Draft Order laid before Parliament under section 429(1) of, and paragraph 26(2) of Schedule 2 to, the Financial Services and Markets Act 2000 c. 8.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2018 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018

Made - - - - ***

Coming into force in accordance with article 1(2)

The Treasury make the following Order in exercise of the powers conferred by sections 22(1), (1A) and (5), 419, and 428(3) of, and paragraph 25(1)(f) of Schedule 2 to, the Financial Services and Markets Act 2000(**a**).

In the opinion of the Treasury(**b**) one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000) will become a regulated activity.

In accordance with section 429(1) of, and paragraph 26(2) of Schedule 2 to, the Financial Services and Markets Act 2000, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018.

(2) This Order comes into force on the day after the day on which is it made.

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) Article 77A (alternative finance investment bonds) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**c**) is amended as follows.

(2) In paragraph (2)(f)—

(a) in sub-paragraph (i) omit "or";

(**a**) 2000 c. 8. Paragraph 25 of Schedule 2 was amended, and paragraph 26 was substituted, by section 8 of the Financial Services Act 2012 (c. 21). Section 22(1A) was inserted by section 7(1)(a) of the Financial Services Act 2012, and amended by S.I. 2018/135.

(**b**) As provided by paragraph 26(1) of Schedule 2 to the Financial Services and Markets Act 2000.

(**c**) S.I. 2001/544. Article 77A was inserted by S.I. 2010/86 and amended by S.I. 2011/133.

(b) in sub-paragraph (ii) for "within the meaning of Article 4.1(14) of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments", substitute "as defined by Article 4.1.21 of the markets in financial instruments directive";

(c) after sub-paragraph (ii), insert—

"(iii) trading on a multilateral trading facility (as defined by Article 4.1.22 of the markets in financial instruments directive); or

(iv) trading on an organised trading facility (as defined by Article 4.1.23 of the markets in financial instruments directive).".

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

3.—(1) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(**a**) is amended as follows.

(2) After article 4 insert—

"Administering a benchmark

4A. A person who carries on an activity of the kind specified by article 63S(**b**) of the Regulated Activities Order (administering a benchmark) is to be regarded as carrying on that activity by way of business.".

Name
Name

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) ("the RAO") to amend the criteria by which alternative investment finance bonds qualify as a specified investment under the RAO. The RAO specifies kinds of activities and investments for the purposes of the Financial Services and Markets Act 2000 (c.8) ("the Act"). Section 19 of the Act prohibits persons from carrying on any regulated activity in the United Kingdom unless they are authorised or exempt.

Article 2 of this Order expands upon the conditions set out in article 77A(2) of the RAO, allowing for a broader range of alternative finance investment bonds. This amendment provides that arrangements involving securities which are traded on a multilateral trading facility or an organised trading facility may satisfy the conditions in article 77A and may be treated as alternative investment finance bonds. This amendment is made so that alternative finance investment bonds are afforded equivalent treatment to conventional bonds in this respect.

Article 3 amends the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177) so that a person administering a benchmark as specified in the RAO will be regarded as carrying on the activity by way of business. This means the person will be required to be authorised under the Financial Services and Markets Act 2000 in order to do so.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

(**a**) S.I. 2001/1177.
(**b**) Article 63S was inserted by S.I. 2018/135.

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