

## SCHEDULE

Article 14

### Consequential amendments to primary and secondary legislation

#### **Amendment to the Fair Trading Act 1973**

1. In section 118 of the Fair Trading Act 1973(1) (trading schemes to which Part 11 applies), in subsection (6A), after paragraph (ba) insert—

“(bb) operating an organised trading facility;”.

#### **Amendment to the Companies Act 1989**

2. In section 176 of the Companies Act 1989(2) (power to make provision about other charges), in subsection (8), after paragraph (ba) insert—

“(bb) operating an organised trading facility;”.

#### **Amendment to the Terrorism Act 2000**

3. In Schedule 6 to the Terrorism Act 2000(3) (financial information), in paragraph 6(1A), after paragraph (ba) insert—

“(bb) operating an organised trading facility;”.

#### **Amendment to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001**

4. In the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001(4) (arrangements not amounting to a collective investment scheme)—

- (a) in paragraph 5(2)(a), after “25D (operating a multilateral trading facility),”, insert “25DA (operating an organised trading facility);”;
- (b) in paragraph 9(5), in the definition of “specified business”, after “25D,” insert “25DA,”.

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

5. After article 3(2)(ca) of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(5) (investment business) insert—

“(cb) article 25DA (operating an organised trading facility);”.

#### **Amendments to the Financial Services and Markets Act 2000 (Exemption) Order 2001**

6.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001(6) is amended as follows.

(2) In article 5(1) (persons exempt in respect of particular regulated activities), after subparagraph (ca) insert—

“(cb) article 25DA (operating an organised trading facility);”.

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- (1) 1973 c.41; section 118(6A) was inserted by S.I. 2001/3649 and paragraph (ba) was inserted by S.I. 2006/3384.
  - (2) 1989 c.40; section 176(8) was inserted by S.I. 2001/3649 and paragraph (ba) was inserted by S.I. 2006/3384.
  - (3) 2000 c.11; paragraph 6(1A) of Schedule 6 was inserted by S.I. 2001/3649 and paragraph (ba) was inserted by S.I. 2006/3384.
  - (4) S.I. 2001/1062 amended by S.I. 2006/3384 and 2008/1641; there are other amendments but none is relevant.
  - (5) S.I. 2001/1177. Article 3(2)(ca) was inserted by S.I. 2006/3384. There are other amendments but none is relevant.
  - (6) S.I.2001/1201. Article 5 and paragraphs 42 and 49 of the Schedule were amended by S.I. 2007/125. There are other amendments but none is relevant.

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- (3) In the Schedule—
- (a) in paragraph 42 (gas industry)—
    - (i) in sub-paragraph (1)—
      - (aa) for “or 25D” substitute “, 25D or 25DA”;
      - (bb) for “or operating a multilateral trading facility” substitute “, operating a multilateral trading facility or operating an organised trading facility”;
    - (ii) in sub-paragraph (2)—
      - (aa) for “or 25D” substitute “, 25D or 25DA”;
      - (bb) for “or operating a multilateral trading facility” substitute “, operating a multilateral trading facility or operating an organised trading facility”;
  - (b) in paragraph 49 (electricity industry)—
    - (i) in sub-paragraph (1)—
      - (aa) after “25D” insert “, 25DA”;
      - (bb) after “operating a multilateral trading facility” insert “, operating an organised trading facility”;
    - (ii) in sub-paragraphs (2), (4) and (5) for “or 25D” substitute “, 25D or 25DA”;
    - (iii) in sub-paragraph (3) after “25D” insert “, 25DA”.

#### **Amendments to the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001**

7.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(7) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation), in the definition of “buy”, “sell”, “security”, “qualifying contract of insurance” and “relevant investment”, for “and “relevant investment”” substitute “, “relevant investment” and “structured deposit””.

- (3) In regulation 2 (descriptions of business for which appointed representatives are exempt)—
- (a) in paragraph (1)(a) for “or relevant investments” substitute “, relevant investments or structured deposits”;
  - (b) in paragraph (1A), in sub-paragraphs (a) and (b) after “financial instruments” insert “or structured deposits”.

#### **Amendments to the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001**

8.—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(8) is amended as follows.

- (2) In article 2(1) (interpretation), at the appropriate place insert—
- ““structured deposit” has the meaning given by article 3(1) of the Regulated Activities Order;”.

(3) In articles 5(1) (managing investments) and 6(2)(b) and (c)(i) (advising on investments), for “security or contractually based investment” substitute “security, contractually based investment or structured deposit”.

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(7) S.I. 2001/1217, amended by S.I. 2001/2508, 2003/1476, 2004/453 and 2006/3414. There are other amendments but none is relevant.

(8) S.I. 2001/1227. Articles 2, 5 and 6 were amended by S.I. 2003/1476. There are other amendments but none is relevant.

## **Amendments to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005**

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

(2) In article 2(1) (interpretation), at the appropriate place insert—

““structured deposit” means a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as—

- (a) an index or combination of indices excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;
- (b) a financial instrument or combination of financial instruments;
- (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
- (d) a foreign exchange rate or combination of foreign exchange rates;”.

(3) In article 22(1) (deposits: non-real time communications), after “Schedule 1” insert “except where that controlled activity relates to a structured deposit”.

(4) In article 23 (deposits: real time communications), after “Schedule 1” insert “except where that controlled activity relates to a structured deposit”.

(5) In article 37 (financial markets) —

- (a) in paragraph (3)(a), for “or 23” substitute “, 23 or 23A”;
- (b) in paragraph (4)(b), omit “II”.

(6) In article 41(4)(b) (bearer instruments: promotions required or permitted by market rules), omit “II or”.

(7) In article 67(2)(b) (promotions required or permitted by market rules), omit “II or”.

(8) In article 68 (promotions in connection with admission to certain EEA markets), omit paragraph (2)(b), and the “or” preceding it.

(9) In the definition of “relevant market” in article 69(1) (promotions of securities already admitted to certain markets), omit “II or”.

(10) In Schedule 1 (controlled activities and controlled investments)—

- (a) in paragraph 3(1) (dealing in securities and contractually based investments) after “securities” insert “, structured deposits”;
- (b) in paragraph 4 (arranging deals in investments)—
  - (i) after sub-paragraph (1)(a), insert—

“(aa) a structured deposit;”;
  - (ii) in sub-paragraph (2), after “(1)(a),” insert “(aa),”;
- (c) after paragraph 4A (operating a multilateral trading facility), insert—

### **“Operating an organised trading facility**

**4AA.** Operating an organised trading facility on which non-equity MiFID instruments are traded is a controlled activity.”;

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(9) [S.I. 2005/1529](#). Paragraph 4A of Schedule 1 was inserted by [S.I. 2006/3384](#). Paragraph 7 of Schedule 1 was amended by [S.I. 2016/392](#). Paragraph 15A of Schedule 1 was inserted by [S.I. 2010/86](#). Paragraph 21 of Schedule 1 was amended by [S.I. 2006/3384](#) and [2011/1613](#). Paragraphs 22 and 23 of Schedule 1 were amended by [S.I. 2006/3384](#). There are other amendments but none is relevant.

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- (d) in paragraph 5(a) (managing investments), after “security” insert “, structured deposit”;
- (e) in paragraph 7(1)(b)(i) (advising on investments), after “security” insert “, structured deposit”;
- (f) in paragraph 15A (alternative finance investment bonds), in paragraph (2)(f)(ii) for “Article 4.1(14) of [Directive 2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments” substitute “Article 4.1.21 of the markets in financial instruments directive”;
- (g) in paragraph 21 (options)—
  - (i) in sub-paragraph (1)(e), after “directive” insert “(read with Articles 5, 6, 7 and 8 of the Commission Regulation)”;
  - (ii) in sub-paragraph (2)(d)—
    - (aa) in sub-paragraph (i), after “directive” insert “(read with Articles 5 and 6 of the Commission Regulation)”;
    - (bb) in sub-paragraph (ii), for “38” substitute “7”;
  - (iii) in sub-paragraph (3)(c), after “with” insert “Articles 7 and 8 of”;
  - (iv) in sub-paragraph (4)—
    - (aa) omit “or” at the end of paragraph (b);
    - (bb) in sub-paragraph (c), for “paragraph 8” substitute “paragraph 8 or 9”;
    - (cc) 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.”;
- (h) in paragraph 22 (futures)—
  - (i) in sub-paragraph (1A)(d), after “directive” insert (read with Articles 5 and 6 of the Commission Regulation)”;
  - (ii) in sub-paragraph (1B)(d), for “38” substitute “7”;
  - (iii) in sub-paragraph (1C)(c), after “with” insert “Articles 7 and 8 of”;
  - (iv) after sub-paragraph (1C) insert—
    - “(1CA) Subject to sub-paragraph (1D), any other derivative contract, relating to currencies to which paragraph 4 of Section C of Annex 1 to the markets in financial instruments directive read with Article 10 of the Commission Regulation applies.”;
  - (v) in sub-paragraph (1D)—
    - (aa) for “and (1C)” substitute “, (1C) and (1CA)”;
    - (bb) for “or forwards” substitute “, forwards or derivative contacts”;
    - (cc) in paragraph (b), for “5(3)” substitute “6(3)”;
    - (dd) omit “or” at the end of paragraph (b);
    - (ee) in paragraph (c), for “paragraph 8” substitute “paragraph 8 or 9”;
    - (ff) after paragraph (c) insert—
      - “, or

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- (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.”;
- (vi) in sub-paragraph (1E), for “(IC)” substitute “(1CA)”;
- (i) in paragraph 23 (contracts for differences etc.)—
  - (i) in sub-paragraph (4)—
    - (aa) in paragraph (b), for “5(3)” substitute “6(3)”;
    - (bb) omit “or” at the end of paragraph (b);
    - (cc) in paragraph (c), for “paragraph 8” substitute “paragraph 8 or 9”;
    - (dd) after 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.”;
  - (ii) after sub-paragraph (4) insert—
    - “(4A) Subject to sub-paragraph (4B), a derivative contract of a binary or other fixed outcomes nature—
      - (a) to which sub-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 applies.
    - (4B) Sub-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
      - (e) a person is carrying on the controlled activity referred to in paragraph 4(2).”;
- (j) after paragraph 23 insert—

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**“Emission allowances**

**23A.**—(1) Subject to sub-paragraph (2), emission allowances consisting of any units recognised for compliance with the requirements of the emission allowance trading directive.

(2) Sub-paragraph (1) only applies to emission allowances 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 services specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex 1 to the markets in financial instruments directive;
- (c) a market operator is providing an investment service specified in paragraph 8 or 9 of Section A of Annex 1 to the markets in financial instruments directive; 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.”;

(k) in paragraph 28 (interpretation)—

(i) in the appropriate places, insert—

““AIFM” has the meaning given in the Regulated Activities Order;

“markets in financial instruments directive” means [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast)<sup>(10)</sup>;

“non-equity MiFID instrument” has the meaning given in article 25DA of the Regulated Activities Order;

“organised trading facility” has the meaning given in the Regulated Activities Order.”;

(ii) in the definition of “Commission Regulation”, for “means Commission Regulation 1287/2006 of 10 August 2006” substitute “has the meaning given in the Regulated Activities Order”;

(iii) in the definition of “security”, after “20” insert “or 23A”.

(11) In Schedule 3 (markets and exchanges) omit Part 2 (certain investment exchanges operating relevant EEA markets).

**Amendment to the Cancellation of Contracts made in a Consumer’s Home or Place of Work etc. Regulations 2008**

**10.** In Schedule 3 to the Cancellation of Contracts made in a Consumer’s Home or Place of Work etc. Regulations 2008<sup>(11)</sup> (excepted contracts), in paragraph 8(1)(a) after sub-paragraph (iii) insert—

“(iiia) operating an organised trading facility.”.

<sup>(10)</sup> OJ L173, 12/6/2014, p.349.

<sup>(11)</sup> [S.I. 2008/1816](#).