
STATUTORY INSTRUMENTS

2001 No. 544

The Financial Services and Markets Act
2000 (Regulated Activities) Order 2001

PART III

SPECIFIED INVESTMENTS

Contracts for differences etc.

- 85.**—(1) Subject to 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; or
 - (ii) an index or other factor designated for that purpose in the contract.
- (2) There are excluded from 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.
- [^{F1}(3) Subject to paragraph (4), derivative instruments for the transfer of credit risk—
- (a) to which neither article 83 nor paragraph (1) applies; and
 - (b) to which paragraph 8 of Section C of Annex I to the markets in financial instruments directive applies.
- (4) 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 [^{F2}Article 6(3)] of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary

Status: Point in time view as at 01/04/2017. This version of this provision has been superseded.

Changes to legislation: The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Section 85 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, [^{F3}or]

- (c) a market operator is providing the investment service specified in [^{F4}paragraph 8][^{F4}paragraph 8 or 9] of Section A of Annex I to the markets in financial instruments directive [^{F5}, 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.]

[^{F6}(4A) Subject to paragraph (4B), a derivative contract of a binary or other fixed outcomes nature—

- (a) to which 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 (the texts of which are set out in Parts 1 and 2 of Schedule 2) applies.

(4B) 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 activity specified by article 25(2).]

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

Textual Amendments

- F1** Art. 85(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), **28**
- F2** Words in art. 85(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. 1(5)**
- F3** Word in art. 85(4)(b) omitted (1.4.2017 for specified purposes) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **9(2)(a)**
- F4** Words in art. 85(4)(c) substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **9(2)(b)**

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- F5** Art. 85(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 \(S.I. 2017/488\)](#), arts. 1(2), **9(2)(c)**
- F6** Art. 85(4A)(4B) inserted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **9(3)**

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