

*Draft Order laid before Parliament under paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2024 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Regulated Activities)  
(Amendment) (No. 2) Order 2024**

*Made - - - -*

*Coming into force in accordance with article 1*

The Treasury make this Order, in exercise of the powers conferred by sections 22(1) and (5), 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(a) (“the Act”).

In the opinion of the Treasury, one of the effects of this Order is that an activity which is not a regulated activity (within the meaning given in section 22 of the Act(b)) will become a regulated activity.

Accordingly, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament pursuant to paragraph 26(1) and (2) of Schedule 2 to the Act(c).

**PART 1**

**Introduction**

**Citation, commencement, extent and interpretation**

**1.—**(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2024.

(2) This Order comes into force on the day after the day on which it is made (“the initial commencement day”) for the following purposes only—

(a) enabling the FCA(d)—

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- (a) 2000 (c. 8). Section 428(3) was inserted by the Financial Services and Markets Act 2023 (c. 29) and paragraph 25 of Schedule 2 inserted by the Financial Guidance and Claims Act 2018 (c. 10).
- (b) Section 22 was amended by section 7 of the Financial Services Act 2012 (c. 21), section 27 of the Financial Guidance and Claims Act 2018, S.I. 2018/135 and section 69 of the Financial Services and Markets Act 2023.
- (c) Paragraph 26 of Schedule 2 was amended by the Financial Services Act 2012 and the Financial Guidance and Claims Act 2018.
- (d) “The FCA” means the Financial Conduct Authority, as defined in section 417 of the Financial Services and Markets Act 2000.

- (i) to make or approve rules,
  - (ii) to give guidance, and
  - (iii) impose requirements or give directions;
- (b) enabling applications for—
- (i) a Part 4A(a) permission under section 55A of the Act(b),
  - (ii) a variation of Part 4A permission under section 55H of the Act(c), and
  - (iii) approval under Part 5 of the Act(d),
- to be made and determined in relation to any activity which becomes a regulated activity by virtue of this Order;
- (c) enabling the FCA to exercise any of its powers under Part 4A or Part 5 of the Act in relation to any activity which becomes a regulated activity by virtue of this Order;
- (d) enabling the scheme operator(e) to—
- (i) make rules, and
  - (ii) give guidance.
- (3) This Order comes into force for all other purposes on the first day following the expiry of a period of [...] calendar months beginning on the day after the initial commencement day (“the main commencement day”).
- (4) This Order extends to England and Wales, Scotland and Northern Ireland.
- (5) In this Order—
- “the Act” means the Financial Services and Markets Act 2000;
- “the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(f).

## PART 2

### Amendments to the Regulated Activities Order

#### **Amendments to the Regulated Activities Order**

- 2.—(1) The Regulated Activities Order is amended as follows.
- (2) After article 63T (administration of a benchmark by the FCA)(g), insert—

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(a) Part 4A was inserted by section 11(2) of the Financial Services Act 2012.

(b) Section 55A was inserted by section 11(2) of the Financial Services Act 2012 and amended by paragraph 4 of Schedule 5 to the Financial Services and Markets Act 2023 and S.I. 2018/135; there are other amending instruments but none is relevant.

(c) Section 55H was inserted by section 11(2) of the Financial Services Act 2012 and amended by paragraph 4 of Schedule 8(2) to the Financial Services and Markets Act 2023, S.I. 2013/1773 and S.I. 2018/135.

(d) Section 59 was amended by section 14 of the Financial Services Act 2012. There are other amending instruments but none is relevant.

(e) “Scheme operator” has the meaning given in section 225(2) of the Financial Services and Markets Act 2000.

(f) S.I. 2001/544.

(g) Article 63T was inserted by S.I. 2018/135.

“CHAPTER 15F

ESG RATINGS

*The activity*

**ESG ratings**

- 63U.**—(1) Providing an ESG rating is a specified kind of activity, where that rating is—
- (a) produced using an established methodology and a defined ranking system of rating categories,
  - (b) made available by an ESG rating provider in accordance with paragraph (2), and
  - (c) likely to influence a decision to make a specified investment, unless the ESG rating provider could not reasonably have expected the ESG rating to influence a decision to make a specified investment.
- (2) This paragraph applies where—
- (a) a rating is made available by an ESG rating provider located in the UK by any means;
  - (b) a rating is made available by an ESG rating provider not located in the UK by way of a business relationship, including but not limited to a subscription or any other contractual relationship, with a person located in the UK.
- (3) For the purposes of paragraph (2)(b), the circumstances in which an ESG rating is made available by an ESG rating provider include where—
- (a) the rating is made available by the ESG rating provider to another person;
  - (b) the rating is made available by that person or a third party to a person located in the UK;
  - (c) the ESG rating provider could reasonably have expected the ESG rating to be made available to a person located in the UK.
- (4) For the purposes of paragraph (1), it is immaterial whether the rating is solicited or unsolicited.

*Exclusions*

**[Regulated products and services**

- 63V.**—(1) A person does not carry on an activity of the kind specified by article 63U by providing an ESG rating in the course of carrying on—
- (a) another regulated activity,
  - (b) an activity that is subject to approval by the FCA under a provision of assimilated law<sup>(a)</sup> or legislation restated by virtue of section 4 of the Financial Services and Markets Act 2023<sup>(b)</sup>, or
  - (c) an activity that is within the scope of a market access arrangement.
- (2) For the purposes of paragraph (1), an ESG rating is not provided in the course of carrying on an activity under (a), (b) or (c) where it is provided as a standalone product or service.
- (3) In this article—

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(a) “Assimilated law” has the meaning given in section 5 of the Retained EU Law (Revocation and Reform) Act 2023 (c. 28).

(b) 2023 (c. 29).

“approval by the FCA” includes authorisation, registration, and any other functionally equivalent process of approval however so named;

“market access arrangement” means *[placeholder for definition of relevant arrangements, such as equivalence or overseas regimes]*.

*[NOTE: If you are providing the rating as part of a regulated activity for which you already have permission (or as part of other arrangements provided for in the exclusion above) then no additional ESG rating permission is required. However, the FCA intend to review existing rules and guidance pertaining to other relevant regulated activities to assess whether, and where, standards may need to be enhanced to ensure there is a level playing field between all firms producing ESG ratings. This will be subject to consultation and the FCA will continue to have the full range of its regulatory toolkit for any FCA rule breaches.]*

### **Intra-group ratings**

**63W.** A person does not carry on an activity of the kind specified by article 63U by providing an ESG rating to a person who is a member of the ESG rating provider’s group, where the ESG rating provider reasonably expects that the ESG rating will not be made available to a third party outside that group.

### **Private use**

**63X.** A person does not carry on an activity of the kind specified by article 63U by providing an ESG rating pursuant to a contract with, and exclusively about, the person that the ESG rating relates to (“P”), where the ESG rating provider reasonably expects that the ESG rating will not be made available to a third party outside P’s group.

### **Ancillary non-commercial provision**

**63Y.** A person does not carry on an activity of the kind specified by article 63U by providing an ESG rating as an integral part of their activities as a journalist, an academic or a charity, except where the rating is provided by way of a business relationship separate to the person’s activities as a journalist, an academic or a charity.

### **Public authorities, central banks and international organisations**

**63Z.—**(1) There is excluded from article 63U the act of providing an ESG rating by a public authority, a central bank or an international organisation.

(2) In this article—

“central bank” means the Bank of England, the European Central Bank and the central banks of overseas jurisdictions.

“international organisation” means any body the members of which comprise—

- (a) states including the United Kingdom, or
- (b) bodies whose members comprise states including the United Kingdom.
- (c) for the purposes of (a) and (b) “states” includes a public authority of a state.

“public authority” means a person or body exercising functions of a public nature.

## Accreditation or certification

**63ZA.** There is excluded from article 63U the act of providing an ESG rating where the ESG rating is developed exclusively for accreditation or certification processes, and the purpose of that accreditation or certification is not to influence a decision to make a specified investment.

## Interpretation

**63ZB.** In this Chapter—

“charity” means—

- (a) in England and Wales, a charity registered under section 30(1) of the Charities Act 2011(a);
- (b) in Scotland, a charity registered under section 3 of the Charities and Trustee Investment (Scotland) Act 2005(b);
- (c) in Northern Ireland, a charity registered under section 16(2) of the Charities Act (Northern Ireland) 2008(c);

“ESG” means environmental, social or governance;

“ESG opinion” means an ESG rating involving substantial analytical input from an analyst, whether or not it is characterised as an ESG opinion;

“ESG rating” means an assessment regarding one or more ESG factors, produced in the form of an ESG opinion, an ESG score or a combination of both, whether or not it is characterised as an ESG rating;

“ESG rating provider” means an entity that produces and makes available ESG ratings;

“ESG score” means an ESG rating derived from data and a pre-established statistical or algorithmic system or model, without additional substantial analytical input from an analyst, whether or not it is characterised as an ESG score;

“located in the UK” means, in relation to a legal person, they have a registered office or other official address in the UK and, in relation to a natural person, they are resident for tax purposes in the UK;

“made available” includes, but is not limited to, providing to another person in hard-copy or electronic form or publishing on a website or other digital medium;

“rating category” includes, but is not limited to, a variable or division within a system, such as a letter, number, symbol, colour or temperature, that provides a relative measure to distinguish one or more characteristics of various rated items;

“specified investment” means an investment of a kind specified by any provision of Part III of the Regulated Activities Order.”.

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(a) 2011 (c. 25).  
(b) 2005 asp 10.  
(c) 2008 (c. 12) (N.I.).

## PART 3

### Transitional provisions

#### Placeholder for transitional provisions

3.—(1) *Transitional provisions...*

## PART 4

### Rules and guidance

#### ESG ratings related rules and guidance made by the FCA

4. In relation to amendments made by this Order, the requirements of section 138I of the Act<sup>(a)</sup>, in so far as they apply to a proposal by the FCA to make rules and guidance, may be satisfied by things done (wholly or in part) before the date on which this Order comes into force for the purpose of enabling the FCA to make rules and give guidance.

#### Rules made by the scheme operator relating to ESG ratings

5.—(1) In relation to amendments made by this Order, the requirements of—

- (a) paragraph 14(4) to (6) of the Act, in so far as they apply to a proposal by the scheme operator to make or amend rules under paragraph 14(1) of Schedule 17 to the Act, and
- (b) paragraph 22 of Schedule 17 to the Act, in so far as they apply to a proposal by the scheme operator to make or amend rules under section 227(3)(a) of the Act,

may be satisfied by things done (wholly or in part) before the date on which this Order comes into force for the purpose of enabling the scheme operator to make or amend rules.

## PART 5

### Consequential amendments

#### Placeholder for consequential amendments

6.—(1) *Consequential amendments...*

## PART 6

### Review

#### Review

7.—(1) The Treasury must from time to time—

- (a) carry out a review of this Order, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the day on which this Order comes into force for any purpose.

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(a) Section 138I was amended by section 24(1) of the Financial Services Act 2012.

(3) Subsequent reports must be published at intervals not exceeding five years.

[insert date] *Name*  
*Name*  
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 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”) so that the provision of Environmental, Social or Governance (“ESG”) ratings become a regulated activity within the meaning of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”) regulatory framework.

Part 1 of the Order sets out preliminary matters. It makes provision for the Order to come into force ahead of the date that ESG ratings will be regulated to enable the Financial Conduct Authority (the “FCA”) and the Financial Ombudsman Service to make rules and carry out other steps prior to regulation.

Part 2 of the Order amends the Regulated Activities Order. Article 2 includes definitions relating to the regulated activity and inserts a new article 63U to provide that the provision of ESG ratings is a regulated activity, unless falling within one of the specified exclusions.

Part 3 of the Order contains transitional provisions which...

Part 4 of the Order relates to rules and guidance made by the FCA and rules made by the Financial Ombudsman Service, so as to allow steps taken by both organisations before the date given in article 1(2) to satisfy relevant legal requirements.

Part 5 of the Order makes consequential amendments which...

Part 6 of the Order requires the Treasury to review the regulatory provision contained in the Order within 5 years of the Order coming into force and thereafter at intervals not exceeding 5 years.

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 from His Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.gov.uk](http://www.gov.uk) and is published alongside the Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).