

2021 No. 566

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2021

<i>Made</i> - - - -	<i>7th May 2021</i>
<i>Laid before Parliament</i>	<i>12th May 2021</i>
<i>Coming into force</i> - -	<i>18th June 2021</i>

The Treasury make the following Order in exercise of the powers conferred by section 235(5) 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 2021.

(2) This Order comes into force on 18th June 2021.

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) is amended as follows.

(2) For paragraph 6A, substitute the following—

“**6A.**—(1) Arrangements do not amount to a collective investment scheme in so far as they are arrangements of a kind described in one of sub-paragraphs (2) to (6).

(2) Arrangements operated by a person specified in paragraph (a) and in one or more of the circumstances specified in paragraph (b).

(a) A person who is—

- (i) an authorised person with permission to carry on an activity of the kind specified by article 36H(1) of the Regulated Activities Order(c) (operating an electronic system in relation to lending);
- (ii) an appointed representative in relation to that activity;
- (iii) an exempt person in relation to that activity;

(a) 2000 c. 8.

(b) S.I. 2001/1062. Paragraph 6A of the Schedule was inserted by S.I. 2015/2061.

(c) “The Regulated Activities Order” is defined in article 2 of the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/544). Article 36H of the Regulated Activities Order was inserted by S.I. 2013/1881. It was amended by S.I. 2014/366, 2016/392 and 2020/480.

- (iv) a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity.
- (b) The circumstances are—
 - (i) the operating of the arrangements amounts to the carrying on of an activity of the kind specified by article 36H of the Regulated Activities Order;
 - (ii) the arrangements amount to the holding of money on behalf of a lender or borrower under a relevant article 36H agreement, or with a view to a lender entering in to such an arrangement;
 - (iii) the purpose of the arrangements is to compensate a lender when a borrower fails to pay any sum due to that lender under a relevant article 36H agreement.
- (3) Arrangements forming a necessary part of the operation of arrangements of the kind specified in sub-paragraph (2).
- (4) Arrangements that—
 - (a) are operated by a person specified in sub-paragraph (2)(a), and
 - (b) would consist of arrangements of the kind specified in sub-paragraphs (2) or (3) except that they relate to a non-article 36H agreement rather than an article 36H agreement.
- (5) Arrangements with the purpose of winding up the operations of a person who operates or operated arrangements of the kind specified in sub-paragraphs (2) to (4).
- (6) Arrangements with the purpose of continuing the provision of services to a lender and borrower in relation to a relevant article 36H agreement or non-article 36H agreement, which are entered into in connection with the winding up of the operations of a person who provides or provided those services in relation to that agreement.

(7) In this paragraph—

“article 36H agreement” has the meaning given in article 36H of the Regulated Activities Order;

“borrower” means

- (a) a person who receives credit under an article 36H agreement or a person to whom the rights and duties of a borrower under an agreement have passed by assignment or operation of law, or
- (b) for the purposes of sub-paragraph (4)(b), a person who receives credit under an agreement of the kind described in sub-paragraph (4)(b) or a person to whom the rights and duties of a borrower under such an agreement have passed by assignment or operation of law;

“credit” has the meaning given in article 60L of the Regulated Activities Order^(a) (interpretation of Chapter 14A etc);

“lender” means—

- (a) a person providing credit under an article 36H agreement,
- (b) a person who by assignment or operation of law has assumed the rights of a person who provided credit under such an agreement, or
- (c) for the purposes of sub-paragraph (4)(b), a person providing credit under an agreement of the sort described in sub-paragraph (4)(b), or a person who by assignment or operation of law has assumed the rights of a person who provided credit under such an agreement;

“non-article 36H agreement” means an agreement that would be a relevant article 36H agreement but for the fact that it does not satisfy the conditions in article 36H(5) and (6) of the Regulated Activities Order;

(a) Article 60L of the Regulated Activities Order was inserted by S.I. 2013/1881. There are other amending instruments, but none are relevant here.

“relevant article 36H agreement” means an article 36H agreement which has been entered into with the facilitation of a person carrying on an activity of a kind specified by article 36H(1) of the Regulated Activities Order.”.

*Michael Tomlinson
David Rutley*

7th May 2021

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order substitutes a new paragraph 6A of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062) “the CIS Order”. The Schedule to the CIS Order sets out the kinds of arrangements which do not amount to a collective investment scheme as defined in section 235 of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”). Existing paragraph 6A of the Schedule provides that electronic systems in relation to lending (the operation of which is specified as a regulated activity in article 36H of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)) and the operation of arrangements closely associated with this, are not a collective investment scheme.

New paragraph 6A, substituted by this Order, clarifies that arrangements with the purpose of continuing the provision of services to a lender or borrower in relation to a relevant article 36H agreement or non-article 36H agreement, where the original firm that operated the electronic system in relation to lending is wound up, also does not amount to a collective investment scheme.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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