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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order implements in part Directive [2004/39/EC](#) of 21 April 2004 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“MiFID”). MiFID is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 ([S.I. 2007/126](#)), the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2007 ([S.I. 2007/125](#)), the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006 ([S.I. 2006/3386](#)) and the Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006 ([S.I. 2006/3385](#)), and by the Financial Services Authority using powers under the Financial Services and Markets Act 2000 (c. 8) (“the Act”).

Part 2 of the Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#)) (“the principal Order”). The amendments include the following.

- Article 4(4) of the principal Order is updated to take account of MiFID’s repeal and replacement of Council Directive [93/22/EEC](#) of 10 May 1993 on investment services in the securities field (OJ No L 141, 11.6.1993, p.27) (“ISD”). Article 4(4) provided that in respect of any regulated activity that falls within the scope of the “ISD, the exclusions in the principal Order applicable to that activity must be disregarded if they are incompatible with that directive. The replacement provision provides that in respect of any regulated activity that falls within the scope of MiFID, the exclusions in the principal Order applicable to that activity are to be disregarded if they are incompatible with MiFID. The articles of the principal Order to which article 4(4) applies are amended to show that they must be read subject to article 4(4).
- Operating a multilateral trading facility, one of the “investment services and activities” in MiFID, is made a separate regulated activity for the purposes of the Act. This kind of activity is already specified by the principal Order, but it is covered by several of the existing specified activities. The Order creates an exclusion from the new activity for certain overseas persons.
- Articles 83 (options), 84 (futures) and 85 (contracts for differences etc.) of the principal Order are extended to include “financial instruments” in Section C of Annex I to MiFID which are not currently investments specified in Part 3 of the principal Order. These new categories of investment are only specified for the purposes of the Act in so far as an investment firm, credit institution or in some circumstances a management company (within the meaning of Council Directive [85/611/EEC](#) of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, OJ No L 375, 31.12.85, p.3) or a market operator carries on an investment service or activity in relation to the investment.
- New definitions of “investment firm”, “credit institution”, “market operator”, “multilateral trading facility” and “investment services and activities” (all terms defined in MiFID) are inserted into the principal Order. The provisions of MiFID and subordinate legislation made under it to which the definitions refer are set out in new Schedules 2 and 3 to the principal Order (replacing existing Schedules setting out the corresponding provisions of the “ISD”). The definitions apply for the purposes of the above-mentioned provisions.

Parts 3 and 4 of the Order make amendments to other legislation consequential on the changes made by this Order.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

A transposition note has been prepared which sets out how the main elements of MiFID will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing MiFID on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)), and copies of both documents have been placed in the libraries of both Houses of Parliament.