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STATUTORY INSTRUMENTS

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**2018 No. 143**

**The Taxation of Securitisation Companies  
(Amendment) Regulations 2018**

**Insertion of new regulation 9A (meaning of “financial asset”)**

6. After regulation 9 insert—

**“Meaning of “financial asset”**

**9A.**—(1) In these Regulations, “financial asset” has the meaning it has for the purposes of generally accepted accounting practice, which is to be treated as—

- (a) including derivative contracts, whether otherwise constituting an asset or liability (other than such contracts excluded by subparagraph (b)(i)), but
- (b) excluding—
  - (i) derivative contracts where the underlying subject matter is or includes shares (other than shares in a securitisation company which is party to the capital market arrangement) or land,
  - (ii) loan relationships which have embedded derivatives where the underlying subject matter of the embedded derivative is or includes shares or land except where paragraph (2) applies, and
  - (iii) shares (other than shares in a securitisation company which is party to the capital market arrangement).

(2) This paragraph applies where—

- (a) a company takes reasonable care to ensure that loan relationships which have embedded derivatives where the underlying subject matter of the embedded derivative is or includes shares or land are not included as part of the security for a capital market arrangement,
- (b) such loan relationships are inadvertently included as part of the security for a capital market arrangement, and
- (c) the return, or potential return, in relation to the shares or land comprised in the underlying subject matter of the embedded derivative is small in value or insignificant in comparison with the return in relation to the loan relationship as a whole.

(3) For the purposes of this regulation—

- (a) whether an asset acquired, held or managed by a company is a financial asset, and whether the return or potential return in relation to the underlying subject matter of an embedded derivative is of small value or insignificant, is to be determined at the time that asset is first acquired, held or managed by that company;

- (b) “underlying subject matter” has the meaning given by section 583 of CTA 2009(1);
- (c) a loan relationship has an embedded derivative where the relationship contains rights and liabilities which would, were they entered into separately from the relationship, constitute a derivative contract; and
- (d) whether an embedded derivative would be an option, future or contract for difference for the purposes of section 583 of CTA 2009 is to be determined having regard to what the character of the embedded derivative would be, if it were a separate contract.”