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STATUTORY INSTRUMENTS

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**2008 No. 3053**

**FINANCIAL SERVICES**

**The Definition of Financial Instrument Order 2008**

*Made* - - - - 24th November 2008  
*Laid before Parliament* 25th November 2008  
*Coming into force* - - 31st January 2009

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to securities and rights in securities<sup>(1)</sup>, the listing of securities on a stock exchange and information concerning listed securities<sup>(2)</sup> and insider dealing and market manipulation<sup>(3)</sup>.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(4)</sup>, make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Definition of Financial Instrument Order 2008 and comes into force on 31 January 2009.

(2) In this Order “the Act” means the Financial Services and Markets Act 2000<sup>(5)</sup>.

**Transparency rules: interpretation etc.**

2.—(1) Section 89F of the Act<sup>(6)</sup> is amended as follows.

(2) In subsection (4), after the definition of “Article 13 instrument” insert—

““financial instrument” has the meaning given in Article 4.1(17) of Directive [2004/39/EC](#) on markets in financial instruments;”<sup>(7)</sup>.

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(1) [S.I. 2000/3057](#).

(2) [S.I. 2004/3328](#).

(3) [S.I. 2004/2642](#).

(4) 1972 c. 68.

(5) 2000 c. 8.

(6) Section 89F was inserted by section 1266(1) of the Companies Act [2006 \(c.46\)](#).

(7) OJ No L 145, 30.4.04, p1.

### Meaning of “securities” etc

3.—(1) Section 102A of the Act<sup>(8)</sup> is amended as follows.

(2) In subsection (4)—

- (a) after the words ““financial instrument” has”, insert the words “(except in section 89F)”;
- (b) at the end of the subsection, insert the words “(as modified by Article 69 of Directive [2004/39/EC](#) on markets in financial instruments)”<sup>(9)</sup>.

### Amendment of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001

4. In article 5 (qualifying investments) of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001<sup>(10)</sup>, at the end insert the words “as modified by Article 69 of Directive [2004/39/EC](#) on markets in financial instruments”.

24th November 2008

*Tony Cunningham*  
*Steve McCabe*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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<sup>(8)</sup> Section 102A was substituted, together with sections 102B, 102C and 103, for section 103 as originally enacted, by regulation 2(1) of, and Schedule 1 to, [S.I. 2005/1433](#).

<sup>(9)</sup> Article 69 of that Directive was substituted by Directive [2006/31/EC](#) of the European Parliament and of the Council, of 5 April 2006 (OJ No L 114, p 61), Article 1(4) as from 28 April 2006.

<sup>(10)</sup> [S.I. 2001/996](#); articles 4 and 5 were substituted for articles 4, 4A and 5 by regulation 10(2) of [S.I. 2005/381](#).

## EXPLANATORY NOTE

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

This Order amends the definition of “financial instrument” in Part 6 (Official Listing) of the Financial Services and Markets Act 2000 (“the Act”) to give further implementation to Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

Article 2 ensures that “financial instrument” is defined in section 89F by reference to the definition of “financial instrument” given in that Directive.

Article 3 makes a consequential amendment to section 102(4), and ensures that “financial instrument” is defined for the purposes of Part 6 of the Act (other than section 89F) in the same way as that term is defined in Article 1.3 of Directive 2003/6 of the European Parliament and of the Council of 28 January on insider dealing and market manipulation as that Directive has been modified by Article 69 of Directive [2004/39/EC](#) on markets in financial instruments. Article 4 makes the same amendment to article 5 of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001.

An Impact Assessment of the effect of this instrument on the costs of business has been prepared and may be obtained from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)). A copy has been placed in the library of both Houses of Parliament.