Draft Order laid before Parliament under section 94 of the Financial Services Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013

Made - - - -

Coming into force - - *1st April 2013*

In accordance with section 94(1) of the Financial Services Act 2012(**a**), a draft of this Order has been laid before Parliament and approved by a resolution of each House;

The Treasury, in exercise of the powers conferred by sections 93(3) to (5) and 115(2) of the Financial Services Act 2012, makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013 and comes into force on 1st April 2013.

(2) In this Order—

"the Act" means the Financial Services Act 2012;

"contract of insurance" has the meaning given by article 3(1) of the Regulated Activities Order(**b**);

"controlled activity" means an activity which falls within Part 1 of Schedule 1 to the Financial Promotion Order(**c**);

"controlled investment" means an investment which falls within Part 2 of Schedule 1 to the Financial Promotion Order(**d**);

"the Financial Promotion Order" means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005;

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(**a**) 2012 c.21.
(**b**) SI 2001/544.
(**c**) Amended by SI 2006/2383, SI 2006/3384 and SI 2009/1342.
(**d**) SI 2005/1529. Amended by SI 2006/1969, SI 2006/2383, SI 2006/3384, SI 2009/1342, SI 2010/86, SI 2011/133, 2011/1613.

Relevant agreements – specified kinds of activity

2. The following kinds of activity are specified for the purposes of section 93(3)(a) of the Act (interpretation of Part 7)—

(a) a controlled activity;

(b) an activity of the kind specified by any of the following provisions of the Regulated Activities Order—

(i) article 45 (sending dematerialised instructions)(**a**),

(ii) article 51 (establishing etc. a collective investment scheme),

(iii) article 52 (establishing etc. a pension scheme)(**b**), or

(iv) article 57 (managing the underwriting capacity of a Lloyd's syndicate),

(c) so far as not already specified by paragraph (a), an activity of the kind specified by any of the following provisions of the Regulated Activities Order—

(i) article 14 (dealing in investments as principal)(**c**),

(ii) article 21 (dealing in investments as agent)(**d**),

(iii) article 25(1) or (2) (arranging deals in investments)(**e**),

(iv) article 39A (assisting in the administration and performance of a contract of insurance)(**f**),

(v) article 53 (advising on investments)(**g**), or

(vi) so far as relevant to any of the provisions specified by sub-paragraphs (i) to (v), article 64(**h**),

so far as it relates to a contract of insurance.

Relevant benchmarks

3. The benchmarks that are known as the London Interbank Offered Rate (also known as LIBOR) are specified for the purposes of section 93(4) of the Act.

Relevant investments

4. Controlled investments are specified for the purposes of section 93(5) of the Act.

Name
Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) Amended by SI 2001/3544 and SI 2002/682.
(**b**) Amended by SI 2006/1969.
(**c**) Amended by SI 2006/3384.
(**d**) Amended by SI 2003/1476 and SI 2006/3384.
(**e**) Amended by SI 2003/1476 and SI 2006/3384.
(**f**) Inserted by SI 2003/1476.
(**g**) Amended by SI 2003/1476.
(**h**) Amended by SI 2002/682, SI 2006/3384 and SI 2009/1389.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies relevant activities, relevant investments and relevant benchmarks for the purposes of Part 7 of the Financial Services Act 2012 ("the Act"). Part 7 of the Act creates criminal offences which relate to the making of false or misleading statements, or the creation of a false or misleading impression, in connection with a relevant agreement, relevant investment or relevant benchmark. Sections 89 and 90 in part replicate the effect of section 397 of FSMA, which is repealed by section 95 of the Act.

Article 2 specifies activities which are relevant for the purposes of the definition of "relevant agreement" which is used in section 89 of the Act (misleading statements).

Article 3 specifies the benchmarks which are "relevant benchmarks" for the purposes of section 91 of the Act (misleading statements etc in relation to benchmarks). The only benchmarks which are specified for this purpose are the benchmarks known as the London Interbank Offered Rate or LBOR.

Article 4 specifies investments which are "relevant investments". This concept is relevant for the purposes of sections 89 (misleading statements) and 90 (misleading impressions) of the Act.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from, Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.hm-treasury.gov.uk and is published alongside the Order on www.legislation.gov.uk.

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