

SCHEDULE

Consequential amendments to primary and secondary legislation

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(1) 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—

(1) [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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“Operating an organised trading facility

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

- (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 contracts”;
 - (cc) in paragraph (b), for “5(3)” substitute “6(3)”;
 - (dd) omit “or” at the end of paragraph (b);

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- (ee) in paragraph (c), for “paragraph 8” substitute “paragraph 8 or 9”;
- (ff) 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.”;
- (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

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- (e) a person is carrying on the controlled activity referred to in paragraph 4(2).”;
- (j) after paragraph 23 insert—

“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)(2);

“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).

(2) OJ L173, 12/6/2014, p.349.