
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (S.I. 2014/1960) (“the Core Activities Order”) and the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (S.I. 2014/2080) (“the Excluded Activities Order”).

Article 2 makes a number of amendments to the Core Activities Order. In particular, Article 2(2) (d) amends the definition of “UK deposit-taker” in the Core Activities Order with the effect that only bodies corporate that are incorporated in the United Kingdom will be capable of falling within that definition (thus excluding United Kingdom branches of non-United Kingdom banks from the scope of the definition).

Article 2(3) to (6) amends the Core Activities Order in order to make new provision regarding the identification of qualifying organisations. Instead of a relevant organisation being required to give a “qualifying organisation declaration” to a UK deposit-taker before it may be considered to be a qualifying organisation, a UK deposit-taker may determine that an organisation is a qualifying organisation without the organisation having to give any such declaration.

Article 2(7) amends the Core Activities Order for the purpose of ensuring that the duty of ring-fenced bodies to provide “specified information” only applies in the case of (1) individuals that are located in an EEA state and (2) accounts that are provided for the purpose of accepting deposits.

Article 3 makes a number of amendments to the Excluded Activities Order. In particular, article 3(2)(c) extends the definition of “global systemically important insurer” in article 1 of the Excluded Activities Order and article 3(2)(d) amends the definition of “liquidity risk” in article 1 of the Excluded Activities Order so as to clarify that a ring-fenced body does not carry out an excluded activity where the purpose of the transaction in question is to limit the extent to which its subsidiaries etc. (and not just the ring-fenced body itself) will be adversely affected by liquidity risk.

Article 3(3) amends the definition of “sponsored structured finance vehicle” that is set out in article 3(2) of the Excluded Activities Order in order to expand the categories of assets that any such entity may hold. As a result of this amendment, a sponsored structured finance vehicle of a ring-fenced body will be able to hold assets that have been transferred to its ring-fenced body sponsor pursuant to a ring-fencing transfer scheme and assets that have been subject to a transfer effected in the course of resolution action taken pursuant to the Banking (Special Provisions) Act 2008 or Part 1 of the Banking Act 2009. An amendment has also been made to permit a sponsored structured finance vehicle to hold any assets created by a third party provided that they are assets that a ring-fenced body could hold and provided that they were acquired by any company within a group of companies of which the ring-fenced body is a member no later than two years before the ring-fenced body became a ring-fenced body. Article 3(3) also makes an amendment to article 3(2) of the Excluded Activities Order for the purpose of clarifying that a sponsored structured finance vehicle may hold assets created by a securitisation undertaking that itself holds assets created by a subsidiary undertaking of the ring-fenced body only where those assets could be held by the ring-fenced body itself.

Article 3(4) amends article 6 of the Excluded Activities Order in order to provide that a ring-fenced body does not carry on an excluded activity by entering into a transaction where the main purpose of the transaction is to limit the extent to which another ring-fenced body within the same group as the ring-fenced body or another company within the same sub-group as the ring-fenced body is adversely affected by any of the factors set out in article 6(2) of the Excluded Activities Order. Article 3(4) also makes amendments to article 6 of the Excluded Activities Order for the purpose of providing

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that ring-fenced bodies do not carry on an excluded activity when acquiring or disposing of shares in companies that operate financial market infrastructure (i.e. operators of payment systems, companies providing electronically transmitted secure financial messaging services and central counterparties), complying with the default rules of a central counterparty of which it is a member, or when acting in the capacity as trustee for or on behalf of individuals (including minors) and charitable bodies.

Article 3(6) amends the conditions in article 12 of the Excluded Activities Order which must be satisfied in order for a ring-fenced body to enter into a derivative transaction with an account holder.

Article 3(7) amends article 14 of the Excluded Activities Order in order to provide that a ring-fenced body (“the relevant RFB”) does not incur a prohibited financial institution exposure by entering into a transaction where the main purpose of the transaction is to limit the extent to which another ring-fenced body within the same group as the relevant RFB, or another company within the same subgroup as the relevant RFB, is adversely affected by any of the factors set out in article 14(3) of the Excluded Activities Order. Article 3(7) also makes amendments that allow a ring-fenced body to incur financial institution exposures where the exposure arises as a result of the acquisition of liquid assets for the purposes of managing the ring-fenced body’s liquidity risk (provided that the assets in question meet the liquidity buffer requirements of the Regulation of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms); giving effect to any agreement whereby a member of the same group provides financial support to the ring-fenced body’s pension scheme and giving effect to any agreement whereby the ring-fenced body supports the pension scheme of another group member before 1st January 2026.

Article 3(8) substitutes a new article 16 for the former article 16 in the Excluded Activities Order. The purpose of this amendment is to additionally allow ring-fenced bodies to incur a financial institution exposure where that exposure arises as a result of a transaction with a covered bond vehicle that is a subsidiary of a ring-fenced body or a building society.

Article 3(9) makes further amendments to the Excluded Activities Order in order to allow a ring-fenced body to incur a financial institution exposure which arises a result of providing clients with operational or consultative services, provided that such services are also offered to clients that are not relevant financial institutions.

Article 3(10) inserts two new articles into the Excluded Activities Order: The new article 19A allows for ring-fenced bodies to incur financial institution exposures arising from loans advanced or guarantees given to entities responsible for the financing of infrastructure projects within the EEA; and the new article 19B provides that in instances where a financial institution exposure is incurred as a result of a counterparty changing its status to become a relevant financial institution at any point after the transaction in question is entered into, then that exposure will be permitted for a period of twelve months provided that at the time the transaction was entered into, the ring-fenced body did not know, or could not reasonably be expected to have known, of the counterparty’s forthcoming change in status.

A validation impact assessment is being prepared in relation to this Order. The assessment will be placed in the library of each House of Parliament and will be available on <http://www.legislation.gov.uk/>. Copies will be available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ.