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STATUTORY INSTRUMENTS

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**2008 No. 1641**

**The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 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<sup>(1)</sup> (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
  - (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—

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

- (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.”