

2023 No. 548

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Commodity
Derivatives and Emission Allowances) Order 2023**

Made - - - - *17th May 2023*

Coming into force - - *1st January 2025*

The Treasury make the following Order in exercise of the powers conferred by section 22(1) and (5) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(a).

A draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament in accordance with paragraph 13(1) of Schedule 8 to the European Union (Withdrawal) Act 2018(b).

Citation, commencement and extent

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023.

(2) This Order comes into force on 1st January 2025.

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

Amendment of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c) is amended as follows.

(2) In article 3(1) (interpretation)—

(a) in the definition of “investment firm”—

(i) in sub-paragraph (a), omit the words from “and with” to the end;

(ii) in sub-paragraph (b), omit “and with Commission Delegated Regulation (EU) 2017/592”;

(b) in the definition of “qualifying credit institution”, in sub-paragraph (d), omit the words from “and with” to the end.

(3) In article 3(1A) (read with the definition of “market operator” in article 3(1))—

(a) in sub-paragraph (a), omit the words from “and with” to “main business”;

(a) 2000 c. 8. Paragraph 25 of Schedule 2 was amended by section 8 of the Financial Services Act 2012 (c. 21) and section 27 of the Financial Guidance and Claims Act 2018 (c. 10).

(b) 2018 c. 16. Paragraph 13(1) was amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1), Schedule 5, paragraph 54.

(c) S.I. 2001/544. Amended by S.I. 2017/1255, 2018/1403, 2019/632. There are other amendments which are not relevant.

(b) in sub-paragraph (b), omit “and with Commission Delegated Regulation (EU) 2017/592”.

(4) Omit article 72J (persons seeking to use the exemption under Article 2.1(j) of the markets in financial instruments directive).

(5) In paragraph 2(c) of Part 1 of Schedule 3 (exemptions from the definition of “investment firm”), for the words from the beginning to “the FCA” in the second place it occurs, substitute “P reports to the FCA under regulation 47 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”.

Amendment of the Financial Service and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

3.—(1) The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(a) are amended as follows.

(2) In sub-paragraph (1B)(c) of regulation 30 (algorithmic trading)—

(a) for the words from the beginning to “the FCA” in the second place it occurs, substitute “P reports to the FCA under regulation 47”;

(b) for “this activity” substitute “P’s activity under paragraph (1A)(e)(i) and (ii)”.

(3) In regulation 47 (notifications, reports, and applications relating to the markets in financial instruments regulation)—

(a) for the heading, substitute “Reports and applications”;

(b) omit paragraph (1)(a);

(c) in paragraph (1)(b)—

(i) omit “, for the purposes of the words after paragraph (ii) of sub-paragraph (e) of regulation 30(1A),”;

(ii) omit “described in paragraphs (i) and (ii) of that sub-paragraph”.

Stuart Anderson

Steve Double

17th May 2023

Two of the Lords Commissioners of His Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order concerns certain exemptions relating to the regulation of investment services for the purposes of the Financial Services and Markets Act 2000.

Article 2 amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Order”). References to Commission Delegated Regulation (EU) 2017/592 are omitted from article 3 meaning that the criteria within that Regulation for establishing when an activity is ancillary, for the purposes of the exemption from the definition of “investment firm”, no longer apply. Article 72J (which enables firms seeking to rely on the ancillary activities exemption to carry on their business without obtaining authorisation if there is no data available to enable them to perform the test establishing when an activity is ancillary) is omitted. Part 1 of Schedule 3 is amended to remove the requirement to notify the Financial Conduct Authority (“the FCA”) where a person makes use of the exemption from the definition of “investment firm” on the basis that an activity is ancillary to that person’s main business. Reporting arrangements are retained.

Article 3 amends the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701). Regulation 30 is amended to remove the requirement to notify the FCA, which mirrors the requirement removed from Schedule 3 to the Order. Reporting arrangements are retained. Regulation 47 is amended to reflect the omission of the notification

(a) S.I. 2017/701. Amended by S.I. 2018/1403. There are other amendments which are not relevant.

requirement. Regulation 47 is also amended to reflect its applicability in relation to the reporting arrangements under Schedule 3 to the Order.

A de minimis impact assessment of the effect of this instrument is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

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