Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 ISBN 978-0-11-153382-6*

Draft Order laid before Parliament under paragraphs 2(2) and 2A of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

FINANCIAL SERVICES

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

Made - - - - ***

Coming into force in accordance with Article 1

In the opinion of the Treasury, one of the effects of the following order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000(**1**)) will become a regulated activity.

The Treasury are a government department designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972(**3**) in relation to measures relating to the operation of regulated markets and clearing or settlement systems and in relation to insider dealing and market manipulation.

A draft of this Order was laid before Parliament, and approved by a resolution of each House of Parliament, in accordance with paragraphs 2(2) and 2A(**4**) of Schedule 2 to the European Communities Act 1972.

The Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972, and sections 22(1) and (5), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000, make the following Order.

(**1**) 2000 c.8.
(**2**) S.I. 1993/2661; S.I. 2004/2642.
(**3**) 1972 c. 68. Section 2(2) of and Schedule 2 to the 1972 Act were amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51); and by section 3 of and the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(**4**) Paragraph 2A was inserted by the Legislative and Regulatory Reform Act 2006, section 33.

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 and comes into force on the day after the day on which it is made.

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(**5**) is amended as follows.

(2) In article 3(1) (interpretation)—

(a) for the definition of "investment services and activities"(**6**), 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(**7**) (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(**8**);";
>
> ""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 (**9**);";

(**5**) S.I. 2001/544.
(**6**) The definition of "investment services and activities" was inserted by S.I. 2006/3384.
(**7**) OJ L 241, 2.9.2006, p.26.
(**8**) OJ L 275, 25.10.2003, p.32.
(**9**) 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(**10**).

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.

(**10**) S.I. 2011/2699.

(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.".

PART 3

CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

Amendment of the Financial Services and Markets Act 2000

3.—(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 39(4)(**11**) (exemption of appointed representatives), after "markets in financial instruments directive" insert "or contained in the emission allowance auctioning regulation".

(3) In section 45 (variation etc. on the Authority's own initiative), after subsection (2B)(**12**), insert—

"(2C) Without prejudice to the generality of subsections (1) and (2), the Authority may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, exercise its power under this section to vary the Part 4 permission of the person concerned by removing that activity from those to which the permission relates if it appears to the Authority that that person has seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.".

(4) In section 59(8) (approval for particular arrangements), after "the single market directives" insert "or the emission allowance auctioning regulation".

(5) In section 66(2)(**13**) (disciplinary powers), after "the markets in financial instruments directive or the UCITS directive" insert "or by the emission allowance auctioning regulation".

(6) In section 138(6)(b) (general rule-making power), after "the single market directives" insert "or the emission allowance auctioning regulation".

(7) In section 168(4)(j)(**14**) (appointment of persons to carry out investigations in particular cases), insert at the end "or made by the emission allowance auctioning regulation".

(8) In section 205(**15**) (public censure), after "the UCITS directive" insert "or by the emission allowance auctioning regulation".

(9) In section 206(1)(**16**) (financial penalties), after "the UCITS directive" insert "or by the emission allowance auctioning regulation".

(**11**) Section 39(4) was amended by S.I. 2007/126.
(**12**) Section 45(2B) was inserted by S.I. 2007/126.
(**13**) Section 66(2) was amended by S.I. 2007/126 and 2011/1613.
(**14**) Paragraph (j) was inserted into section 168(4) by S.I. 2007/126.
(**15**) Section 205 was amended by S.I. 2007/126 and 2011/1613.
(**16**) Section 206(1) was amended by S.I. 2007/126 and 2011/1613.

(10) In section 206A(2)(**17**) (suspending permission to carry on regulated activities etc.), in the definition of "relevant requirement", omit the word "or" before paragraph (e), and at the end of that paragraph insert—

"; or

(f) by the emission allowance auctioning regulation.".

(11) In section 380(6)(a)(i)(**18**) (injunctions), after "the UCITS directive" insert "or by the emission allowance auctioning regulation".

(12) In section 382(9)(a)(i)(**19**) (restitution orders), after "the UCITS directive" insert "or by the emission allowance auctioning regulation".

(13) In section 384(7)(a)(**20**) (power of Authority to require restitution), after "the UCITS directive" insert "or by the emission allowance auctioning regulation".

(14) In section 417(1)(**21**) (definitions), in the definition of "investment services and activities"—

(a) at the end of paragraph (a), omit "and";

(b) at the end of paragraph (b), insert—

"and

(c) Article 6(5) of the emission allowance auctioning regulation;".

(15) In section 418 (carrying on regulated activities in the United Kingdom), after subsection (6), insert—

"(7) For the purposes of subsection (2)(b) and (c), the emission allowance auctioning regulation is a single market directive.".

(16) In section 425(1)(a)(**22**) (expressions relating to authorisation elsewhere in the single market), after ""EEA State"," insert ""emission allowance auctioning regulation",".

(17) In Schedule 1, paragraph 6(**23**)(monitoring and enforcement)—

(a) in sub-paragraph (1), after "under this Act, insert "by the emission allowance auctioning regulation";

(b) in sub-paragraph (3), after "under this Act", insert ", the emission allowance auctioning regulation,".

Amendment of Schedule 3 to the Financial Services and Markets Act 2000

4.—(1) Schedule 3 to the Financial Services and Markets Act 2000 (EEA passport rights) is amended as follows.

(2) After paragraph 4C (the market in financial instruments directive)(**24**), insert—

"**The emission allowance auctioning regulation**

4D. "The 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 Directive 2003/87/EC of the

(**17**) Section 206A was inserted by section 9 of the Financial Services Act 2010 (c. 28), and subsection (2) was amended by S.I. 2011/99 and 2011/1613.
(**18**) Paragraph (a)(i) of section 380(6) was amended by S.I. 2007/126 and 2011/1613.
(**19**) Paragraph (a)(i) of section 382(9) was amended by S.I. 2007/126 and 2011/1613.
(**20**) Section 384(7)(a) was amended by S.I. 2007/126 and 2011/1613.
(**21**) The definition of "investment services and activities" was inserted by S.I. 2007/126.
(**22**) Section 425(1)(a) was substituted by S.I. 2003/2066, and amended by S.I. 2004/3379; 2006/2975; 2007/126 and 2007/3253.
(**23**) Paragraphs 6(1) and (3) of Schedule 1 were each amended by S.I. 2007/126 and 2011/1613.
(**24**) Paragraph 4C of Schedule 3 was inserted by S.I. 2006/2975.