
STATUTORY INSTRUMENTS

2017 No. 488

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2017**

Amendments to article 85 of the Order: contracts for differences

9.—(1) Article 85 of the Order⁽¹⁾ (contracts for differences etc.) is amended as follows.

(2) In paragraph (4)—

- (a) omit “or” at the end of sub-paragraph (b);
- (b) in sub-paragraph (c), for “paragraph 8” substitute “paragraph 8 or 9”;
- (c) after sub-paragraph (c) insert—

“, or

- (d) an AIFM is providing, in accordance with Article 6.4 of the alternative investment fund managers directive the investment service specified in paragraph 1, 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.”

(3) After paragraph (4) insert—

“(4A) Subject to paragraph (4B), a derivative contract of a binary or other fixed outcomes nature—

- (a) to which 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 Section C of Annex I to the markets in financial instruments directive read with Articles 5 to 8 and 10 of the Commission Regulation (the texts of which are set out in Parts 1 and 2 of Schedule 2) applies.

(4B) Paragraph (4A) 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 6.3 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,
- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Section A of Annex I to the markets in financial instruments directive,
- (d) an AIFM is providing, in accordance with Article 6.4 of the alternative investment fund managers directive the investment service specified in paragraph 1, 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

(1) Article 85 was amended by [S.I. 2006/3384](#) and [2011/1613](#).

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(e) a person is carrying on the activity specified by article 25(2).”.