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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2023 No.**

**BANKS AND BANKING**

**The Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2023**

*Made* - - - - - \*\*\*

*Coming into force* \*\*\*

The Treasury make this Order in exercise of the powers conferred by sections 142A(2)(b), 142B(2), 142D(2), 142E(1), 142F and 428(3) of the Financial Services and Markets Act 2000(a), being of the opinion—

(a) in connection with the exercise of the power in section 142A(2)(b), that the exemption conferred by this order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services;

(b) in connection with the exercise of the power conferred by section 142B(2), that it is not necessary for the purposes set out in section 142B(4) that the regulated activity of accepting deposits should be a core activity when carried on in the specified circumstances;

(c) in connection with the exercise of the power conferred by section 142D(2), that allowing ring-fenced bodies to deal in investments as principal in the specified circumstances would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services;

(d) in connection with the exercise of the power conferred by section 142E(1), that the making of this Order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services; and

having had regard to the desirability of minimising any adverse effect that the ring-fencing provisions might be expected to have on competition in the market for services provided in the course of carrying on core activities, and to the risks which a ring-fenced body would be exposed if it carried on the activities excluded by this Order or did the thing to which the prohibitions in this Order relate.

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(a) 2000 c. 8. Sections 142A to 142Z1 were inserted by section 4 of the Financial Services (Banking Reform) Act 2013 (c. 33).

A draft of this Order has been laid before Parliament and approved by resolution of each House of Parliament in accordance with section 142Z(2) of the Financial Services and Markets Act 2000.

### **Citation and commencement**

**1.**—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2023.

(2) It comes into force on [ ].

### **Amendments to the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014**

**2.**—(1) The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014(a) is amended as follows.

(2) In article 1(3)—

(a) omit the definitions of “EEA account” and “EEA account holder”;

(b) in the appropriate place, insert—

““overseas account” has the meaning given in article 2(3)(b);

“overseas account holder” means the holder of an overseas account;”;

(c) after the definition of “Northern Ireland industrial and provident society”, insert—

““the prudential requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms(b);”.

(3) In article 2—

(a) in paragraph (2)—

(i) in the opening words, for “EEA account” substitute “overseas account”;

(ii) after sub-paragraph (a), insert—

“(aa) an investment firm which is an SME, within the meaning of Article 4(1)(128D) of the prudential requirements regulation;”;

(iii) at the end of paragraph (d), omit “or”;

(iv) after sub-paragraph (e), insert—

“(f) the central bank of a state or territory other than the United Kingdom;

(g) the European Central Bank;

(h) the European Union; or

(i) the European Atomic Energy Community.”;

(b) in paragraph (3)(b)—

(i) for “EEA account” substitute “overseas account”;

(ii) for “an EEA state” substitute “a state or territory outside the United Kingdom”;

(c) after paragraph (3), insert—

“(4) An account holder is to be treated as a relevant financial institution for the purposes of this article for a period of twelve months beginning with the day after the day on which it ceases to satisfy the definition of a relevant financial institution.”.

(4) In article 11—

(a) in paragraph (1)—

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(a) S.I. 2014/1960, amended by S.I. 2016/1032, 2018/897 and 2019/632.

(b) EUR 2013/575, amended by the Financial Services Act 2021 (c. 22), sections 1, 7 and Schedules 1 and 4, S.I. 2018/1401, 2019/710, 876, 1232, 2033, 2020/1301, 1385, 2021/1078, 1376, 2022/838.

- (i) at the end of sub-paragraph (c), omit “or”;
- (ii) at the end of sub-paragraph (d), insert—
  - “; or
  - (e) it complies with the condition set out in article 13A (the “trading assets condition”).”;
- (b) after paragraph (1), insert—
 

“(1A) Paragraph (1)(e) does not apply to a UK deposit-taker which is included, or is a member of a group which is included, on the list of global systemically important banks published by the Financial Stability Board on 21st November 2022, as that list is updated by the Financial Stability Board from time to time(a).”;
- (c) in paragraph (3), after sub-paragraph (b), insert—
  - “(c) a ring-fenced body or a member of its group acquires securities issued—
    - (i) by the UK deposit-taker, or
    - (ii) by the parent undertaking of the UK deposit-taker.”.
- (5) In article 12(1)(a) and (b), for “£25 billion” both times it occurs, substitute “£35 billion”.
- (6) After article 13, insert—

**“Trading assets condition**

**13A.**—(1) The trading assets condition is that at any particular time (“T”)—

- (a) in the case of a UK deposit-taker which is not a member of a group, the average value of the trading assets held by the UK deposit-taker in the calculation period does not exceed 10% of the average tier 1 capital held by the UK deposit-taker in the calculation period, in each case as calculated in accordance with paragraph (2);
- (b) in the case of a UK deposit-taker which is a member of a group, the average sum of the value of the trading assets held by—
  - (i) the UK deposit-taker,
  - (ii) each UK financial institution or UK institution in the same group as the UK deposit-taker, and
  - (iii) a UK branch of a credit institution in the same group as the UK deposit-taker, does not exceed 10% of the average sum of the tier 1 capital held by the UK deposit-taker and each other UK financial institution and UK institution in the group, in each case as calculated in accordance with paragraph (3).

(2) For the purpose of paragraph (1)(a), the average value of the trading assets or tier 1 capital of an entity is to be calculated as follows—

- (a) calculate the value of the trading assets or tier 1 capital at the end of each quarter in the calculation period to give quarterly totals, and
- (b) in each case, add those quarterly totals together and divide by the number of quarters in the calculation period to give the average value.

(3) For the purpose of paragraph (1)(b)—

- (a) add together the total value of the trading assets held at the end of each quarter in the calculation period by—
  - (i) the UK deposit-taker,
  - (ii) any other UK financial institutions or UK institutions in the same group as the UK deposit-taker so far as those assets are not included in the total in paragraph (i), and

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(a) The list of global systemically important banks can be found at <https://www.fsb.org/2022/11/2022-list-of-global-systemically-important-banks-g-sibs/>, or obtained from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

- (iii) a UK branch in the same group as the UK deposit-taker, so far as those assets are not included in the total in paragraph (i) or (ii),
  - (b) add together the total value of the tier 1 capital held at the end of each quarter in the calculation period by—
    - (i) the UK deposit-taker;
    - (ii) any other UK financial institutions or UK institutions in the UK deposit-taker's group so far as that capital is not included in the total in paragraph (i), and
  - (c) in each case, add the quarterly totals calculated under sub-paragraphs (a) and (b) together and divide by the number of quarters in the calculation period to give the average value.
- (4) For the purposes of this article—
- (a) trading assets are held by a branch if they are treated by the credit institution to which the branch belongs as being held by the branch;
  - (b) each calculation required by paragraph (3) is to be made—
    - (i) on a consolidated basis where the UK deposit-taker, UK financial institution or other UK institution concerned is treated together with one or more other entities as being a single entity for the purposes of those calculations, as if the rules set out in Part One, Title II, Chapter 2 of the prudential requirements regulation applied to them, and
    - (ii) on an individual basis in any other case.
- (5) The value of trading assets for the purposes of this article is their fair value, assessed in accordance with International Financial Reporting Standard 13 (fair value measurement) issued by the International Accounting Standards Board in May 2011, as amended from time to time<sup>(a)</sup>.
- (6) For the purposes of this article, tier 1 capital has the meaning given in Article 25 of the prudential requirements regulation, and the value of the tier 1 capital is to be calculated in accordance with the prudential requirements regulation.
- (7) The calculation period is—
- (a) in the case of a UK deposit-taker that has existed for three financial years or more, the period of three consecutive financial years of that UK deposit-taker which ends immediately before the start of the financial year in which T falls;
  - (b) in the case of any other UK deposit-taker, the period for which that UK deposit-taker has existed at T.
- (8) If a UK financial institution, UK deposit-taker or other UK institution holds trading assets or tier 1 capital in a currency other than sterling, the quarterly totals referred to in paragraphs (2) and (3) must be calculated by converting financial amounts representing such trading assets or tier 1 capital into sterling.
- (9) The conversion required by paragraph (8) must be made by reference to an appropriate spot rate of exchange as at the last day of the quarter to which a quarterly total relates.
- (10) In this article—
- “branch” means a place of business that forms a legally dependant part of a credit institution and conducts directly all or some of the operations inherent in its business, where the credit institution is—
- (a) a member of the same group as the UK deposit-taker, and

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(a) A copy of International Financial Reporting Standard 13 can be found at <https://www.ifrs.org/issued-standards/list-of-standards/ifrs-13-fair-value-measurement/#standard>, or obtained from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

(b) is not incorporated in the United Kingdom;  
“trading assets” means financial assets which are held for trading, other than any hedging assets, and for these purposes—

(a) “financial assets” has the meaning given in paragraph 11 of International Accounting Standard 32 (financial instruments: presentation) as amended from time to time<sup>(a)</sup>,

(b) “held for trading” has the meaning given in Appendix A to International Financial Reporting Standard 9 (financial instruments), issued by the International Accounting Standards Board in November 2009 as amended from time to time,

(c) “hedging assets” means assets where the sole or main purpose for the entity acquiring the asset is to limit the extent to which—

(i) that entity, or

(ii) any other entity, whose trading assets are included in the calculation required by paragraph (3)(a)(i) or (ii),

will be adversely affected by any of the factors specified in article 6(2) of the excluded activities and prohibitions order;

“UK branch” means a branch which is located in the United Kingdom;

“UK financial institution” means a financial institution, within the meaning of Article 4(1)(26) of the prudential requirements regulation which is incorporated in the United Kingdom;

“UK institution” means an institution, within the meaning of Article 4(1)(3) of the prudential requirements regulation, which is incorporated in the United Kingdom.”.

(7) In article 14(1)—

(a) in sub-paragraph (a), for “EEA account” substitute “overseas account”;

(b) in sub-paragraph (b), for “EEA account-holders” substitute “overseas account holders”.

### **Amendments to the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014**

**3.—**(1) The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014<sup>(b)</sup> is amended as follows.

(2) In article 1(4)—

(a) in the definition of “correspondent banking”—

(i) after “two” insert “or more”;

(ii) for “the other credit institution” substitute “one or more other credit institutions”;

(iii) for “that credit institution” substitute “those other credit institutions”;

(b) after the definition of “mixed financial holding company”, insert—

““mortality risk” means the risk that a person to whom an undertaking has loaned money dies earlier than anticipated by the undertaking at the time when the loan was agreed;”.

(3) In article 2(3)—

(a) in sub-paragraph (f)—

(i) renumber the words from “are not authorised” to the end as paragraph (i);

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(a) A copy of International Accounting Standard 32 can be found at <https://www.icaew.com/technical/corporate-reporting/ifrs/ifrs-standards/ias-32-financial-instruments-presentation#:~:text=IAS%2032%20classifies%20financial%20instruments,a%20liability%20and%20equity%20element,> or may be obtained from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

(b) S.I. 2014/2080, amended by S.I. 2016/1032; 2017/752, 1064, 1167; 2019/632; 2021/1376.

- (ii) at the end of paragraph (i) as so renumbered, insert—
    - “or
      - (ii) are SMEs, within the meaning of Article 4(1)(128D) of the prudential requirements regulation(a);”;
  - (b) in sub-paragraph (g)(ii), for “to 20” substitute “to 19C”.
- (4) In article 3(2)(a), for the words from “or a” to the end, substitute “, another ring-fenced body which is a member of the group of companies to which the first ring-fenced body belongs (a “group ring-fenced body”), or a subsidiary of either ring-fenced body”;
- (5) In article 3(2)(b)—
- (a) in the opening words, after “created by,” insert “acquired by,”;
  - (b) in paragraph (i), after “body” insert “or a group ring-fenced body”;
  - (c) in paragraph (ii)—
    - (i) after “created by” insert “or acquired by”;
    - (ii) for “or any of its” substitute “, a group ring-fenced body or any of their”;
    - (iii) for “the ring-fenced body itself” substitute “a ring-fenced body”;
  - (d) in paragraph (iii)—
    - (i) after “ring-fenced body”, the first time it appears, insert “or of a group ring-fenced body”;
    - (ii) for “the ring-fenced body itself” substitute “a ring-fenced body”;
  - (e) in paragraph (iv)—
    - (i) in the opening words, after “(“A”)” insert “or a group ring-fenced body (“B”)”;
    - (ii) in each of sub-paragraphs (aa) and (bb), after “A” insert “or B”;
    - (iii) in sub-paragraph (aa), after “created” insert “or acquired”;
    - (iv) in sub-paragraph (cc), for “A itself” substitute “a ring-fenced body”.
- (6) In article 6—
- (a) in paragraph (2), after sub-paragraph (e), insert—
    - “(f) mortality risk.”;
  - (b) in paragraph (4), after sub-paragraph (a), insert—
    - “(aa) acquiring shares, debentures or instruments giving an entitlement to shares or debentures from an issuer where—
      - (i) the shares, debentures or instruments concerned are issued by the issuer,
      - (ii) the acquisition of the shares, debentures or instruments concerned is undertaken as part of a restructuring of debt owed by the issuer or by another group undertaking to the lender which includes a relevant release of debt, whether or not the release of debt is granted in consideration for the shares, debentures or instruments concerned, and for these purposes—
        - (aa) “group undertaking” means an undertaking within the same group as the issuer, and
        - (bb) “lender” means the ring-fenced body or a subsidiary undertaking of the ring-fenced body;
      - (iii) the restructuring is undertaken when the issuer or one or more of its group undertakings has encountered, or is likely to encounter, financial difficulties which may affect their ability to carry on business as a going concern, and

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(a) EUR 2013/575. Paragraph 128D was inserted by S.I. 2018/1401 and amended by S.I. 2020/1301.

- (iv) the purpose of the restructuring is to prevent or mitigate the effect of those financial difficulties;
- (ab) acquiring shares or debentures from an issuer through the exercise of rights granted in an instrument giving an entitlement to such shares or debentures where the acquisition of that instrument is permitted under sub-paragraph (a) or (aa);”;
- (c) after paragraph (4), insert—
  - “(4A) In paragraph (4)(aa), a release of debt is a “relevant release of debt” if—
    - (a) it is a release of all or part of the debt owed by the issuer or by its group undertaking to the lender, and
    - (b) it takes place, or, if paragraph (4B) applies, would take place, at the time—
      - (i) of the restructuring, where the ring-fenced body acquires shares or debentures otherwise than by exercising the rights under an instrument giving an entitlement to shares and debentures (a “relevant instrument”), or
      - (ii) the relevant instrument is issued to the ring-fenced body, or
      - (iii) the ring-fenced body exercises the rights to acquire shares or debentures given to it in a relevant instrument.
  - (4B) For the purposes of paragraph (4)(aa)(ii), a restructuring is to be treated as including a relevant release of debt if the instruments acquired as part of the restructuring consist of instruments giving an entitlement to shares or debentures, and the rights given in those instruments may only be exercised where there is a relevant release of debt within the meaning of paragraph (4A), whether or not those rights are ever exercised.”;
- (d) in paragraph (5)—
  - (i) renumber the words from “selling shares” to the end as sub-paragraph (a);
  - (ii) in sub-paragraph (a), as so renumbered, after “(4)(a)” insert “, (aa), (ab),”;
  - (iii) after sub-paragraph (a), as so renumbered, insert—
    - “(b) selling debentures acquired or held by the ring-fenced body in accordance with paragraph (4)(c), provided that the debenture is sold together with the loan, credit, guarantee or other financial accommodation referred to in paragraph (4)(c)(ii) to which the debenture relates.”;
- (e) after paragraph (7), insert—
  - “(8) A ring-fenced body does not carry on an excluded activity by dealing in investments as principal to prevent the failure of a transaction which it has entered into as agent for a customer where the failure is due to a systems or operating error, provided that the investment concerned can be allocated to the customer and is so allocated as soon as practicable after the transaction.
  - (9) A ring-fenced body does not carry on an excluded activity by entering into a transaction to buy or sell a relevant security as principal where—
    - (a) the ring-fenced body proposes to—
      - (i) launch a new product or service, or
      - (ii) make changes to an existing product or service;
    - (b) the only purpose of the transaction is to test the new or changed product or service;
    - (c) the transaction concerns—
      - (i) a single security, or
      - (ii) if it is not possible to buy or sell a single unit of the security in question, the minimum amount of the security which it is possible to buy or sell.

(10) In paragraph (9), “relevant security” means an investment which is specified in article 76, 77, 78 or 81 of the Regulated Activities Order 2001(a)”.

(7) After article 7, insert—

**“Excluded activities: SME exception**

**7A.**—(1) Subject to paragraph (2), a ring-fenced body does not carry on an excluded activity by entering into a transaction to—

- (a) acquire or dispose of shares in a UK SME, provided that the ring-fenced body only ever has a minority interest in the UK SME concerned;
- (b) invest money in an SME investment fund by acquiring an interest in that SME investment fund;
- (c) acquire, or exercise rights under, equity warrants issued by a UK SME as part of commercial arrangements between the UK SME and the ring-fenced body which include the ring-fenced body making a loan to the UK SME.

(2) Paragraph (1) does not apply unless the sum of the value of relevant investments held at any time by the ring-fenced body is less than 10 per cent of the value of the tier 1 capital held by the ring-fenced body on an individual basis or a sub-consolidated basis (within the meaning of Article 4(1)(49) of the prudential requirements regulation), as applicable, and for these purposes—

- (a) “relevant investments” means shares, equity warrants or other investments acquired or made by the ring-fenced body in reliance on paragraph (1);
- (b) the value of relevant investments is their fair value, assessed in accordance with International Financial Reporting Standard 13 (fair value measurement) issued by the International Accounting Standards Board in May 2011, as amended from time to time;
- (c) tier 1 capital has the meaning given in Article 25 of the prudential requirements regulation, and the value of the tier 1 capital held by the ring-fenced body is to be calculated in accordance with the prudential requirements regulation.

(3) In paragraph (1), an “SME investment fund” means an investment fund which satisfies all the following conditions—

- (a) it is an AIF managed by a UK AIFM, and for these purposes, AIF and UK AIFM have the meanings given in the Alternative Investment Fund Managers Regulations 2013(b) (“the 2013 Regulations”);
- (b) it has a policy of investing at least 70% of its investment capital in UK SMEs,
- (c) it does not at any time invest more than 30% of its investment capital in enterprises which are not UK SMEs;
- (d) subject to paragraph (6), it is not a collective investment scheme which has a policy of investing in other collective investment schemes (a “fund of funds”).

(4) For the purposes of paragraph (1)(b), investing money includes the acquisition of shares issued by an SME investment fund which is structured as a corporate body, provided that the ring-fenced body—

- (a) only has a minority interest in the SME investment fund;
- (b) does not exercise any influence on the investment decisions of the SME investment fund.

(5) In paragraph (3), the “investment capital” of an investment firm is the sum of—

- (a) the capital which investors have provided for investment by the fund, and

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(a) S.I. 2001/544, amended by S.I. 2010/86; 2011/133, 2687; 2014/1815; 2019/632. There are other amendments to S.I. 2001/544 not relevant to this Order.

(b) S.I. 2013/1773.



- (b) the capital which investors may be required to provide for such investment under the terms of their investment in the fund,

after the deduction of all fees, charges and expenses which are directly or indirectly borne by investors and which are agreed between the manager of the investment fund and the investors.

(6) An investment fund which is a feeder AIF is not disqualified from being an SME investment fund because it is a fund of funds for the purposes of paragraph (3)(d), provided that any master AIF in which the feeder AIF invests complies with all the conditions set out in paragraph (3)(a) to (c), and for these purposes, a “feeder AIF” means an AIF, within the meaning of the 2013 Regulations, which—

- (a) invests at least 85% of its assets in units or shares of another AIF (the “master AIF”);
- (b) invests at least 85% of its assets in more than one master AIF where those master AIFs have identical investment strategies; or
- (c) has an exposure of at least 85% of its assets to such a master AIF.

(7) Where an investment fund is a collective investment scheme which is divided into a number of separate sub-schemes, each sub-scheme is to be treated as an SME investment fund if—

- (a) the sub-scheme is subject to separate pooling, as described in section 235(4) (collective investment schemes) of the Act,
- (b) the property subject to that sub-scheme cannot be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-scheme, and
- (c) the sub-scheme complies with the conditions in paragraph (3).

(8) In this article—

- (a) a ring-fenced body has a “minority interest” in a company if—
  - (i) it does not hold a majority of the voting rights in that company;
  - (ii) it does not control alone, pursuant to an agreement with other members of the company, a majority of the voting rights in that company, and
  - (ii) it does not have the right to appoint or remove a majority of the board of directors of that company;
- (b) a “UK SME” is an undertaking which—
  - (i) at the time of the transaction referred to in paragraph (1), is an SME, within the meaning of Article 4(1)(128D) of the prudential requirements regulation, and
  - (ii) is registered in, and has its principal place of business in, the United Kingdom.

(9) Schedule 6 of the Companies Act 2006 (meaning of “subsidiary” etc: supplementary provisions)(a) applies for the interpretation of paragraph (8)(a).<sup>(a)</sup>

(8) In article 10—

- (a) in paragraph (1)—
  - (i) at the end of sub-paragraph (b), omit “or”;
  - (ii) in sub-paragraph (c)—
    - (aa) in the opening words, after “relating to” insert “one or more”;
    - (bb) in paragraph (i), for “currency or commodity” substitute “currencies or commodities”;

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(a) 2006 c. 46.

- (cc) in paragraph (iii), for “rate or commodity price” substitute “rates or commodity prices”;
- (iii) at the end of sub-paragraph (c), insert—
  - “or
  - (d) an inflation swap.”;
- (b) in paragraph (2), after sub-paragraph (b), insert—
  - “(ba) “inflation swap” means a transaction under which one person (“A”) agrees with another person (“B”) that A is liable to pay B an amount calculated by reference to a fixed rate on a specified notional sum over a specified period, and B is liable to pay A an amount calculated by reference to a variable rate, linked to a specified price index on that notional sum and over the same specified period, and for these purposes, “price index” means an index of prices which is used for the purposes of measuring inflation.”.
- (9) In article 14—
  - (a) In paragraph (1), for “19B” substitute “19C”;
  - (b) in paragraph (3), after sub-paragraph (d), insert—
    - “(e) mortality risk.”;
  - (c) in paragraph (3A)(a)—
    - (i) for the words from “Article 412” to the end, substitute “Article 412 of the Liquidity (CRR) Part of the PRA Rulebook, and other applicable requirements in relation to liquid assets set out in that Part of the PRA Rulebook published by the PRA containing rules made by that Authority under the Act, as it applies to CRR firms, and as amended from time to time”;
  - (d) after paragraph (6), insert—
    - “(7) A ring-fenced body may incur a financial institution exposure where—
      - (a) the financial institution is an SME investment fund within the meaning of article 7A, and
      - (b) the transaction giving rise to the financial instrument exposure satisfies the conditions in article 7A.”.
- (10) In article 15—
  - (a) in paragraph (1)—
    - (i) in the opening words, for “both” substitute “all”;
    - (ii) in sub-paragraph (b)—
      - (aa) in the opening words, for the words from “an agreement” to the end, substitute “a relevant agreement, which specifies, or together with other connected agreements specifies”;
      - (bb) in paragraph (ii), for “the agreement” substitute “the relevant agreement and any connected agreements”;
    - (iii) after sub-paragraph (b), insert—
      - “(c) the supplier of the goods or services to which the transaction relates, or the person to whom the goods or services are supplied, is a customer of the ring-fenced body.”;
  - (b) after paragraph (1), insert—
    - “(1A) For the purpose of paragraph (1)(b)—
      - (a) an agreement is a “relevant agreement” if—

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(a) Paragraph (3A) was inserted by S.I. 2016/1032.

- (i) it gives effect to the transaction described in paragraph (1)(a) (“the finance transaction”),
  - (ii) it is made under a master agreement which gives effect to the finance transaction, or
  - (iii) it is one of a number of connected agreements entered into in relation to the finance transaction;
- (b) an agreement is a “connected agreement” if it is one of a number of agreements which—
- (i) are entered into by a party to the finance transaction or to the supply of goods or services to which the finance transaction relates with one or more other such parties; and
  - (ii) collectively give effect to the finance transaction.”.
- (11) In article 19(7), for “individual or charity” substitute “individual, minor, charity or CIO”.
- (12) After article 19B, insert—

**“Financial institution exposures: small exposures**

**19C.**—(1) A ring-fenced body may incur a financial institution exposure where the total exposures of the ring-fenced body to the relevant financial institution when aggregated are equal to or less than £100,000.

(2) The amount of a ring-fenced body’s exposure to a relevant financial institution must be determined in accordance with the fair value of the assets giving rise to that exposure, assessed in accordance with International Financial Reporting Standard 13 on fair value measurement issued by the International Accounting Standards Board, as that reporting standard is amended from time to time.”.

- (13) Omit article 20.

	<i>Name, Name</i>
Date	Two of the Lords Commissioners of His Majesty’s Treasury

**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”) to adjust the regulatory regime applying to ring-fenced bodies.

The Core Activities Order is amended—

- (a) to allow a grace period of 12 months during which an account holder which has ceased to satisfy the definition of “relevant financial institution” can continue to bank with a non-ring-fenced bank (article 2(3)(c));
- (b) to increase the amount of core deposits which may be held by a non-ring-fenced body from £25 billion to £35 billion. (article 2(5));
- (c) to permit UK deposit-takers to hold trading assets without becoming a ring-fenced body, provided that the value of its trading assets is always less than 10% of the value of its tier 1 capital (article 2(4) and (6)).

The Excluded Activities Order is amended—

- (a) to allow a ring-fenced body to have correspondent banking relationships with more than one bank (article 3(2)(a));
- (b) to allow a ring-fenced body to have investment firms which are SMEs as account holders. (article 3(3)(a));
- (c) to allow a ring-fenced body to hedge against mortality risk (article 3(2)(b), (6)(a) and (9)(b));
- (d) to extend the range of assets which may be held by a sponsored structured finance vehicle of a ring-fenced body (article 3(4) and (5));
- (e) to allow a ring-fenced body to acquire certain instruments issued by an issuer as part of arrangements for restructuring the debt of the issuer or a group undertaking of the issuer, to mitigate the actual or potential financial difficulties of the issuer or one or more of its group undertakings (article 3(6)(b)(c)(d));
- (f) to allow a ring-fenced body to deal in investments to prevent the failure of a transaction due to systems or operating error, or to test a new or changed product or service of the ring-fenced bank (article 3(6)(e));
- (g) to allow a ring-fenced body to acquire a minority interest in a micro, small or medium sized enterprise (“an SME”) based in the UK, and to invest money in an SME investment fund (article 3(7) and (9)(d)).

The Order also amends the Excluded Activities Order—

- (a) to amend the requirements for forward contracts and swaps permitted to ring-fenced banks to clarify that forward contracts relating to currencies or commodities may involve more than one currency or commodity (article 3(8)(a)), and to permit inflation swaps (article 3(8)(b));
- (b) to extend the range of transactions a ring-fenced body may enter into in the course of providing trade finance for its customers (article 3(10)), and
- (c) to allow a ring-fenced body to incur exposures to a relevant financial institution of £100,000 or less (article 3(12)).

The Order also makes minor amendments to both the Core Activities Order and the Excluded Activities Order to remove EU-related expressions which are no longer relevant to the UK.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available on [legislation.gov.uk](http://legislation.gov.uk) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.