

2008 No. 1641

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2008

<i>Made</i> - - - -	<i>24th June 2008</i>
<i>Laid before Parliament</i>	<i>24th June 2008</i>
<i>Coming into force</i> - -	<i>15th July 2008</i>

The Treasury make the following order in exercise of the powers conferred by sections 235(5) and 428(3) of the Financial Services and Markets Act 2000(a):

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2008.

(2) This Order comes into force on 15th July 2008.

Amendment of the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001

2.—(1) The Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001(b) (arrangements not amounting to a collective investment scheme) is amended as follows.

(2) For paragraph 9 (schemes entered into for commercial purposes related to existing business), substitute—

“Schemes entered into for commercial purposes wholly or mainly related to existing business

9.—(1) Arrangements first entered into before 15th July 2008 do not amount to a collective investment scheme if—

- (a) by virtue of paragraph 9 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 as it had effect immediately before 15th July 2008 they did not then do so provided that all participants are permitted participants; or
- (b) in the case of arrangements which amounted to a collective investment scheme immediately before 15th July 2008—
 - (i) all participants are permitted participants; and

(a) 2000 c. 8.

(b) S.I. 2001/1062, amended by S.I. 2001/3650; there are other amending instruments but none is relevant.

- (ii) at any time each person which is at that time a participant irrevocably agrees in writing that the arrangements do not amount to a collective investment scheme.

(2) Arrangements first entered into on or after 15th July 2008 do not amount to a collective investment scheme if all participants are permitted participants.

(3) The exclusion in sub-paragraph (2) shall not apply to arrangements falling within that sub-paragraph if each person which is at that time a permitted participant at any time irrevocably agrees in writing that that the arrangements do not amount to a collective investment scheme.

(4) If at any time a person which is not a permitted participant participates in arrangements then for as long as that person is a participant but not a permitted participant the exclusion in sub-paragraph (1) or, as the case may be, sub-paragraph (2) shall not apply to the arrangements.

(5) For the purposes of this paragraph—

“permitted participant” means a participant which—

- (a) at the time of entering into the arrangements carries on a business which is not a specified business (the “first business”) but which may be in addition to any specified business carried on by that participant at that time and—
 - (i) does not carry on that first business solely by virtue of being—
 - (a) a participant in the arrangements; or
 - (b) a member, partner or trust beneficiary of a body corporate, unincorporated association, partnership or trust which is itself a participant in the arrangements; and
 - (ii) enters into the arrangements for commercial purposes wholly or mainly related to the first business; or
- (b) is a body corporate, unincorporated association partnership, or trustee of a trust (unless that trustee is an individual) which—
 - (i) does not carry on a specified business; and
 - (ii) only has as its members, partners or trust beneficiaries persons which themselves qualify, or would qualify if they participated in the arrangements, as participants of the kind mentioned in paragraph (a) of this paragraph; and

“specified business” means the business of engaging in any regulated activity of the kind specified by any of articles 14, 21, 25, 25D, 37, 40, 45, 51 to 53 or, so far as relevant to any of those articles, article 64 of the Regulated Activities Order.

(6) For the purposes of this paragraph, neither the entry into arrangements by any person as a further participant nor the exit from arrangements by any participant shall in itself constitute the creation of new arrangements.

(7) An agreement made in accordance with the provisions of sub-paragraph (1)(b)(ii) or sub-paragraph (3) is not affected by the entry into arrangements by any person as a further participant nor the exit from arrangements by any participant.”

Frank Roy
Alan Campbell

24th June 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of this Order)

This Order amends the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062) which sets out arrangements which are not to be regarded as a collective investment scheme (“CIS”) for the purposes of the Financial Services and Markets Act 2000 (c. 8). It substitutes a new paragraph 9 in that Schedule (the “former paragraph 9”).

Sub-paragraph (1) of the new paragraph provides for arrangements first entered into before the date on which this Order comes into force (the “commencement date”). Paragraph (a) provides for the circumstances in which arrangements which, by virtue of the former paragraph 9, did not amount to a CIS continue to do so on and after the commencement date. Paragraph (b) provides for the circumstances in which arrangements which did amount to a CIS immediately before the commencement date no longer do so from that date onwards.

Sub-paragraph (2) provides for the circumstances in which arrangements first entered into on or after the commencement date do not amount to a CIS and sub-paragraph 3 provides a mechanism for the participants to agree that they do.

Sub-paragraph (4) disapplies the exemptions in sub-paragraphs (1) and (2) (whichever is relevant) for as long as any participant in the arrangements is not a permitted participant.

Sub-paragraph (5) sets out the definitions of “permitted participant” and “specified business” on which the tests in sub-paragraphs (1) and (2) as to whether arrangements do not amount to a CIS depend.

Sub-paragraph (6) provides that for the purposes of this paragraph arrangements are not new arrangements merely as a result of any change in participants.

Sub-paragraph (7) provides that an agreement made in accordance with the provisions of sub-paragraph (1)(b)(ii) or sub-paragraph (2) remains valid in the event of a change in participants.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available on HM Treasury’s website (www.hm-treasury.gov.uk) or from Savings and Investment Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

STATUTORY INSTRUMENTS

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The Financial Services and Markets Act 2000 (Collective
Investment Schemes) (Amendment) Order 2008

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