

## SCHEDULE 1

### PART II

#### *Controlled Investments*

12. A deposit.
13. Rights under a contract of insurance.
- 14.—(1) Shares or stock in the share capital of—
- (a) any body corporate (wherever incorporated);
  - (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom.
- (2) Sub-paragraph (1) includes—
- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 <sup>M1</sup>;
  - (b) any transferable shares in a body incorporated under the law of, or any part of, the United Kingdom relating to [<sup>F1</sup>co-operative and community benefit societies,] industrial and provident societies or credit unions or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body.
- (3) But subject to sub-paragraph (2) there are excluded from sub-paragraph (1) shares or stock in the share capital of—
- (a) an open-ended investment company;
  - (b) a building society incorporated under the law of, or any part of, the United Kingdom;
  - (c) any body incorporated under the law of, or any part of, the United Kingdom relating to [<sup>F2</sup>co-operative and community benefit societies,] industrial and provident societies or credit unions;
  - (d) any body constituted under the law of an EEA State for purposes equivalent to those of a body falling within paragraph (b) or (c).

#### **Textual Amendments**

- F1** Words in Sch. 1 para. 14(2)(b) inserted (1.8.2014) by [The Co-operative and Community Benefit Societies and Credit Unions Act 2010 \(Consequential Amendments\) Regulations 2014 \(S.I. 2014/1815\)](#), reg. 1(2), [Sch. para. 15\(3\)](#)
- F2** Words in Sch. 1 para. 14(3)(c) inserted (1.8.2014) by [The Co-operative and Community Benefit Societies and Credit Unions Act 2010 \(Consequential Amendments\) Regulations 2014 \(S.I. 2014/1815\)](#), reg. 1(2), [Sch. para. 15\(3\)](#)

#### **Marginal Citations**

- M1** 1986 c. 53.

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**Instruments creating or acknowledging indebtedness**

**15.**—(1) Subject to sub-paragraph (2), such of the following as do not fall within [<sup>F3</sup>paragraph <sup>F4</sup>... 16]—

- (a) debentures;
- (b) debenture stock;
- (c) loan stock;
- (d) bonds;
- (e) certificates of deposit;
- (f) any other instrument creating or acknowledging a present or future indebtedness.

(2) If and to the extent that they would otherwise fall within sub-paragraph (1), there are excluded from that sub-paragraph—

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
- (c) a banknote, a statement showing a balance on a current, deposit or saving account, a lease or other disposition of property, a heritable security; and
- (d) a contract of insurance.

<sup>F5</sup>(e) .....

(3) An instrument excluded from sub-paragraph (1) of paragraph 16 by paragraph 16(2)(b) is not thereby to be taken to fall within sub-paragraph (1) of this paragraph.

<b>Textual Amendments</b>	
<b>F3</b>	Words in Sch. 1 para. 15(1) substituted (24.2.2010) by <a href="#">The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86)</a> , art. 1(2), <b>Sch. para. 9(f)(i)</b>
<b>F4</b>	Words in Sch. 1 para. 15(1) omitted (16.2.2011) by virtue of <a href="#">The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2011 (S.I. 2011/133)</a> , arts. 1(2), <b>3(2)(a)</b> (with art. 4)
<b>F5</b>	Sch. 1 para. 15(2)(e) omitted (16.2.2011) by virtue of <a href="#">The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2011 (S.I. 2011/133)</a> , arts. 1(2), <b>3(2)(b)</b> (with art. 4)

**[<sup>F6</sup>Alternative finance investment bonds**

**15A.**—(1) Rights under an alternative finance investment bond, to the extent that they do not fall within paragraph [<sup>F7</sup>15 or] 16.

(2) For the purposes of this paragraph, arrangements constitute an alternative finance investment bond if—

- (a) the arrangements provide for a person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”);
- (b) the arrangements identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”);
- (c) the arrangements specify a period at the end of which they cease to have effect (“the bond term”);
- (d) the bond-issuer undertakes under the arrangements—

- (i) to make a repayment in respect of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond term (whether or not in instalments); and
    - (ii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“the additional payments”);
  - (e) the amount of the additional payments does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital; and
  - (f) the arrangements are a security admitted to—
    - (i) an official list (in accordance with the provisions of Directive 2001/34/EC of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities); or
    - (ii) trading on a regulated market (within the meaning of [F8Article 4.1.21 of the markets in financial instruments directive]) or on a recognised investment exchange (within the meaning of section 285 of the Act).
- (3) For the purposes of sub-paragraph (2)—
- (a) the bond-issuer may acquire the bond assets before or after the arrangements take effect;
  - (b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer;
  - (c) the identification of the bond assets mentioned in sub-paragraph (2)(b) and the undertakings mentioned in sub-paragraph (2)(d) may (but need not) be described as, or accompanied by a document described as, a declaration of trust;
  - (d) the reference to a period in sub-paragraph (2)(c) includes any period specified to end upon the redemption of the bond by the bond-issuer;
  - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term;
  - (f) the amount of the additional payments may be—
    - (i) fixed at the beginning of the bond term;
    - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets; or
    - (iii) determined in some other way;
  - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in sub-paragraph (2)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments;
  - (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them; and
  - (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.
- (4) An instrument excluded from sub-paragraph (1) of paragraph 16 by sub-paragraph (2)(b) of that paragraph is not thereby taken to fall within sub-paragraph (1) of this paragraph. ]

#### Textual Amendments

- F6** Sch. 1 para. 15A inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), art. 1(2), **Sch. para. 9(f)(iii)**
- F7** Words in Sch. 1 para. 15A(1) inserted (16.2.2011) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2011 \(S.I. 2011/133\)](#), arts. 1(2), **3(2)(c)** (with art. 4)

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- F8** Words in Sch. 1 para. 15A(2)(f)(ii) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(f)**

### Government and public securities

- 16.**—(1) Subject to sub-paragraph (2), loan stock, bonds and other instruments—
- (a) creating or acknowledging indebtedness; and
  - (b) issued by or on behalf of a government, local authority (whether in the United Kingdom or elsewhere) or international organisation.
- (2) [<sup>F9</sup>Subject to sub-paragraph (3),] there are excluded from sub-paragraph (1)—
- (a) so far as applicable, the instruments mentioned in paragraph 15(2)(a) to (d);
  - (b) any instrument creating or acknowledging indebtedness in respect of—
    - (i) money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank;
    - (ii) money raised under the National Loans Act 1968 <sup>M2</sup> under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972 <sup>M3</sup>.

[<sup>F10</sup>(3) Sub-paragraph (2)(a) does not exclude an instrument which meets the requirements set out in paragraphs (a) to (e) of paragraph 15A(2).]

#### Textual Amendments

- F9** Words in Sch. 1 para. 16(2) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), art. 1(2), **Sch. para. 9(f)(iv)**
- F10** Sch. 1 para. 16(3) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), art. 1(2), **Sch. para. 9(f)(v)**

#### Marginal Citations

- M2** 1968 c. 13.
- M3** 1972 c. 65.

### Instruments giving entitlements to investments

**17.**—(1) Warrants and other instruments entitling the holder to subscribe for any investment falling within paragraph 14, 15 or 16.

(2) It is immaterial whether the investment to which the entitlement relates is in existence or identifiable.

(3) An investment falling within this paragraph shall not be regarded as falling within paragraph 21, 22 or 23.

### Certificates representing certain securities

**18.**—(1) Subject to sub-paragraph (2), certificates or other instruments which confer contractual or property rights (other than rights consisting of an investment of the kind specified by paragraph 21)—

- (a) in respect of any investment of the kind specified by any of paragraphs 14 to 17 being an investment held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
  - (b) the transfer of which may be effected without the consent of that person.
- (2) There is excluded from sub-paragraph (1) any instrument which confers rights in respect of two or more investments issued by different persons, or in respect of two or more different investments of the kind specified by paragraph 16 and issued by the same person.

### Units in a collective investment scheme

19. Units in a collective investment scheme.

### [<sup>F11</sup>Rights under a pension scheme

- 20.—(1) Rights under a stakeholder pension scheme.
- (2) Rights under a personal pension scheme.
- (3) "Stakeholder pension scheme" and "personal pension scheme" have the meanings given by article 72(4).]

#### Textual Amendments

**F11** Sch. 1 Pt. 2 para. 20 substituted (6.4.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), **arts. 1(2)(b), 12(3)**

### Options

- 21.—[<sup>F12</sup>(1)] Options to acquire or dispose of—
- (a) a security or contractually based investment (other than one of a kind specified in this paragraph);
  - (b) currency of the United Kingdom or of any other country or territory;
  - (c) palladium, platinum, gold or silver; <sup>F13</sup>...
  - (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of sub-paragraph (a), (b) or (c)[<sup>F14</sup>;
  - (e) subject to sub-paragraph (4), an option to acquire or dispose of an option to which paragraph 5, 6, 7 or 10 of Section C of Annex I to the markets in financial instruments directive [<sup>F15</sup>(read with Articles 5, 6, 7 and 8 of the Commission Regulation)] applies]
- [<sup>F16</sup>(2) Subject to sub-paragraph (4), options—
- (a) to which sub-paragraph (1) does not apply;
  - (b) which relate to commodities;
  - (c) which may be settled physically; and
  - (d) either—
    - (i) to which paragraph 5 or 6 of Section C of Annex I to the markets in financial instruments directive [<sup>F17</sup>(read with Articles 5 and 6 of the Commission Regulation)] applies, or
    - (ii) which in accordance with Article [<sup>F18</sup>7] of the Commission Regulation are to be considered as having the characteristics of other derivative financial instruments and

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not being for commercial purposes, and to which paragraph 7 of Section C of Annex I to the markets in financial instruments directive applies.

- (3) Subject to sub-paragraph (4), options—
- (a) to which sub-paragraph (1) does not apply;
  - (b) which may be settled physically; and
  - (c) to which paragraph 10 of Section C of Annex I to the markets in financial instruments directive (read with <sup>F19</sup>Articles 7 and 8 of] the Commission Regulation) applies.
- (4) Sub-paragraphs (1)(e), (2) and (3) only apply to options 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 <sup>F20</sup>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, <sup>F21</sup>...
  - (c) a market operator is providing the investment service specified in <sup>F22</sup>paragraph 8 or 9] of Section A of Annex I to the markets in financial instruments directive<sup>F23</sup>, 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.]
- (5) Expressions used in sub-paragraphs (1)(e), (2) and (3) and in the markets in financial instruments directive have the same meaning as in that directive.]

#### Textual Amendments

- F12** Sch. 1 para. 21 renumbered as Sch. 1 para. 21(1) (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **40(3)(a)**
- F13** Word in Sch. 1 para. 21(1)(c) omitted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **40(3)(b)(i)**
- F14** Sch. 1 para. 21(1)(e) and semi-colon inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **40(3)(b)(ii)**
- F15** Words in Sch. 1 para. 21(1)(e) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(g)(i)**
- F16** Sch. 1 para. 21(2)-(5) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **40(3)(c)**
- F17** Words in Sch. 1 para. 21(2)(d)(i) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(g)(ii)(aa)**
- F18** Word in Sch. 1 para. 21(2)(d)(ii) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(g)(ii)(bb)**

- F19** Words in Sch. 1 para. 21(3)(c) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(g)(iii)**
- F20** Words in Sch. 1 para. 21(4)(b) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), reg. 1, **Sch. para. 7(3)**
- F21** Word in Sch. 1 para. 21(4)(b) omitted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. paras. 9(10)(g)(iv)(aa)**
- F22** Words in Sch. 1 para. 21(4)(c) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. paras. 9(10)(g)(iv)(bb)**
- F23** Sch. 1 para. 21(4)(d) and preceding word inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. paras. 9(10)(g)(iv)(cc)**

## Futures

**22.—**(1) Subject to sub-paragraph (2), rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.

[<sup>F24</sup>(1A) Subject to sub-paragraph (1D), futures—

- (a) to which sub-paragraph (1) does not apply;
- (b) which relate to commodities;
- (c) which may be settled physically; and
- (d) to which paragraph 5 or 6 of Section C of Annex I to the markets in financial instruments directive [<sup>F25</sup>(read with Articles 5 and 6 of the Commission Regulation)] applies.

(1B) Subject to sub-paragraph (1D), futures and forwards—

- (a) to which sub-paragraph (1) does not apply;
- (b) which relate to commodities;
- (c) which may be settled physically;
- (d) which in accordance with Article [<sup>F26</sup>7] of the Commission Regulation are to be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes; and
- (e) to which paragraph 7 of Section C of Annex I to the markets in financial instruments directive applies.

(1C) Subject to sub-paragraph (1D), futures—

- (a) to which sub-paragraph (1) does not apply;
- (b) which may be settled physically; and
- (c) to which paragraph 10 of Section C of Annex I to the markets in financial instruments directive (read with [<sup>F27</sup>Articles 7 and 8 of] the Commission Regulation) applies.

[  
<sup>F28</sup>(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.]

(1D) Sub-paragraphs (1A), (1B)[<sup>F29</sup>, (1C) and (1CA)] only apply to futures[<sup>F30</sup>, forwards or derivative contracts] in relation to which—

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- (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 [F316(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, F32 ...
  - (c) a market operator is providing the investment service specified in [F33] paragraph 8 or 9] of Section A of Annex I to the markets in financial instruments directive[F34, 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.]
- (1E) Expressions used in sub-paragraphs (1A) to [F35(1CA)] and in the markets in financial instruments directive have the same meaning as in that directive.]
- (2) There are excluded from sub-paragraph (1) rights under any contract which is made for commercial and not investment purposes.
- (3) For the purposes of sub-paragraph (2), in considering whether a contract is to be regarded as made for investment purposes or for commercial purposes, the indicators set out in article 84 of the Regulated Activities Order shall be applied in the same way as they are applied for the purposes of that article.

#### Textual Amendments

- F24** Sch. 1 para. 22(1A)-(1E) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **40(4)**
- F25** Words in Sch. 1 para. 22(1A)(d) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(h)(i)**
- F26** Word in Sch. 1 para. 22(1B)(d) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(h)(ii)**
- F27** Words in Sch. 1 para. 22(1C)(c) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(h)(iii)**
- F28** Sch. 1 para. 22(1CA) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(h)(iv)**
- F29** Words in Sch. 1 para. 22(1D) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(h)(v)(aa)**
- F30** Words in Sch. 1 para. 22(1D) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(h)(v)(bb)**
- F31** Word in Sch. 1 para. 22(1D)(b) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(h)(v)(cc)**
- F32** Word in Sch. 1 para. 22(1D)(b) omitted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(h)(v)(dd)**



- F33** Words in Sch. 1 para. 22(1D)(c) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), Sch. para. 9(10)(h)(v)(ee)**
- F34** Sch. 1 para. 22(1D)(d) and word inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), Sch. para. 9(10)(h)(v)(ff)**
- F35** Word in Sch. 1 para. 22(1E) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), art. 1(2), Sch. para. 9(10)(h)(vi)**

### Contracts for differences etc.

- 23.—**(1) Subject to sub-paragraph (2), rights under—
- (a) a contract for differences; or
  - (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
    - (i) the value or price of property of any description;
    - (ii) an index or other factor designated for that purpose in the contract.
- (2) There are excluded from sub-paragraph (1)—
- (a) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates;
  - (b) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor;
  - (c) rights under any contract under which—
    - (i) money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank; or
    - (ii) money is raised under the National Loans Act 1968 under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972;
  - (d) rights under a qualifying contract of insurance.
- <sup>F36</sup>(3) Subject to sub-paragraph (4), derivative instruments for the transfer of credit risk—
- (a) to which neither paragraph 21 nor sub-paragraph (1) applies; and
  - (b) to which paragraph 8 of Section C of Annex I to the markets in financial instruments directive applies.
- <sup>F37</sup>(4) Sub-paragraph (3) 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 <sup>F38</sup>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, <sup>F39</sup>...
  - (c) a market operator is providing the investment service specified in <sup>F40</sup>paragraph 8 or 9] of Section A of Annex I to the markets in financial instruments directive<sup>F41</sup>, 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.]

[  
F37(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).]

(5) "Derivative instruments for the transfer of credit risk" has the same meaning as in the markets in financial instruments directive.]

#### Textual Amendments

- F36** Sch. 1 para. 23(3)-(5) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **40(5)**
- F37** Sch. 1 para. 23(4A)(4B) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(i)(ii)**
- F38** Word in Sch. 1 para. 23(4)(b) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(i)(i)(aa)**
- F39** Word in Sch. 1 para. 23(4)(b) omitted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(i)(i)(bb)**
- F40** Words in Sch. 1 para. 23(4)(c) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(i)(i)(cc)**

**F41** Sch. 1 para. 23(4)(d) and word inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(i)(dd)**

#### [<sup>F42</sup>**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.]

#### **Textual Amendments**

**F42** Sch. 1 para. 23A inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(j)**

#### **Lloyd's syndicate capacity and syndicate membership**

**24.**—(1) The underwriting capacity of a Lloyd's syndicate.

(2) A person's membership (or prospective membership) of a Lloyd's syndicate.

#### **Funeral plan contracts**

**25.** Rights under a qualifying funeral plan contract.

#### **Agreements for qualifying credit**

**26.** Rights under an agreement for qualifying credit.

#### [<sup>F43</sup>**Regulated home reversion plans**

**26A.** Rights under a regulated home reversion plan.

**Status:** Point in time view as at 03/01/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, PART II. (See end of Document for details)

**Textual Amendments**

**F43** Sch. 1 paras. 26A, 26B inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **35(6)(a)**

**Regulated home purchase plans**

**26B.** Rights under a regulated home purchase plan.]

**Textual Amendments**

**F43** Sch. 1 paras. 26A, 26B inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **35(6)(a)**

[<sup>F44</sup>**Regulated sale and rent back agreement**

**26C.** Rights under a regulated sale and rent back agreement.]

**Textual Amendments**

**F44** Sch. 1 para. 26C inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **30(5)(a)**

[<sup>F45</sup>**Relevant credit agreements**

**26D.** Rights under a relevant credit agreement

**Textual Amendments**

**F45** Sch. 1 paras. 26D, 26E inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **17(6)(d)**

**Consumer hire agreements**

**26E.** Rights under a consumer hire agreement]

**Textual Amendments**

**F45** Sch. 1 paras. 26D, 26E inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **17(6)(d)**

## Rights to or interests in investments

27.—(1) Subject to sub-paragraphs (2) and (3), any right to or interest in anything which is specified by any other provision of this Part of this Schedule (other than [F46]paragraph 26, [F47]26A, 26B or 26C)).

(2) Sub-paragraph (1) does not apply to interests under the trusts of an occupational pension scheme.

(2A) Sub-paragraph (1) does not apply to any right or interest acquired as a result of entering into a funeral plan contract (and for this purpose a “funeral plan contract” is a contract of a kind described in paragraph 9(2)(a) and (b)).

(3) Sub-paragraph (1) does not apply to anything which falls within any other provision of this Part of this Schedule.

### Textual Amendments

- F46** Words in Sch. 1 para. 27(1) substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), 35(6)(b)
- F47** Words in Sch. 1 para. 27(1) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), [arts. 1\(2\)](#), 30(5)(b)

## Interpretation

28. In this Schedule—

[F48]“AIFM” has the meaning given in the Regulated Activities Order;]

[F49]“agreement provider” has the meaning given in paragraph (3) of article 63J of the Regulated Activities Order, read with paragraphs (6) and (7) of that article;

“agreement seller” has the meaning given in article 63J(3) of the Regulated Activities Order]

[F50]“borrower” has the meaning given by article 60L of the Regulated Activities Order;]

“buying” includes acquiring for valuable consideration;

[F51]“Commission Regulation” [F52]has the meaning given in the Regulated Activities Order;]

[F50]“consumer hire agreement” has the meaning given by article 60N of the Regulated Activities Order;]

“contract of insurance” has the meaning given in the Regulated Activities Order;

“contractually based investment” means—

- (a) rights under a qualifying contract of insurance;
- (b) any investment of the kind specified by any of paragraphs 21, 22, 23 and 25;
- (c) any investment of the kind specified by paragraph 27 so far as relevant to an investment falling within (a) or (b);

[F51]“credit institution” has the meaning given in the Regulated Activities Order;]

[F50]“hirer” has the meaning given by article 60N of the Regulated Activities Order;]

[F53]“home purchase provider” and “home purchaser” have the meanings given in article 63F(3) of the Regulated Activities Order;]

[F51]“investment firm” has the meaning given in the Regulated Activities Order;

**Status:** Point in time view as at 03/01/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, PART II. (See end of Document for details)

“investment services and activities” has the meaning given in the Regulated Activities Order;]

[<sup>F50c1</sup>“lender” has the meaning given by article 60L of the Regulated Activities Order;]

[<sup>F51c</sup>“management company” has the meaning given in the Regulated Activities Order;

“market operator” has the meaning given in the Regulated Activities Order;

[<sup>F48c</sup>“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);]

“MiFID instrument” has the meaning given in article 25D(2) of the Regulated Activities Order;

“multilateral trading facility” has the meaning given in the Regulated Activities Order;]

[<sup>F48c</sup>“non-equity MiFID instrument” has the meaning given in article 25DA of the Regulated Activities Order;]

[<sup>F54c</sup>“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 but with paragraph (b) of the definition omitted;]

[<sup>F48c</sup>“organised trading facility” has the meaning given in the Regulated Activities Order;]

[<sup>F55c</sup>“plan provider” has the meaning given by paragraph (3) of article 63B of the Regulated Activities Order, read with paragraphs (7) and (8) of that article;]

“property” includes currency of the United Kingdom or any other country or territory;

“qualifying funeral plan contract” has the meaning given by paragraph 9;

[<sup>F50c</sup>“regulated consumer hire agreement” has the meaning given by article 60N of the Regulated Activities Order;]

[<sup>F50c</sup>“regulated credit agreement” has the meaning given by article 60B of the Regulated Activities Order;]

[<sup>F56c</sup>“regulated home purchase plan” has the meaning given in article 63F(3) of the Regulated Activities Order;

“regulated home reversion plan” and “reversion seller” have the meanings given in article 63B(3) of the Regulated Activities Order;]

[<sup>F57c</sup>“regulated sale and rent back agreement” has the meaning given in article 63J(3) of the Regulated Activities Order;]

[<sup>F58c</sup>“relevant credit agreement” means a credit agreement (within the meaning given by article 60B of the Regulated Activities Order) other than—

- (a) a regulated mortgage contract or a regulated home purchase plan (within the meaning of that Order); or
- (b) a buy-to-let mortgage contract as defined in article 4 of the Mortgage Credit Directive Order 2015;]

[<sup>F50c</sup>“relevant recipient of credit” has the meaning given by article 60L of the Regulated Activities Order.]

“security” means a controlled investment falling within any of paragraphs 14 to 20 [<sup>F59</sup>or 23A] or, so far as relevant to any such investment, paragraph 27;

“selling”, in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes “disposing” includes—

- (a) in the case of an investment consisting of rights under a contract—
  - (i) surrendering, assigning or converting those rights; or
  - (ii) assuming the corresponding liabilities under the contract;

- (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and
  - (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
- “syndicate” has the meaning given in the Regulated Activities Order.

#### Textual Amendments

- F48** Words in Sch. 1 para. 28 inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(k)(i)**
- F49** Words in Sch. 1 para. 28 inserted (1.7.2009 for specified purposes, 30.6.2010 so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), 30(5)(c)(i)
- F50** Words in Sch. 1 para. 28 inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **17(6)(e)**
- F51** Words in Sch. 1 para. 28 inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **40(6)**
- F52** Words in Sch. 1 para. 28 substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(k)(ii)**
- F53** Words in Sch. 1 para. 28 inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **35(6)(c)(i)**
- F54** Words in Sch. 1 para. 28 substituted (6.4.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), arts. 1(2)(b), 12(4)
- F55** Words in Sch. 1 para. 28 inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **35(6)(c)(ii)**
- F56** Words in Sch. 1 para. 28 inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **35(6)(c)(iii)**
- F57** Words in Sch. 1 para. 28 inserted (1.7.2009 for specified purposes, 30.6.2010 so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), 30(5)(c)(ii)
- F58** Words in Sch. 1 para. 28 substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 12(3)** (with Pt. 4)
- F59** Words in Sch. 1 para. 28 inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), art. 1(2), **Sch. para. 9(10)(k)(iii)**

**Status:**

Point in time view as at 03/01/2018.

**Changes to legislation:**

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, PART II.