

**2002 No. 682**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002**

*Approved by both House of Parliament*

*Made - - - - - 14th March 2002*

*Laid before Parliament 14th March 2002*

*Coming into force in accordance with article 1(2)*

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Whereas, 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(a)) will become a regulated activity (within the meaning of that Act);

The Treasury, in exercise of the powers conferred on them by sections 22(1) and (5) and 428(3) of, and paragraph 25 of Schedule 2 to, that Act, hereby make the following Order:

## PART I

### PRELIMINARY

#### **Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002.

(2) This Order comes into force—

- (a) on 11th April 2002, for the purpose of making rules under articles 9G and 9H of the principal Order (as inserted by article 4 of this Order);
- (b) on 27th April 2002, for all other purposes.

(3) In this Order—

- (a) “the Act” means the Financial Services and Markets Act 2000;
- (b) “the principal Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b).

## PART II

### ELECTRONIC MONEY

#### *Amendments of the principal Order*

#### **Definition of “electronic money”**

2. In article 3(1) of the principal Order (interpretation), after the definition of “deposit” insert—

““electronic money” means monetary value, as represented by a claim on the issuer, which is—

- (a) stored on an electronic device;
- (b) issued on receipt of funds; and
- (c) accepted as a means of payment by persons other than the issuer;”.

#### **Sums received in exchange for electronic money not to constitute deposits**

3.—(1) In paragraph (2) of article 5 of the principal Order (accepting deposits), for “articles 6 to 9” substitute “articles 6 to 9A”.

(2) After article 9 of the principal Order insert—

#### **“Sums received in exchange for electronic money**

**9A.** A sum is not a deposit for the purposes of article 5 if it is immediately exchanged for electronic money.”

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(a) 2000 c. 8.

(b) S.I. 2001/544, amended by S.I. 2001/3544.

## Issuing electronic money: the specified activity

### 4. After article 9A insert—

## “CHAPTER IIA

### ELECTRONIC MONEY

#### *The activity*

#### **Issuing electronic money**

**9B.** Issuing electronic money is a specified kind of activity.

#### *Exclusions*

#### **Persons certified as small issuers etc.**

**9C.**—(1) There is excluded from article 9B the issuing of electronic money by a person to whom the Authority has given a certificate under this article (provided the certificate has not been revoked).

(2) An application for a certificate may be made by—

- (a) a body corporate, or
- (b) a partnership,

(other than a credit institution as defined in Article 1(1)(a) of the banking consolidation directive) which has its head office in the United Kingdom.

(3) The authority must, on the application of such a person (“A”), give A a certificate if it appears to the Authority that paragraph (4), (5) or (6) applies.

(4) This paragraph applies if—

- (a) A does not issue electronic money except on terms that the electronic device on which the monetary value is stored is subject to a maximum storage amount of not more than 150 euro; and
- (b) A’s total liabilities with respect to the issuing of electronic money do not (or will not) usually exceed 5 million euro and do not (or will not) ever exceed 6 million euro.

(5) This paragraph applies if—

- (a) the condition in paragraph (4)(a) is met;
- (b) A’s total liabilities with respect to the issuing of electronic money do not (or will not) exceed 10 million euro; and
- (c) electronic money issued by A is accepted as a means of payment only by—
  - (i) subsidiaries of A which perform operational or other ancillary functions related to electronic money issued or distributed by A; or
  - (ii) other members of the same group as A (other than subsidiaries of A).

(6) This paragraph applies if—

- (a) the conditions in paragraphs (4)(a) and (5)(b) are met; and
- (b) electronic money issued by A is accepted as a means of payment, in the course of business, by not more than one hundred persons where—
  - (i) those persons accept such electronic money only at locations within the same premises or limited local area; or
  - (ii) those persons have a close financial or business relationship with A, such as a common marketing or distribution scheme.

(7) For the purposes of paragraph (6)(b)(i), locations are to be treated as situated within the same premises or limited local area if they are situated within—

- (a) a shopping centre, airport, railway station, bus station, or campus of a university, polytechnic, college, school or similar educational establishment; or
- (b) an area which does not exceed four square kilometres;

but sub-paragraphs (a) and (b) are illustrative only and are not to be treated as limiting the scope of paragraph (6)(b)(i).

(8) For the purposes of paragraph (6)(b)(ii), persons are not to be treated as having a close financial or business relationship with A merely because they participate in arrangements for the acceptance of electronic money issued by A.

(9) In this article, references to amounts in euro include references to equivalent amounts in sterling.

(10) A person to whom a certificate has been given under this article (and whose certificate has not been revoked) is referred to in this Chapter as a “certified person”.

#### **Applications for certificates**

**9D.** The following provisions of the Act apply to applications to the Authority for certificates under 9C (and the determination of such applications) as they apply to applications for Part IV permissions (and the determination of such applications)—

- (a) section 51(1)(b) and (3) to (6);
- (b) section 52, except subsections (6), (8) and (9)(a) and (b); and
- (c) section 55(1).

#### **Revocation of certificate on Authority’s own initiative**

**9E.—**(1) The Authority may revoke a certificate given to a person (“A”) under article 9C if—

- (a) it appears to it that A does not meet the relevant conditions, or has failed to meet the relevant conditions at any time since the certificate was given; or
- (b) the person to whom the certificate was given has contravened any rule or requirement to which he is subject as a result of article 9G.

(2) For the purposes of paragraph (1), A meets the relevant conditions at any time if, at that time, paragraph (4), (5) or (6) of article 9C applies.

(3) Sections 54 and 55(2) of the Act apply to the revocation of a certificate under paragraph (1) as they apply to the cancellation of a Part IV permission on the Authority’s own initiative, as if references in those sections to an authorised person were references to a certified person.

#### **Revocation of certificate on request**

**9F.—**(1) A certified person (“B”) may apply to the Authority for his certificate to be revoked, and the Authority must then revoke the certificate and give B written notice that it has done so.

(2) An application under paragraph (1) must be made in such manner as the Authority may direct.

(3) If—

- (a) B has made an application under Part IV of the Act for permission to carry on a regulated activity of the kind specified by article 9B (or for variation of an existing permission so as to add a regulated activity of that kind), and
- (b) on making an application for revocation of his certificate under paragraph (1), he requests that the revocation be conditional on the granting of his application under Part IV of the Act,

the revocation of B’s certificate is to be conditional on the granting of his application under Part IV of the Act.

#### **Obtaining information from certified persons etc.**

**9G.—**(1) The Authority may make rules requiring certified persons to provide information to the Authority about their activities so far as relating to the issuing of electronic money, including the amount of their liabilities with respect to the issuing of electronic money.

(2) Section 148 of the Act (modification or waiver of rules) applies in relation to rules made under paragraph (1) as if references in that section to an authorised person were references to a certified person.

(3) Section 150 of the Act (actions for damages) applies in relation to a rule made under paragraph (1) as if the reference in subsection (1) of that section to an authorised person were a reference to a certified person.

- (4) The Authority may, by notice in writing given to a certified person, require him—
- (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.

(5) Paragraph (4) applies only to information or documents reasonably required for the purposes of determining whether the certified person meets, or has met, the relevant conditions.

(6) Subsections (2), (5) and (6) of section 165 of the Act (Authority's power to require information) apply to a requirement imposed under paragraph (4) as they apply to a requirement imposed under that section.

- (7) Section 166 of the Act (reports by skilled persons) has effect as if—
- (a) the reference in subsection (1) of that section to section 165 included a reference to paragraph (4) above; and
  - (b) the reference in section 166(2)(a) of the Act to an authorised person included a reference to a certified person.

(8) Subsection (4) of section 168 of the Act (appointment of persons to carry out investigations in particular cases) has effect as if it provided for subsection (5) of that section to apply if it appears to the Authority that there are circumstances suggesting that a certified person may not meet, or may not have met, the relevant conditions.

(9) Sections 175 (information and documents: supplemental provisions), 176 (entry of premises under warrant) and 177 (offences) of the Act apply to a requirement imposed under paragraph (4) as they apply to a requirement imposed under section 165 of the Act (the reference in section 176(3)(a) to an authorised person being read as a reference to a certified person).

- (10) In this article—
- (a) “specified”, in paragraph (4), means specified in the notice mentioned in that paragraph;
  - (b) a certified person (“A”) meets the relevant conditions at any time if, at that time, paragraph (4), (5) or (6) of article 9C applies.

#### *Supplemental*

#### **Rules prohibiting the issue of electronic money at a discount**

**9H.**—(1) The Authority may make rules applying to authorised persons with permission to carry on an activity of the kind specified by article 9B, prohibiting the issue of electronic money having a monetary value greater than the funds received.

(2) Section 148 of the Act (modification or waiver of rules) applies in relation to rules made under paragraph (1).

#### **False claims to be a certified person**

**9I.** A person who is not a certified person is to be treated as guilty of an offence under section 24 of the Act (false claims to be authorised or exempt) if he—

- (a) describes himself (in whatever terms) as a certified person;
- (b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is a certified person.

#### **Exclusion of electronic money from the compensation scheme**

**9J.** The compensation scheme established under Part XV of the Act is not to provide for the compensation of persons in respect of claims made in connection with any activity of the kind specified by article 9B.

#### **Record of certified persons**

**9K.** The record maintained by the Authority under section 347 of the Act (public record of authorised persons etc.) must include every certified person.”

#### **Agreeing to issue electronic money not to be a regulated activity**

**5.** In article 64 of the principal Order (agreeing to carry on specified kinds of activity), after “article 5,” insert “9B.”

### **Electronic money: the specified investment**

6. After article 74 of the principal Order insert—

#### **“Electronic money**

74A. Electronic money.”

#### *Supplemental and transitional provisions*

### **Amendment of the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001**

7.—(1) In the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(a), after sub-paragraph (a) of article 4(1) (activities to which exemption from the general prohibition does not apply), insert—

“(aa) article 9B (issuing electronic money);”.

(2) In article 8 of that Order, after “article 4(a),” insert “(aa),”.

### **Variation of threshold condition**

8. In paragraph 1(2) of Schedule 6(b) to the Act (threshold conditions: legal status of deposit-takers), after “accepting deposits” insert “or issuing electronic money”.

### **Transitional provisions for persons issuing electronic money at commencement**

9.—(1) Where, immediately before commencement, a credit institution with Part IV permission to accept deposits was carrying on by way of business in the United Kingdom the activity of issuing electronic money, the institution’s permission is to be treated as including, for a period of six months beginning at commencement, permission to carry on an activity of the kind specified by article 9B of the principal Order.

(2) Where, immediately before commencement—

- (a) an EEA firm of the kind mentioned in paragraph 5(b) or (c) of Schedule 3 to the Act qualified for authorisation under that Schedule, and
- (b) the activities which were treated as permitted activities for the purposes of paragraph 13 or 14 of that Schedule as it applied to that firm included the issuing of electronic money,

the firm’s permission under paragraph 15 of that Schedule is to be treated, at commencement, as including permission to carry on that activity.

(3) Where an existing issuer having his head office in the United Kingdom is, after commencement, granted a Part IV permission to carry on an activity of the kind specified by article 9B (and hence becomes a UK firm, within the meaning of Schedule 3 to the Act, in relation to that activity)—

- (a) if, immediately before commencement, the existing issuer was carrying on the activity of issuing electronic money from a branch established in another EEA State, the conditions in paragraph 19(2) to (5) of that Schedule are to be treated as satisfied with respect to that branch;
- (b) if, immediately before commencement, the existing issuer was carrying on the activity of issuing electronic money by providing services in another EEA State, the conditions in paragraph 20(1) of that Schedule are to be treated as satisfied with respect to the provision of those services in that EEA State.

(4) An existing issuer having his head office in an EEA State other than the United Kingdom who, after commencement, becomes authorised (within the meaning of Article 1 of the banking consolidation directive) by his home state regulator (and hence becomes an EEA firm)—

- (a) is to be treated as having complied with the establishment conditions (within the meaning of paragraph 13 of Schedule 3 to the Act) where, immediately before commencement, he was carrying on the activity of issuing electronic money from a branch established in the United Kingdom;

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(a) S.I. 2001/1227, amended by S.I. 2001/3650.

(b) Schedule 6 was amended by S.I. 2001/2507.

- (b) is to be treated as having complied with the service conditions (within the meaning of paragraph 14 of that Schedule) where, immediately before commencement, he was carrying on the activity of issuing electronic money by providing services in the United Kingdom.

(5) Where paragraph (4)(a) or (b) applies, the existing issuer is to be treated as having permission to carry on the activity mentioned in that paragraph through its United Kingdom branch or (as the case may be) by providing services in the United Kingdom.

(6) There is excluded from article 9B of the principal Order any activity carried on by an existing issuer before 27th October 2002, unless he has been granted a Part IV permission to carry on that activity, or has permission to carry on that activity as a result of paragraph (5).

(7) There is also excluded from article 9B of the principal Order any activity carried on by an existing issuer after the beginning of 27th October 2002, provided—

- (a) he has made an application before 27th June 2002 under section 40 of the Act for permission to carry on that activity, and has not withdrawn it; and
- (b) the application has not been finally determined.

(8) For the purposes of paragraph (7), an application is to be treated as finally determined—

- (a) in a case where the Authority gives permission to carry on the activity and does not exercise its power under section 42(7)(a) or (b) or section 43(1) of the Act, on the date on which the permission takes effect;
- (b) in a case where the Authority refuses permission, or gives permission but exercises its power under section 42(7)(a) or (b) or section 43 of the Act, at the time when the matter ceases to be open to review (within the meaning of section 391(8) of the Act).

(9) In this article—

- (a) “commencement” means the beginning of 27th April 2002;
- (b) “credit institution” means a credit institution as defined in Article 1(1)(a) of the banking consolidation directive;
- (c) an “existing issuer” means a body corporate or partnership (other than one falling within paragraph (1) or (2)) which, immediately before commencement—
  - (i) has its head office in the United Kingdom, and is carrying on by way of business in the United Kingdom the activity of issuing electronic money; or
  - (ii) has its head office in an EEA State other than the United Kingdom, and is carrying on such an activity by way of business in the United Kingdom without contravening the law of that other EEA State;
- (d) in paragraph (1) and in sub-paragraph (c) of this paragraph, the references to carrying on an activity in the United Kingdom are to be construed without reference to section 418 of the Act (carrying on regulated activities in the United Kingdom).

### **Anticipatory consultation on rules**

**10.** If—

- (a) before 11th April 2002 any steps were taken in relation to a draft of rules which the Authority proposes to make under article 9G(1) or 9H of the principal Order (as inserted by article 4 of this Order), and
- (b) those steps, had they been taken after that day, would to any extent have satisfied the requirements of section 155 of the Act,

those requirements are to that extent to be taken to have been satisfied.

## **PART III**

### **MISCELLANEOUS AMENDMENTS OF THE PRINCIPAL ORDER**

#### **Specified activities: disapplication of exclusions in relation to investment firms**

**11.** In article 4(4)(b) of the principal Order, for “articles 15, 68, 69 and 70” substitute “articles 15, 16, 19, 22, 23, 29, 38, 68, 69 and 70”.

**Accepting deposits: sums received in consideration for the issue of debt securities**

**12.** For article 9(3) of the principal Order substitute—

“(3) In paragraph (2), “commercial paper” means an investment of the kind specified by article 77 or 78 having a maturity of less than one year from the date of issue.”

**Sending dematerialised instructions**

**13.—**(1) In paragraph (1) of article 45 of the principal Order—

(a) after “security” insert “or a contractually based investment”;

(b) for “1995” substitute “2001”.

(2) In paragraph (2) of that article, after “security” insert “or a contractually based investment”.

(3) In paragraph (3) of that article—

(a) for sub-paragraph (a) substitute—

“(a) “the 2001 Regulations” means the Uncertificated Securities Regulations 2001(a);”;

(b) in sub-paragraph (b), for “1995” substitute “2001”.

(4) In articles 46, 49 and 69(8) of the principal Order, for “1995” substitute “2001”.

*Nick Ainger*  
*John Heppell*

14th March 2002

Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) S.I. 2001/3755.



## EXPLANATORY NOTE

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

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the principal Order”). It gives effect to Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (OJ L275, 27.10.2000, p.39); and Directive 2000/28/EC of the European Parliament and of the Council of 18 September 2000 amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions (OJ L275, 27.10.2000, p.37).

Part II of the Order provides for the issuing of electronic money to be a regulated activity under the Financial Services and Markets Act 2000 (“the Act”).

Article 2 inserts a definition of “electronic money” into the principal Order. Article 3 amends that Order to provide that a sum is not a “deposit” for the purposes of that Order if it is immediately exchanged for electronic money.

Articles 4 to 6 insert provisions into the principal Order relating to the regulated activity of issuing electronic money. They include provisions excluding from the scope of that activity certain persons whose operations are on a limited scale, and to whom the Financial Services Authority (“the Authority”) has issued a certificate. The Authority is given powers to obtain information from such “certified persons”, and to make rules prohibiting the issue of electronic money at a discount. Provision is made excluding the issuing of electronic money from the Financial Services Compensation Scheme established under Part XV of the Act, and providing for details of “certified persons” to be included in the public record maintained by the Authority under section 347 of the Act.

Articles 7 and 8 of the Order make supplemental amendments to provide that the issuing of electronic money is not an exempt activity for the purposes of Part XX of the Act (provision of financial services by members of the professions); and to provide that persons seeking permission under the Act to carry on the regulated activity of issuing electronic money must comply with the threshold condition in paragraph 1(2) of Schedule 6 to the Act (i.e. they must be either bodies corporate or partnerships). Article 9 makes transitional provisions relating to persons who were issuing electronic money immediately before 27th April 2002. Article 10 makes provision about anticipatory consultation on rules to be made under the new powers conferred by articles 9G(1) and 9H of the principal Order.

Part III of the Order makes further, miscellaneous amendments to the principal Order. Article 11 makes additions to the list, in article 4(4) of the principal Order, of those exclusions which must be disregarded for the purposes of giving proper effect to the investment services directive (93/22/EEC). Article 12 makes a clarificatory amendment to article 9 of the principal Order, which provides an exclusion from the activity of accepting deposits for sums received in consideration for the issue of debt securities. Article 13 provides for article 45 of the principal Order (sending dematerialised instructions) to apply to instructions relating to contractually based investments as well as those relating to securities. It also replaces references to the Uncertificated Securities Regulations 1995 with references to the corresponding 2001 Regulations.

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**The Financial Services and Markets Act 2000 (Regulated  
Activities) (Amendment) Order 2002**

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