

## [<sup>F1</sup>SCHEDULE 3

Article 3(1)

### Exemptions from the definition of “investment firm”

#### Textual Amendments

- F1** Sch. 3 substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **4(8)** (with savings in S.I. 2019/680, **reg. 11** (as amended by S.I. 2019/1233, regs. 1(3), **3** and S.I. 2019/710, regs. 1(2), **16(2)(c)**); 2020 c. 1, **Sch. 5 para. 1(1)**

## PART 1

1. The following persons are excluded from the definition of “investment firm”—
  - (a) the society incorporated by Lloyd's Act 1871 <sup>M1</sup> known by the name of Lloyd's;
  - (b) an authorised person with a Part 4A permission to carry on the regulated activity of—
    - (i) effecting or carrying out contracts of insurance under article 10;
    - (ii) insurance risk transformation under article 13A;
    - (iii) managing the underwriting capacity of a Lloyd's syndicate under article 57, when carrying on those activities (and any other activities permitted by rules made by the FCA or the PRA under the Act);
  - (ba) a person which is a third country insurance or reinsurance undertaking (as defined by regulation 2(1) of the Solvency 2 Regulations 2015 <sup>F2</sup>, as those regulations have been amended under the European Union (Withdrawal) Act 2018) where the undertaking is transferring risk to a transformer vehicle, provided that the assumption of risk by that vehicle is a specified kind of activity within Article 13A of this Order;
  - (c) a person (“P”) providing investment services exclusively for P's parent undertakings, for P's subsidiaries or for other subsidiaries of P's parent undertakings;
  - (d) a person providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
  - (e) a person dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons—
    - (i) are market makers;
    - (ii) are members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, except for non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;
    - (iii) apply a high-frequency algorithmic trading technique; or
    - (iv) deal on own account when executing client orders;
  - (f) an operator (within the meaning of regulation 3(2) of the Greenhouse Gas Emissions Trading Scheme Regulations 2012 <sup>M2</sup>), subject to compliance obligations under those

**Status:** Point in time view as at 30/07/2022.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SCHEDULE 3 is up to date with all changes known to be in force on or before 20 June 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)

Regulations who, when dealing in emission allowances, does not execute client orders and does not provide any investment services or perform any investment activities other than dealing on own account, provided that the operator does not apply a high-frequency algorithmic trading technique;

- (g) a person providing investment services consisting exclusively in the administration of employee-participation schemes;
- (h) a person (“P”) providing investment services which only involve both the administration of employee-participation schemes and the provision of investment services exclusively for P’s parent undertakings, for P’s subsidiaries or for other subsidiaries of P’s parent undertakings;
- (i) the Treasury, the Bank of England and other public bodies charged with or intervening in the management of the public debt in the United Kingdom or members of the European System of Central Banks;
- (j) a collective investment undertaking, pension fund or a depositary or manager of such an undertaking or fund;
- (k) a person (“P”)—
  - (i) dealing on own account, including a market maker, in commodity derivatives or emission allowances or derivatives thereof, excluding a person who deals on own account when executing client orders; or
  - (ii) providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of P’s main business,provided that in each case the activity in (i) or (ii), considered both individually and on an aggregate basis, is an ancillary activity to P’s main business, when considered on a group basis, and where paragraph 2 applies;
- (l) a person who provides investment advice in the course of providing another professional activity which is not an investment service or activity provided that the provision of such advice is not specifically remunerated;
- (m) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (n) agenti di cambio whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;
- (o) subject to paragraph 3, transmission system operators within the meaning of Article 2(4) of Directive [2009/72/EC](#) and Article 2(4) of Directive [2009/73/EC](#) when carrying out their tasks under the law of the United Kingdom or part of the United Kingdom relied on by the United Kingdom immediately before IP completion day to implement Directive [2009/72/EC](#) or [2009/73/EC](#), under Regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations, any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks;
- (p) central securities depositories as defined in point (1) of Article 2(1) of Regulation (EU) 909/2014 on the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories, except as provided for in Article 73 of that Regulation.

**Status:** Point in time view as at 30/07/2022.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SCHEDULE 3 is up to date with all changes known to be in force on or before 20 June 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)

#### Textual Amendments

**F2** [S.I. 2015/575](#).

#### Marginal Citations

**M1** [1871 c. cxxi](#)

**M2** [S.I. 2012/3038](#).

2. This paragraph applies if—
  - (a) P's main business is not—
    - (i) the provision of investment services;
    - (ii) banking activities requiring permission under Part 4A of the Act (or banking activities which would require such permission if they were carried on in the United Kingdom); or
    - (iii) acting as a market-maker in relation to commodity derivatives;
  - (b) P does not apply a high-frequency algorithmic trading technique; and
  - (c) P notifies the FCA under regulation 47 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 that P makes use of this exemption and reports to the FCA, upon request, the basis on which P considers that P's activity under points (i) and (ii) is ancillary to P's main business.
3. The exemption in paragraph 1(p)—
  - (a) only applies to the persons engaged in the activities set out in that sub-paragraph where they perform investment activities or provide investment services relating to commodity derivatives in order to carry out those activities;
  - (b) does not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights.
4. References in this Schedule to “regulated markets”, “MTFs” and “trading venues” are to “UK regulated markets”, “UK MTFs” and “UK trading venues” within the meaning of Article 2(1)(13A), (14A) and (16A) respectively of the markets in financial instruments regulation.
5. Any expression used in this Part of this Schedule which is used in the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in the regulation.

## PART 2

### Provision of investment service in an incidental manner

6. For the purpose of the exemption in paragraph 1(d), an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied—
  - (a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;
  - (b) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and

**Status:** Point in time view as at 30/07/2022.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SCHEDULE 3 is up to date with all changes known to be in force on or before 20 June 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)

- (c) the persons providing the professional activity do not market or otherwise promote their ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.]

**Status:**

Point in time view as at 30/07/2022.

**Changes to legislation:**

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SCHEDULE 3 is up to date with all changes known to be in force on or before 20 June 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.