Chapter 2

Authorisation and regulated activities
2.6 Specified investments: a broad outline

2.6.1 The following paragraphs describe the various specified investments, taking due account of any exclusion that applies.

Deposits

2.6.2 A deposit is defined in article 5(2) of the Regulated Activities Order. This focuses on a sum of money paid by one person to another on terms that it will be repaid when a specified event occurs (for example, a demand is made).

2.6.3 Certain transactions are excluded. The definition of deposit itself excludes money paid in connection with certain transactions such as advance payments for the provision of goods or services and sums paid to secure the performance of a contract. The circumstances in which payments are excluded from the definition itself are exhaustively stated in article 5(3) of the Regulated Activities Order (Accepting deposits). In addition, there is a separate exclusion in article 9 of the Order (Sums received in consideration for the issue of debt securities) and another in article 9A (Sums received in exchange for electronic money). PERG 3A Q4 contains guidance on the exclusion relating to electronic money.

2.6.4 In addition, several separate exclusions focus on the identity of the person paying the money or the person receiving it (or both).

(1) Payments by certain persons are excluded if they are made by specified persons (such as local authorities or national, or supranational, bodies) or by persons acting in the course of a business consisting wholly or partly of lending money.

(2) Exclusions apply for sums paid between certain persons who are linked in a specified way (such as group companies or close relatives).

(3) Exclusions apply to sums received by persons acting for specified purposes. This covers sums received by a practising solicitor acting in the course of his profession or by authorised or exempt persons carrying on one of a specified range of regulated activities and acting within the scope of their permission or exemption.
(1) A structured deposit is a kind of deposit.

(2) A structured deposit is a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

(a) an index or combination of indices; or

(b) a financial instrument or combination of financial instruments; or

(c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or

(d) a foreign exchange rate or combination of foreign exchange rates.

(3) A variable rate deposit whose return is directly linked to an interest rate index such as Euribor or Libor is not a structured deposit under paragraph (2)(a).

(4) (3) applies whether or not the interest is predetermined and whether it is fixed or variable.

The reason why there is a definition of a structured deposit is that there are a number of regulated activities that apply to structured deposits that do not apply to other kinds of deposit. See PERG 2.7.2-BG for a list.

Although the definition of a structured deposit specifically requires that the principal amount be fully repayable, that does not imply that this feature only applies to structured deposits. In the FCA’s view, capital certainty is a feature of any kind of deposit.

Electronic money

Electronic money is specified as an investment in article 74A of the Regulated Activities Order, but only when issued by:

(1) a full credit institution, a credit union or a municipal bank; or

(2) a person deemed to have been granted authorisation under regulation 74 of the Electronic Money Regulations; or a person who falls within regulation 76(1) of the Electronic Money Regulations (see PERG 3A, Q30 and 31).

The authorisation and registration requirements for any other person intending to issue electronic money are governed by the Electronic Money Regulations. Guidance on these regulations is available in PERG 3A.

Rights under a contract of insurance

Contract of insurance is defined to include certain things that might not be considered a contract of insurance at common law. Examples of such additions include capital redemption contracts or contracts to pay annuities on human life. Detailed guidance on identifying a contract of insurance is in PERG 6 (Guidance on the Identification of Contracts of Insurance).
2.6.6
There are two main sorts of contracts of insurance. These are general insurance contracts and long-term insurance contracts. The Regulated Activities Order provides that, in certain specified circumstances, a contract is to be treated as a long-term insurance contract notwithstanding that it contains supplementary provisions that might also be regarded as relating to a general insurance contract (see article 3(3)).

2.6.7
The Regulated Activities Order uses two further terms in relation to contracts of insurance to identify those contracts under which rights are treated as contractually based investments.

(1) The first term is 'qualifying contracts of insurance' (referred to as life policies in the Handbook). This identifies those long-term insurance contracts under which rights are treated as contractually based investments. This term does not cover long-term insurance contracts which are contracts of reinsurance or, if specified conditions are met, contracts under which benefits are payable only on death or incapacity.

(2) The second term is 'relevant investments'. This term applies to:

(a) contractually based investments, which includes rights under life policies and rights to or interests in such investments under article 89 of the Regulated Activities Order (Rights to or interests in investments); and

(b) rights under contracts of insurance other than life policies (but not rights to or interests in such rights).

This term is used in connection with the treatment, under various parts of the Regulated Activities Order, of persons carrying on insurance distribution activities (see further ■ PERG 5 (Guidance on insurance distribution activities)).

2.6.8
Certain arrangements in relation to funeral plans are specifically excluded from being contracts of insurance if they would otherwise be so. The exclusion applies to arrangements that fall within the definition of a funeral plan contract (see ■ PERG 2.6.26 G) as well as arrangements that are excluded from the regulated activity of entering as provider into funeral plan contracts (see ■ PERG 2.8.14 G).

2.6.9
Shares etc

Shares are defined in the Regulated Activities Order as shares or stock in a wide range of entities; that is, any body corporate wherever incorporated and unincorporated bodies formed under the law of a country other than the United Kingdom. They include deferred shares issued by building societies as well as transferable shares in industrial and provident societies, credit unions and equivalent EEA bodies. These shares are transferable and negotiable in a way similar to other shares or stock and are treated as such for the purposes of defining regulated activities. They are specifically mentioned as being within the specified investment category of shares because other types of share issued by these mutual bodies are not transferable and are expressly excluded (see ■ PERG 2.6.10 G).
The following are excluded from the specified investment category of shares. Shares or stock in all open-ended investment companies are excluded from being treated in this particular category (but see ■ PERG 2.6.17 G). Exclusions from this category also apply to shares or stock in the share capital of certain mutuals or in equivalent EEA bodies. This takes out building society or credit union accounts and non-transferable shares in industrial and provident societies. These may nevertheless be specified investments in another category (such as deposits in the case of building society accounts).

### Debt instruments

Two categories of specified investments relating to debt instruments are dealt with under this heading. They broadly split into private debt and public sector debt.

1. The first category of ‘instruments creating or acknowledging indebtedness’ (defined in article 77 of the Regulated Activities Order and referred to in the Handbook as debentures) expressly refers to a range of instruments such as debentures, bonds and loan stock and contains a catch-all reference to ‘any other instrument creating or acknowledging indebtedness.’

2. The second category (defined in article 78 of the Regulated Activities Order and referred to in the Handbook as government and public securities) refers to loan stock, bonds and other instruments creating or acknowledging indebtedness which are issued by or on behalf of any government, the assemblies for Scotland, Wales or Northern Ireland, a local authority or an international organisation.

An instrument cannot fall within both categories of specified investments relating to debt instruments. ‘Instrument’ is defined to include any record whether or not in the form of a document (see article 3(1) of the Regulated Activities Order).

### Alternative finance investment bonds

Alternative finance investment bonds (defined in article 77A of the Regulated Activities Order and referred to in the Handbook as alternative debentures) are a form of Sharia compliant bond (known as sukuk in the plural or sakk in the singular) which are intended to be regulated in an equivalent manner to conventional debt securities, where appropriate. Sukuk arrangements allow assets to be held for the benefit of investors in certificates issued by a company. The benefits may include the payment of a return that is economically equivalent to interest and redemption of the certificates out of the proceeds from the disposal of the assets. Alternative debentures are not limited to those wishing to issue Sharia compliant sukuk.

The arrangements which grant rights under alternative debentures are similar to the tax definition of arrangements relating to alternative finance investment bonds at section 48A of the Finance Act 2005 (see www.opsi.gov.uk/acts/acts2007/ukpga_20070011_en_5#pt3-pb9-l1g53). However the purposes of the two provisions are not the same. One of the objectives of the FCA under the Act is consumer protection. Accordingly, secondary legislation made under the Act, like article 77A of the Regulated Activities Order, is likely to be interpreted by the FCA with consumer protection in mind. This may mean that whilst the arrangements described at
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The arrangements which grant rights under an alternative debenture arise where:

1. The arrangements provide for a person (the bond-holder) to pay a sum of money (the capital) to another (the bond-issuer);
2. The arrangements identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (the bond assets);
3. The arrangements specify a period at the end of which they cease to have effect (the bond term);
4. The bond-issuer undertakes under the arrangements:
   a. To make a repayment in respect of the capital (the redemption payment) to the bond-holder during or at the end of the bond term (whether or not in instalments); and
   b. To pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (the additional payments);
5. The amount of the additional payments does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital; and
6. The arrangements are a security admitted to:
   a. An official list; or
   b. Trading on a regulated market or on a recognised investment exchange.

Different types of alternative debentures are permitted so that, for example:

1. The assets of the arrangement may be acquired before or after it commences;
2. The bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them before the end of the bond term;
3. The return may be fixed, floating or determined in some other way;
4. The amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them.

As these arrangements might amount to a collective investment scheme (see PERG 9.4.2 GG for a broad description) a consequential amendment to the
Financial Services and Markets Act 2000 (Collective Investment Scheme) Order 2001 (SI 2001/1062) has been made so that, like conventional bonds, alternative debentures are excluded from the definition of collective investment scheme.

2.6.11F The range of instruments that are caught by the alternative debenture definition have been tightly circumscribed to ensure that only those arrangements that grant, in substance, debt-like returns are captured. This is because arrangements giving rights under an alternative debenture cannot amount to a collective investment scheme (see PERG 2.6.11EG). If other types of investments were covered by the alternative debenture definition this could have the effect of undermining the regime for regulating collective investment schemes, which is primarily aimed at protecting the consumer from investing in unsuitable products. For example, under section 238 of the Act (Restrictions on promotion) an authorised person cannot communicate an invitation or inducement to participate in an unregulated collective investment scheme.

2.6.11G The condition set out at PERG 2.6.11CG (6) is also intended to protect consumers. This provides that alternative debentures must be listed on an official list or traded on a regulated market or recognised investment exchange. This is because there is a risk that alternative debentures could lead to regulatory arbitrage (i.e. the risk that the exclusion from being classified as a collective investment scheme is exploited by instruments not intended to be excluded). Mandatory listing is aimed at ensuring an enhanced level of transparency, reducing the likelihood of regulatory arbitrage.

2.6.11H (1) The main provision within the definition of alternative debenture arrangements that seeks to ensure that only instruments that display the characteristics of a debt security can be alternative debentures is set out at PERG 2.6.11CG (5). It provides that the amount of additional payments under the arrangements must not exceed an amount which would, at the time the bond is issued, be a reasonable commercial return on a loan of capital. Where the return is not fixed at the outset, it is the maximum possible amount of the additional payments that must be considered in deciding this question. The following example demonstrates how this condition should be approached.

Example

ABC Ltd is a property development company. It wishes to increase its portfolio on a short-term basis. It issues 5-year sukuk to investors and uses the proceeds to buy the head lease of a commercial property. The rental income from the lease is distributed to investors in proportion to their holdings without a cap on the level of return. After 5 years, the head lease is sold on at a profit and the proceeds shared between investors.

In this example, the investors participate directly in the success or failure of the underlying property business. The sakk is not really in the nature of a debt instrument. It is unlikely to be an alternative debenture as:

(a) additional payments under the arrangements would exceed a reasonable commercial return on a loan of the capital.
Further, where the return is not fixed at the outset, it is the maximum possible amount of the additional payments that must be considered. Here, the issue terms of the sukuk impose no upper limit on the amount of the periodic distributions: a sakk holder subscribing 1,000 may, in a year, get back 200 or 2,000 or nothing depending on the rental market. The maximum potential return is clearly in excess of a reasonable commercial return on a loan of 1,000; and

(b) the arrangements have not been admitted to an official list or admitted to trading on a regulated market or recognised investment exchange (see PERG 2.6.11CG (6)).

(2) If, in the above example, investors returns were capped at 500 per sakk per year, then this is the amount that must be considered in deciding whether the return exceeds a reasonable commercial return on a loan, even where the amounts actually received turn out to be far lower.

(3) In applying the reasonable commercial return test, the sakk should be compared to a hypothetical loan to the issuer on similar terms and carrying similar risks. For example, a conventional security convertible into shares will normally carry a lower rate of interest because the conversion right has a value. The return on an exchangeable or convertible sakk should be measured against the return on an equivalent exchangeable or convertible debt security.

(4) The risk to investors in sukuk may vary slightly from that of a conventional bond in some instances. This may be due to the fact that sukuk holders only have recourse to the bond assets or some other structural feature which results in the risk profile being higher. In such instances it may be justifiable for the rate of return to be slightly higher than that of a conventional loan.

(5) As with any financial instrument, the pricing of sukuk will depend on the issuers view of the market at the time of issue and reasonable commercial return may vary depending on the issuer and the economic circumstances prevalent at the time of issue.

2.6.12 Certain instruments are excluded from both of the categories of specified investments referred to in PERG 2.6.11G. These include trade bills, specified banking documents (such as cheques and banknotes though not bills of exchange accepted by a banker) and contracts of insurance. There is a further exclusion from this category of specified investment dealing with public debt for National Savings deposits and products. However, for the purposes of article 78 of the Financial Services and Markets Act (Regulated Activities) Order 2001, this exclusion does not apply to instruments that meet the requirements of PERG 2.6.11CG (1) to (5).

Warrants

The category of specified investment of instruments giving entitlements to investments (referred to in the Handbook as warrants) covers warrants and other instruments which confer an entitlement to subscribe for shares, alternative debentures, debentures and government and public securities. This is one of several categories of specified investments that are expressed in terms of the rights they confer in relation to other categories of specified investment. The rights conferred must be rights to ‘subscribe’ for the relevant investments. This means that they are rights to acquire the
investments directly from the issuer of the investments and by way of the issue of new investments (rather than by purchasing investments that have already been issued).

2.6.14 To keep clear distinctions between the different specified investment categories, instruments giving entitlements to investments are not to be regarded as options, futures or contracts for differences.

Certificates representing securities

2.6.15 The specified investment category of certificates representing certain securities covers certificates or other instruments which confer rights in relation to shares and debt securities. It includes depositary receipts.

2.6.16 There is an exclusion for any instrument that would otherwise fall within the specified investment category of units in a collective investment scheme. But the exclusion does not apply where the underlying investments covered by the certificate are issued by the same (non-public sector) issuer or constitute a single issue of public sector debt (such as a single issue of gilts). Certificates or other instruments conferring rights in respect of investments in these two cases continue to be treated as certificates representing certain securities.

Units

2.6.17 The specified investment category of units in a collective investment scheme includes units in a unit trust scheme or authorised contractual scheme, shares in open-ended investment companies and rights in respect of most limited partnerships and all limited partnership schemes. Shares in or securities of an open-ended investment company are treated differently from shares in other companies. They are excluded from the specified investment category of shares. This does not mean that they are not investments but simply that they are uniformly treated in the same way as units in other forms of collective investment scheme. The effect is that an open-ended investment company will, in issuing its shares, be subject to the restrictions on promotion of collective investment schemes in section 238 of the Act (rather than to restrictions that apply to other forms of body corporate). For exclusions from the restrictions on the provisions of collective investment schemes, see the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (SI 2001/1060). Guidance on the meaning of open-ended investment company is in PERG 9 (Meaning of open-ended investment company).

2.6.18 There are no exclusions in the Regulated Activities Order for this specified investment category. This is because ‘collective investment scheme’ is defined in section 235 of the Act (Collective investment schemes) for the purposes of the Act generally. But there is a separate power to provide for exemptions from that definition and the Treasury have exercised it (see the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062). The result is that units in certain arrangements are excluded from being collective investment schemes (for example, closed-ended bodies corporate, franchise arrangements, timeshare schemes).
Three types of investment are specified here:

1. rights under a **stakeholder pension scheme**;
2. rights under a **personal pension scheme**; and
3. rights or interests under a pension scheme which provides **safeguarded benefits**.

A **stakeholder pension scheme** is defined in section 1 of the Welfare Reform and Pensions Act 1999. Regulations made under that section set out detailed rules under which such schemes will operate (see the [Stakeholder Pension Scheme Regulations 2000](https://www.gov.uk/government/publications/stakeholder-pension-scheme-regulations-2000)). Schemes must be registered with The Pensions Regulator.

A **personal pension scheme** is, broadly speaking, a pension scheme which is not an **occupational pension scheme** or a **stakeholder pension scheme**. That is, a scheme or arrangement that is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people:

1. on retirement; or
2. on having reached a particular age; or
3. on termination of service in an employment.

Under section 48(8) of the Pension Schemes Act 2015 **safeguarded benefits** means benefits other than:

1. money purchase benefits (defined in section 181 of the Pension Schemes Act 1993 and section 176 of the Pension Schemes (Northern Ireland) Act 1993); and
2. cash balance benefits (defined in section 75 of the Pension Schemes Act 2015).

Rights under **stakeholder pension schemes and personal pension schemes** are **specified investments** for the purposes of the entire Regulated Activities Order.

Rights or interests under a pension scheme which provides **safeguarded benefits** as defined by section 48(8) of the Pension Schemes Act 2015 are only **specified investments** for the purposes of article 53E (Advising on conversion or transfer of pension benefits) and not in relation to any other regulated activity.

There are no exclusions in the Order.
Greenhouse gas emission allowances

There are two specified investments relating to the scheme for greenhouse gas emission allowance trading within the EU:

the first kind comprises emission allowances that are auctioned as financial instruments or two-day emissions spots (together, emissions auction products); and

the second kind is an emission allowance itself, subject to (2)).

An emission allowance is only a specified investment under (1)(b) if (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.

An emission allowance can also be the underlying for an option, future or contract for differences.

The emissions auction product specified investment relates only to the regulated activity of bidding in emissions auctions (whereby a bid is received, transmitted and submitted on an auction platform) and captures the two forms of allowance products that may be auctioned under article 4(2) of the auction regulation: a two-day spot or a five-day future.

See (Wider definition of certain specified investments when carrying on some kinds of EU business) for more about.

(1) how the RAO deals with the overlap between emission allowances and emissions auction products; and

(2) whether these products are a security, a contractually-based investment or a relevant investment.

Some other points about emission allowances are:

(1) Emission allowance means an allowance as defined in article 3(a) of Directive 2003/87/EC which established the scheme for greenhouse gas emission allowance trading within the EU. That article provides that an allowance is an allowance to emit one tonne of carbon dioxide equivalent during a specified period, only valid for the purpose of meeting the requirements of Directive 2003/87/EC and only transferable in accordance with the provisions of that directive (emission allowance).

(2) A two-day spot is defined by reference to article 3(3) of the auction regulation. That article provides that a two-day spot is an allowance auctioned for delivery at an agreed date no later than the second trading day from the day of the auction (two-day emissions spot).

(3) A financial instrument is defined as any instrument listed in Section C of Annex I to MiFID.

(4) The distinction between emission allowances that are auctioned as financial instruments and those auctioned as two-day spots is no longer relevant as all emissions auction products are financial instruments. When this part of the Regulated Activities Order was brought into force, a two-day emissions spot was not a financial instrument.
Options

2.6.20 The specified investment category of options comprises:

(1) options to acquire or dispose of securities or contractually based investments, currency and certain precious metals and options to acquire or dispose of such options. Options to buy or sell other types of commodity will only fall within this specified investment category if they are options to buy or sell futures, or options to buy or sell contracts for differences, which are based on other commodities. But options to buy or sell other types of commodity may be contracts for differences (see PERG 2.6.23 G);

(2) options to acquire or dispose of other property and falling within paragraphs 5, 6, 7 or 10 of Section C of Annex 1 to MiFID (see article 83(2) of the Regulated Activities Order and PERG 13, Q33A to Q34 for guidance about these instruments), but only where they are options to which PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies; and

(3) options to acquire or dispose of an option to which (2) applies, but only where PERG 2.5.7G applies (see article 83(1)(e) of the Regulated Activities Order).

It follows therefore that options not falling within PERG 2.6.20G (1), for example physically settled options on non-precious metals, such as copper options, will not be options unless they meet the conditions in PERG 2.6.20G (2). Moreover, where the option in question is one to which PERG 2.6.20G (2) applies, it will be an option only in relation to the services referred to in PERG 2.5.8G, provided by that person. The same applies in the case of options falling within PERG 2.6.20G (3), for example an option on a physically settled copper option traded on a regulated market.

Futures

2.6.21 Futures is the name given to rights under a contract for the sale of a commodity, or of property of any other description, under which delivery is to be made at a future date and at a price agreed on when the contract is made.

2.6.22 The key issue in determining whether something is an investment in this category for the purposes of the Regulated Activities Order is whether the contract is made for investment purposes rather than commercial purposes. Contracts which are made for commercial purposes are excluded from this specified investment category and the Regulated Activities Order contains several tests as to when that is, or is not, the case (some are conclusive, others only indicative).

2.6.22A As with options, there is an additional category of instruments which are futures only in limited circumstances. These are contracts as described in PERG 2.6.21 G:
(1) that would not be regarded as having been entered into for investment purposes because they fail one of the tests mentioned in ■ PERG 2.6.22 G;

(2) that:
- fall within paragraph 4 of Section C of Annex 1 to MiFID and relate to currencies (see ■ PERG 13, Q31A to Q31S for guidance about these derivatives); or
- fall within paragraphs 5, 6, 7 or 10 of Section C of Annex 1 to MiFID (see ■ PERG 13, Q33A to Q34 for guidance about these derivatives); and

(3) to which ■ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.

See article 84(1A)-(1D) of the Regulated Activities Order

Contracts for differences

The specified investment category of contracts for differences covers:

(1) rights under contracts for differences;

(2) rights under other contracts whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in certain factors; and

(3) derivative contracts for the transfer of credit risk (not within (1) or (2)) falling within paragraph 8 or 9 of Section C of Annex 1 to MiFID (see ■ PERG 13, Q31 for guidance about these instruments), but only where ■ PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.

The factors mentioned in (2) include the value or price of property of any description or an index or any 'other factor designated in the contract'. This catches a wide range of factors.

All contracts in this category are cash-settled instruments (as opposed to being settled by way of delivering something other than cash). Many would be unenforceable as gaming contracts were it not for section 412 of the Act (Gaming contracts). Examples of instruments that count as specified investments under this category are spread bets and interest rate swaps.

There are a number of exclusions. These include a case where the parties intend that the profit is to be secured or the loss to be avoided by taking delivery of property. This avoids overlap with the specified investment categories of options and futures. Also excluded are index-linked deposits and rights under certain contracts connected with the National Savings Bank or National Savings products. There is also provision to ensure that the specified investment category of contracts for differences does not include rights under life policies.
2.6.24A

(1) A binary or other fixed outcomes bet is also treated as contract for differences. This is defined as something that meets the following conditions:
   (a) it is a derivative contract of a binary or other fixed outcomes nature;
   (b) it is not covered by PERG 2.6.23G(1) or (2);
   (c) it is settled in cash;
   (d) it is a financial instrument that falls within paragraphs 4, 5, 6, 7 or 10 of Section C of Annex 1 to MiFID (see PERG 13, Q31A to Q34 for guidance about these instruments); and
   (e) one of the following requirements is met:
      (i) PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies; or
      (ii) a person is making arrangements with a view to transactions in investments in relation to it.

(2) A product is binary (see PERG 2.6.24AG(1) (a)) only if the payout is all or nothing. That is, the overall result will be that one party will pay the other a fixed sum. It is a sort of fixed odds bet.

(3) The main example of a binary product is a binary or digital option.

(4) A simple example is a contract between X and Y under which:
   (a) at the start, X pays Y a fixed sum (equivalent to the stake in a bet);
   (b) if shares in ABC PLC close above £5.20 per share at close of trading five days later, Y pays X a fixed sum (a multiple of X's original stake), the result being that Y pays X a fixed sum in net terms;
   (c) if shares in ABC PLC close at or below £5.20 per share at close of trading five days later, X gets nothing, the result being that X pays Y a fixed sum.

(5) A simple binary sporting bet is not a contract for differences as:
   (a) it is not covered by MiFID and so it does not meet the condition in PERG 2.6.24AG(1)(d); and
   (b) it does not come under any other part of the definition of a contract for differences.

(6) A product that that has fixed outcomes but is not binary (see PERG 2.6.24AG(1)(a)):
   (a) is like a binary product in that there are fixed number of possible payouts and they are all known in advance; but
   (b) differs from a binary contract in that the number of possible payouts is three or more rather than just two.

(7) A simple example of a contract in (6) (although it may not be common in practice) is a contract between X and Y under which:
(a) at the start, X pays Y a fixed sum (equivalent to the stake in a bet);

(b) if shares in ABC PLC close above £5.20 per share at close of trading five days later and (c) does not apply, Y pays X a fixed sum (a multiple of X's original stake), the result being that Y pays X a fixed sum in net terms;

(c) if shares in ABC PLC close above £5.20 per share at close of trading five days later and the market as a whole rises by more than ten percent, Y pays X a fixed sum that is:

(i) a multiple of X's original stake; but

(ii) a different (and usually smaller) multiple from the one in (b); the result being that Y pays X a fixed sum in net terms;

(d) if shares in ABC PLC close at or below £5.20 per share at close of trading five days later, X gets nothing, the result being that X pays Y a fixed sum.

(1) Any derivative under MiFID will be an option, future or contract for differences where PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.

(2) So for example the following contract between X and Y would be a contract for differences.

(a) At the start, X pays Y a fixed sum (equivalent to a stake in a bet).

(b) If the ABC index closes above 6,500 when the contract expires, Y pays X a fixed sum being the stake and an additional pay out (determined on the opening of the contract), the result of the contract being that Y pays X a fixed sum.

(c) If the ABC index closes below 6,500 when the contract expires, X gets nothing (and pays Y the stake paid when X opened the contract), the result of the contract being that X pays Y a fixed sum.

(d) If the ABC index was trading at 6,500 when the contract was opened and closes at 6,500 when the contract expires, Y pays X a fixed sum (being a proportion of the amount paid by X to Y on opening of the contract), the result of the contract being that X pays Y a fixed sum.

Lloyd's investments

Two types of specified investment are relevant. These are the underwriting capacity of a Lloyd's syndicate and a person's membership of a Lloyd's syndicate. There are no exclusions from these specified investment categories.

Rights under a funeral plan

Rights under a funeral plan contract are the rights to a funeral obtained by a person who pays for the funeral before the death of the person whose funeral it will be.
Rights under a regulated mortgage contract

2.6.27

In accordance with article 61(3)(a) of the Regulated Activities Order, a regulated mortgage contract is a contract which, at the time it is entered into, satisfies the following conditions:

1. The contract is one where the lender provides credit to an individual or trustees (the "borrower");
2. The obligation of the borrower to repay is secured by a mortgage on land in the EEA; and
3. At least 40% of that land is used, or is intended to be used, as or in connection with a dwelling.

Detailed guidance on this is set out in PERG 4.4 (Guidance on regulated activities connected with mortgages). However, generally, the definition of regulated mortgage contract does not include certain loans to commercial borrowers, second charge loans by a credit union, exempt consumer buy-to-let mortgage contracts (see PERG 4.4.31G) and second charge bridging loans (see PERG 4.4.1-A G).

Rights under a home reversion plan

2.6.27A

In accordance with article 63B(3)(a) of the Regulated Activities Order, a home reversion plan is an arrangement under which, at the time it is entered into:

1. A person (the "reversion purchaser") buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the "reversion occupier");
2. The reversion occupier (or, where trustees are concerned, an individual who is a beneficiary of the trust), or a related person of either, is entitled, and intends, to use at least 40% of that land as or in connection with a dwelling; and
3. The entitlement to occupy ends on the occurrence of any one or more of the following events:
   (a) The end of a specified period of at least twenty years; or
   (b) The death of the individual; or
   (c) The individual enters a care home.

Detailed guidance on this is set out in PERG 14.3 (Guidance on home reversion and home purchase activities).

Rights under a home purchase plan

2.6.27B

In accordance with article 63F(3)(a) of the Regulated Activities Order, a home purchase plan is an arrangement under which, at the time it is entered into:

1. A person (the "home purchase provider") buys a qualifying interest in land or an undivided share of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;
(2) where an undivided share of a qualifying interest is bought, the interest is held on trust for the home purchase provider and the individual or trustee as beneficial tenants in common;

(3) an individual or trustees (the "home purchaser") is obliged to buy the interest bought by the home purchase provider over the course of or at the end of a specified period; and

(4) the home purchaser (or, where trustees are concerned, by an individual who is a beneficiary of the trust), or a related person of either, is entitled, and intends, to use at least 40% of that land as or in connection with a dwelling.

Detailed guidance on this is set out in ■ PERG 14.4 (Guidance on home reversion and home purchase activities).

Rights under a regulated sale and rent back agreement

2.6.27C

In accordance with Article 63J(3)(a) of the Regulated Activities Order, a regulated sale and rent back agreement is an arrangement under which, at the time it is entered into:

(1) a person (the SRB agreement provider) buys all or part of the qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the agreement seller); and

(2) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated home reversion plan.

Detailed guidance on this is set out in ■ PERG 14.4A (Activities relating to regulated sale and rent back agreements).

2.6.28

Rights to, or interests in, all the specified investments in ■ PERG 2.6 (except rights to, or interests in, rights under a home finance transaction) are themselves treated as specified investments. The effect is that, in most cases, an activity carried on in relation to rights or interests derived from any of those investments is also a regulated activity if the activity would be regulated if carried on in relation to the investment itself. The exception is where the rights or interests relate to a pure protection contract or a general insurance contract.

2.6.29

There are several things that are not covered by this category (other than rights to, or interests in, rights under a mortgage contract). Anything that is covered by any other specified investment category is excluded, as are interests under the trusts of an occupational pension scheme. Finally, where a contract is excluded from the scope of the regulated activity of entering as provider into a funeral plan contract (see ■ PERG 2.8.14 G), then rights to, or interests in, the contracts of insurance or interests under the trusts, to which
Rights under a credit agreement and an article 36H agreement

In accordance with article 60B (3) of the Regulated Activities Order, a credit agreement is an agreement between an individual ("A") and any other person ("B") under which B provides A with credit of any amount. In accordance with article 36H (10) of the Regulated Activities Order, rights under an article 36H agreement are also specified investments. The definition of an article 36H agreement is set out in PERG 2.7.7H G. In addition and in accordance with article 53(5) of the Regulated Activities Order, rights under a ‘relevant article 36H agreement’ (within the meaning of that Order) are also specified investments.

Rights under a consumer hire agreement

In accordance with article 60N(3) of the Regulated Activities Order, a consumer hire agreement is an agreement between a person ("the owner") and an individual ("the hirer") for the bailment or, in Scotland, the hiring, of goods to the hirer which:

1. is not a hire-purchase agreement; and
2. is capable of subsisting for more than three months.