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DRAFT STATUTORY INSTRUMENTS

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**2012 No.**

**The Financial Services and Markets Act 2000  
(Regulated Activities) (Amendment) Order 2012**

**PART 2**

**AMENDMENT OF THE REGULATED ACTIVITIES ORDER**

**Amendment of the Regulated Activities Order**

**2.—**(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(1)</sup> is amended as follows.

(2) In article 3(1) (interpretation)—

(a) for the definition of “investment services and activities”<sup>(2)</sup>, substitute—

““investment services and activities” means—

- (a) any service provided to third parties listed in Section A of Annex 1 to the markets in financial instruments directive (the text of which is set out in Part 3 of Schedule 2) read with Article 52 of Commission Directive [2006/73/EC](#) of 10 August 2006<sup>(3)</sup> (the text of which is set out in Part 4 of Schedule 2), including the reception, transmission or submission of a bid by an investment firm or credit institution on any auction platform, in relation to any financial instrument; or
- (b) any activity listed in Section A of Annex 1 to that directive, in relation to any financial instrument;”;

(b) insert the following definitions in the appropriate places—

““aircraft operator” has the same meaning as in the emission allowance trading directive;”;

““auction platform” means a platform on which auctions of greenhouse gas emissions allowances are held in accordance with the emission allowance auctioning regulation;”;

““emission allowance trading directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>(4)</sup>;”;

““emission allowance auctioning regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to the emission allowance trading directive <sup>(5)</sup>;”;

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(1) [S.I. 2001/544](#).

(2) The definition of “investment services and activities” was inserted by [S.I. 2006/3384](#).

(3) OJ L 241, 2.9.2006, p.26.

(4) OJ L 275, 25.10.2003, p.32.

(5) OJ L 302, 18.11.2010, p.1.

““greenhouse gas emissions allowances” mean “allowances” as defined in Article 3(a) of the emission allowance trading directive;”;

““operator” has the same meaning as in the emission allowance trading directive;”;

““reception”, “transmission” and “submission” have the same meaning in relation to a bid at an auction for an investment of the kind specified in article 82A as in the emission allowance auctioning regulation;”.

(3) Insert after article 24 (other exclusions)—

#### “CHAPTER 5A

#### BIDDING IN EMISSIONS AUCTIONS

##### *The activity*

##### **Bidding in emissions auctions**

**24A.**—(1) The reception, transmission or submission of a bid at an auction of an investment of the kind specified by article 82A conducted—

- (a) on a recognised auction platform, or
- (b) on any other auction platform which has been appointed under the emission allowance auctioning regulation,

is a specified kind of activity.

(2) An activity which falls within paragraph (1) (or would do so but for the exclusions in article 24B) does not form part of any other activity specified under any other article of this Order.

(3) In this article, “recognised auction platform” has the meaning given in regulation 1(3) of the Recognised Auction Platform Regulations 2011(6).

##### *Exclusions*

##### **Miscellaneous exclusions**

**24B.**—(1) There is excluded from article 24A any activity carried on by—

- (a) an operator or an aircraft operator having an operator holding account, in either case bidding on its own account, including any parent undertaking, subsidiary undertaking or affiliate undertaking forming part of the same group of undertakings as the operator or the aircraft operator;
- (b) business groupings of persons listed in sub-paragraph (a) bidding on their own account or acting as an agent on behalf of their members; or
- (c) public bodies or state-owned entities of the Member States that control any of the persons listed in sub-paragraph (a).

(2) There is excluded from article 24A the reception, transmission or submission of a bid by an investment firm or a credit institution on any auction platform on their own account for investments of the kind specified by article 82A which are not financial instruments.

(3) In this article, the expressions “parent undertaking”, “subsidiary undertaking”, “affiliate undertaking”, “business grouping”, “public bodies” and “state-owned entities” have the same meaning as in the emission allowance auctioning regulation.”

(4) Insert after article 82 (rights under a pension scheme)—

**“Greenhouse gas emissions allowances**

**82A.** Greenhouse gas emissions allowances which are auctioned as financial instruments or as two-day spots within the meaning of Article 3.3 of the emission allowance auctioning regulation.”.