Excluded Activities and Prohibitions) Order 2014**

PART 2

EXCLUDED ACTIVITIES AND EXCEPTIONS

Excluded activities: dealing in investments as principal

4. The activity of dealing in investments as principal described in article 14 of the Regulated Activities Order 2001 is an excluded activity even where it is not a regulated activity by virtue of articles 15, 19 or 20 of that Order, except where it is carried on in accordance with any of articles 6 to 12 of this Order.

Excluded activities: commodities trading

5.—(1) Dealing in commodities is an excluded activity, except where it is carried on in accordance with this article, or any of articles 6, 8, 9, 10, 11 and 12.

(2) A ring-fenced body may deal in commodities where the commodities in question are required for its own use or consumption or for use or consumption by a subsidiary undertaking of the ring-fenced body.

(3) A ring-fenced body may deal in commodities in order—

- (a) to take a security interest over those commodities or to realise a security interest held over those commodities (including by selling the commodities), or
- (b) to enter into a title transfer collateral arrangement in relation to commodities, or acquire and hold equivalent commodities in accordance with the arrangement or enforce that arrangement (including by selling the commodities which are subject to that arrangement).

(4) For the purposes of this article, “dealing” means buying or selling commodities as principal.

Excluded activities: general exceptions

6.—(1) A ring-fenced body does not carry on an excluded activity by entering into a transaction with another person (including a structured finance vehicle) if the sole or main purpose for which the ring-fenced body entered into the transaction, either by itself or in combination with other transactions, is that of limiting the extent to which—

- (a) the ring-fenced body,
- (b) any subsidiary undertaking of the ring-fenced body,
- (c) any sponsored structured finance vehicle of the ring-fenced body,
- (d) any conduit vehicle of the ring-fenced body, or
- (e) any combination of the undertakings referred to in sub-paragraphs (a), (b), (c) and (d),

will be adversely affected by any of the factors specified in paragraph (2).

- (2) The factors specified in this paragraph are—
- (a) changes in interest rates, exchange rates or commodity prices;
 - (b) changes in any index of retail prices or of residential or commercial property prices;
 - (c) changes in any index of the price of shares;
 - (d) default risk;
 - (e) liquidity risk.
- (3) A ring-fenced body does not carry on an excluded activity by—
- (a) buying, selling or subscribing for investments which are liquid assets for the purpose of managing its liquidity, or
 - (b) buying or subscribing for investments to provide collateral in connection with a transaction falling within paragraph (1), or selling investments acquired for that purpose.
- (4) A ring-fenced body does not carry on an excluded activity by—
- (a) acquiring shares, debentures or instruments giving an entitlement to shares or debentures from an issuer where—
 - (i) the shares, debentures or instruments concerned are issued by the issuer, and
 - (ii) the consideration for the acquisition is the release by the ring-fenced body or by a subsidiary undertaking of the ring-fenced body of part or all of a debt owed by the issuer or by another undertaking within the same group as that issuer to the ring-fenced body or the subsidiary undertaking of the ring-fenced body;
 - (b) dealing in—
 - (i) debentures or instruments giving an entitlement to shares or debentures issued by the ring-fenced body or by a subsidiary of the ring-fenced body, or
 - (ii) debentures issued by a parent undertaking⁽¹⁾ of the ring-fenced body;
 - (c) acquiring a debenture where—
 - (i) the debenture is acquired from the issuer, and
 - (ii) the debenture relates to any loan, credit, guarantee or other similar financial accommodation made by the ring-fenced body or a subsidiary undertaking of the ring-fenced body to the issuer or to an undertaking in the same group as the issuer;
 - (d) acquiring shares in a company—
 - (i) which is, or following such acquisition becomes, a subsidiary undertaking of the ring-fenced body, or
 - (ii) in which the ring-fenced body has, or following the acquisition will have, a participating interest⁽²⁾.
- (5) A ring-fenced body does not carry on an excluded activity by selling shares, debentures or instruments giving an entitlement to shares or debentures acquired or held by the ring-fenced body in accordance with paragraph (4)(a), (b) or (d).
- (6) A ring-fenced body does not carry on an excluded activity by—
- (a) taking or granting a security interest over investments, or realising a security interest held over investments (including selling the investment over which the security is held), or
 - (b) entering into a title transfer collateral arrangement in relation to investments, acquiring equivalent investments in accordance with the arrangement or enforcing the arrangement (including by selling the investments which are subject to that arrangement).

(1) Defined in section 420 of the Act. Section 420(1) was amended by [S.I. 2008/948](#).

(2) Defined in section 421A of the Act. Section 421A was inserted by [S.I. 2008/948](#).

Excluded activities: securitisation and covered bonds

7.—(1) A ring-fenced body does not carry on an excluded activity by selling investments to or buying investments from a sponsored structured finance vehicle of the ring-fenced body, or from a conduit vehicle of the ring-fenced body.

(2) A ring-fenced body does not carry on an excluded activity by acquiring any instrument creating or acknowledging indebtedness issued by one or more of its sponsored structured finance vehicles.

Excluded activities: central bank exemption

8.—(1) A ring-fenced body does not carry on an excluded activity where—

- (a) it enters into a transaction with a central bank, or with a wholly owned subsidiary of a central bank, in the course of carrying on the activity specified in article 14 (dealing in investments as principal) of the Regulated Activities Order 2001, or which would fall within that activity if the transaction took place in the United Kingdom; or
- (b) it sells commodities to, or buys commodities from, a central bank, or a wholly owned subsidiary of a central bank.

(2) For the purposes of this article—

- (a) an undertaking is to be regarded as wholly owned by a central bank at any time if at that time—
 - (i) it is an undertaking of which no person other than the central bank or a nominee of the central bank is a member, or
 - (ii) it is a wholly owned subsidiary of an undertaking within paragraph (i);
- (b) an undertaking (“A”) is a “subsidiary” of another undertaking (“B”) if B—
 - (i) holds a majority of the voting rights in A,
 - (ii) is a member of A and has the right to appoint or remove a majority of A’s directors, or
 - (iii) is a member of A, and controls alone, pursuant to an agreement with other members, a majority of the voting rights in A;
- (c) A is a subsidiary of B if it is a subsidiary of an undertaking that is itself a subsidiary of B.

Excluded activities: derivatives

9. A ring-fenced body does not carry on an excluded activity by entering into transactions with any one or more of its account holders if—

- (a) the transaction satisfies the requirements listed in article 10 or 11(1), (2), or (3), and
- (b) all the conditions set out in article 12 are satisfied.

Derivatives: forward contracts and swaps

10.—(1) The requirements listed in this article are that the transaction is—

- (a) a currency swap,
- (b) an interest rate swap, or
- (c) a forward contract relating to currencies or commodities, where the relevant contract specifies—
 - (i) the description and amount of the currency or commodity concerned;
 - (ii) the date when delivery will be made or when settlement will be made in cash; and

- (iii) the exchange rate or commodity price which will apply.
- (2) For the purposes of this article—
 - (a) “currency swap” means a transaction under which—
 - (i) one person (“A”) agrees with another person (“B”) that A will at a specified date pay to B a specified amount in one specified currency, and B will pay A that amount in another specified currency, calculated by reference to a specified exchange rate, and
 - (ii) the amount concerned may consist of a specified principal amount and interest calculated at a specified fixed or floating rate;
 - (b) “forward contract” means a contract for the sale of a commodity, currency or property of any description (including futures, whether or not traded on an exchange or trading venue) under which delivery is to be made at a future date and at a price agreed on when the contract is made;
 - (c) “interest rate swap” means a transaction under which—
 - (i) one person (“A”) agrees with another person (“B”) that A is liable to pay to B an amount equal to interest calculated by reference to an interest rate on a specified notional sum over a specified period, and that B is liable to pay to A an amount equal to interest calculated by reference to a different interest rate on that notional sum, and
 - (ii) the interest rates in question are either specified (in the case of a fixed interest rate), or determined in relation to a specified reference rate (in the case of a floating interest rate);
 - (d) “reference rate” means a foreign exchange or interest rate which is offered on an inter-bank market, or which is set out in an index published by any person who is not one of the parties to the contract;
 - (e) “specified” means specified in the transaction agreement.

Derivatives: options and swaptions

- 11.—(1) The requirements listed in this paragraph are that—
 - (a) the transaction is an option exercisable by a customer (“X”) of the ring-fenced body requiring the ring-fenced body to buy or sell foreign currency or commodities, and
 - (b) the contract in which the option is granted specifies—
 - (i) the currency or commodity concerned;
 - (ii) the amount of currency or commodity which may be bought or sold under the option;
 - (iii) a single date on which the option may be exercised (which must be no later than 3 years from the date on which the contract is entered into); and
 - (iv) the exchange rate or commodity price which will apply to the transaction.
- (2) The requirements listed in this paragraph are that—
 - (a) the transaction consists of a cap or floor (or both) under which—
 - (i) in respect of a cap, the ring-fenced body must pay X an amount equal to A minus B (provided that amount is a positive number), where “A” is the interest payable in relation to a specified notional amount at the interest rate prevailing during the specified calculation period (“the floating interest rate”), and “B” is the interest payable on that notional amount at the interest rate specified in the agreement (“the fixed interest rate”), or
 - (ii) in respect of a floor, X must pay the ring-fenced body an amount equal to C minus D (provided that amount is a positive number), where “C” is the interest payable in

relation to a specified notional amount at the interest rate specified in the agreement (“the fixed interest rate”), and “D” is the interest payable in relation to that notional amount at the interest rate prevailing during the specified calculation period (“the floating interest rate”), and

- (b) the agreement relating to the cap or floor specifies—
 - (i) the notional amounts and the fixed and floating interest rates referred to in subparagraph (a)(i) and (ii); and
 - (ii) the calculation period.
- (3) The requirements listed in this paragraph are that—
 - (a) the transaction consists of an option for the customer to enter into an interest rate swap;
 - (b) the agreement granting the option specifies—
 - (i) a single date on which the option may be exercised (which must be no later than 5 years from the date on which the agreement is entered into);
 - (ii) the terms which will apply to the interest rate swap, including the interest rates to which the swap applies; and
 - (iii) the notional amount on which the swap payments are to be calculated.

Derivatives: general conditions

- 12.—(1) The conditions in this article are that—
- (a) the position risk requirement attributable—
 - (i) to all transactions entered into which meet the conditions in articles 9 to 11, and
 - (ii) to any investments traded by the ring-fenced body under article 6(1) for the purpose of hedging risks arising in relation to the transactions referred to in paragraph (i) (provided that those investments are hedged separately from any other investments entered into by the ring-fenced body under article 6(1)),is at all times less than 0.5% of the ring-fenced body’s own funds;
 - (b) the sum of the position risk requirements attributable to each individual transaction with an account holder under articles 9 to 11 is at all times less than 25% of the credit risk capital requirement of the ring-fenced body; and in calculating the sum of the position risk requirements, no position risk requirement may be set off against any other position risk requirement;
 - (c) the sum of the position risk requirements attributable to the transactions entered into by the ring-fenced body under article 11 is at all times less than 20% of the sum of the position risk requirements attributable to the transactions entered into by the ring-fenced body under articles 9 to 11;
 - (d) there is evidence available at the date on which the transaction is entered into to assess the fair value of the investment concerned in accordance with international financial reporting standard 13 (“IFRS 13”) on fair value measurement issued by the International Accounting Standards Board, as that reporting standard is amended from time to time, and that evidence would be considered to constitute a level 1 input within the meaning of paragraph 76 of IFRS 13, or a level 2 input within the meaning of paragraphs 81 and 82 of IFRS 13(3);
 - (e) at the time the transaction is entered into, the investments traded under article 10 or 11 fall within a class of derivatives that are traded on—

(3) A copy of this IFRS can be obtained from the International Accounting Standards Board, 30 Cannon Street, London, EC4M 6XH.

- (i) a trading venue in the EEA, or
 - (ii) a third country trading venue which satisfies paragraph 1(d) of Article 28 of the Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation No 648/2012⁽⁴⁾; and for these purposes, “third country trading venue” has the same meaning as in that Article.
- (2) For the purposes of this article—
- (a) the position risk requirement shall be calculated in accordance with Chapter 2 of Title IV of Part Three of the prudential requirements regulation as if the positions associated with those investments are all held in the trading book of the ring-fenced body,
 - (b) “credit risk capital requirement” means the own funds requirements set out in Article 92.3(a) of the prudential requirements regulation, excluding the risk-weighted exposure amounts determined in accordance with Title II of Part Three of that regulation for counterparty risk arising from positions which are not included in the trading book;
 - (c) “trading venue” has the meaning given in Article 4.1(24) of the Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments repealing [Directive 2004/39/EC](#) of the European Parliament and of the Council (recast)⁽⁵⁾;
 - (d) “position risk requirement” means the capital requirements for position risk calculated in accordance with Chapter 2 of Title IV of Part Three of the prudential requirements regulation; and
 - (e) “trading book” has the meaning given in Article 4.1(86) of the prudential requirements regulation.

⁽⁴⁾ OJ L 173, 12.6.2014, p84.

⁽⁵⁾ OJ L 173, 12.6.2014, p349.