

**1988 No. 803**

**FINANCIAL SERVICES**

**The Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1988**

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|-------------------------------|------------------------|
| <i>Made - - - -</i>           | <i>28th April 1988</i> |
| <i>Laid before Parliament</i> | <i>28th April 1988</i> |
| <i>Coming into force</i>      | <i>29th April 1988</i> |

The Secretary of State, in exercise of the powers conferred on him by sections 2 and 75(9) of the Financial Services Act 1986(a) and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1988 and shall come into force on 29th April 1988.

(2) In this Order, “the Act” means the Financial Services Act 1986.

**Instruments creating or acknowledging indebtedness**

2. Paragraph 12 of Schedule 1 to the Act shall be amended by the addition at the end of the following—

*“Notes*

(1) This paragraph does not apply to a person by reason of his accepting, or offering or agreeing to accept, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(2) The references in (1) above to a person accepting, or offering or agreeing to accept, an instrument include references to a person becoming, or offering or agreeing to become, a party to an instrument otherwise than as a debtor or a surety.”.

**Arranging deals in investments**

3. Paragraph 13 of Schedule 1 to the Act(b) shall be amended by the addition of the following Notes—

“(4) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting,

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(a) 1986 c.60.

(b) Paragraph 13 of Schedule 1 to the Act has been amended by the Financial Services Act 1986 (Restriction of Scope of Act) Order 1988 (S.I. 1988/318).

whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(5) Arrangements do not fall within (b) above by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

(6) This paragraph does not apply to arrangements for the introduction of persons to another person if—

(a) the person to whom the introduction is made is an authorised or exempted person or is a person whose ordinary business involves him in engaging in activities which fall within this Part of this Schedule or would do apart from the provisions of Part III or Part IV and who is not unlawfully carrying on investment business in the United Kingdom; and

(b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either—

(i) in relation to investments generally; or

(ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.

(7) The references in (4) above to a person accepting an instrument include references to a person becoming a party to an instrument otherwise than as a debtor or a surety.”.

#### **Arrangements made in course of profession or non-investment business**

4.—(1) The heading to paragraph 24 of Schedule 1 to the Act shall be amended by the insertion of the words “or arrangements made” after the word “given”.

(2) Paragraph 24(2) of Schedule 1 to the Act shall be deleted and the following substituted—

“(2) Paragraph 13 above does not apply to arrangements—

(a) which are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and

(b) the making of which is a necessary part of other services provided in the course of carrying on that profession or business.

(3) Advice shall not be regarded as falling within sub-paragraph (1)(b) above and the making of arrangements shall not be regarded as falling within sub-paragraph (2)(b) above if the giving of the advice or the making of the arrangements is remunerated separately from the other advice or services.”.

#### **Collective investment schemes**

5. The references to a collective investment scheme(a) in Schedule 1 to, and elsewhere in, the Act shall be amended by—

(a) adding the following subsections after section 75(5)—

“(5A) Arrangements are not a collective investment scheme if—

(a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares;

(b) they constitute a complying fund;

(c) each participant is the owner of a part of the property to which the arrangements relate and, to the extent that his part of that property—

(i) comprises relevant shares of a class which are admitted to the Official List of any member State or to dealings on a recognised investment exchange, he is entitled to withdraw it any any time after the end of the period of five years beginning with the date on which the shares in question were issued;

(a) The references to a collective investment scheme in Schedule 1 to and elsewhere in the Act have been amended by the Financial Services Act 1986 (Extension of Scope of Act and Meaning of Collective Investment Scheme) Order 1988 (S.I. 1988/496).

- (ii) comprises relevant shares which do not fall within (i) above, he is entitled to withdraw it at any time after the end of the period of two years beginning with the date upon which the period referred to in (i) above expired.;
  - (iii) comprises any other shares, he is entitled to withdraw it at any time after the end of the period of six months beginning with the date upon which the shares in question ceased to be relevant shares; and
  - (iv) comprises cash which the operator has not agreed (conditionally or unconditionally) to apply in subscribing for shares, he is entitled to withdraw it at any time; and
  - (d) the arrangements would meet the conditions described in paragraph (c) of subsection (5) above were it not for the fact that the operator is entitled to exercise all or any of the rights conferred by shares included within the property to which the arrangements relate.
- (5B) For the purposes of subsection (5A) above—
- (a) “shares” means investments falling within paragraph 1 of Schedule 1 to this Act;
  - (b) shares shall be regarded as being relevant shares if and so long as they are shares in respect of which neither—
    - (i) a claim for relief, made in accordance with section 306 of the Income and Corporation Taxes Act 1988(a) has been disallowed; nor
    - (ii) an assessment has been made pursuant to section 307 of that Act withdrawing or refusing relief by reason of the body corporate in which the shares are held having ceased to be a body corporate which is a qualifying company for the purposes of section 293 of that Act; and
  - (c) arrangements shall be regarded as constituting a complying fund if they provide that—
    - (i) the operator will, so far as practicable, make investments each of which, subject to each participant’s individual circumstances, qualify for relief by virtue of Chapter III of Part VII of the Income and Corporation Taxes Act 1988; and
    - (ii) the minimum subscription to the arrangements made by each participant must be not less than £2000.”; and
  - (b) by adding the following three paragraphs at the end of section 75(6) of the Act—
    - “(1) arrangements under which the rights or interests of the participants are represented by the following—
      - (i) investments falling within paragraph 2 of Schedule 1 to this Act which are issued by a single body corporate which is not an open-ended investment company or which are issued by a single issuer which is not a body corporate and are guaranteed by the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom; or
      - (ii) investments falling within sub-paragraph (i) above which are convertible into or exchangeable for investments falling within paragraph 1 of Schedule 1 to this Act provided that those latter investments are issued by the same person as issued the investments falling within sub-paragraph (i) or are issued by a single other issuer; or
      - (iii) investments falling within paragraph 3 of Schedule 1 to this Act issued by the same government, local authority or public authority; or
      - (iv) investments falling within paragraph 4 of Schedule 1 to this Act which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within paragraph 1 of Schedule 1 to this Act or within sub-paragraph (i), (ii) or (iii) above;

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(a) 1988 c.1.

- (m) arrangements which would fall within paragraph (l) were it not for the fact that the rights or interests of a participant ("the counterparty") whose ordinary business involves him in engaging in activities which fall within Part II of Schedule 1 to this Act or would do so apart from Part III or Part IV of that Schedule are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which—
- (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
  - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in (i) above) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in (i) above.
- (n) arrangements under which the rights or interests of participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition of property or the provision of services for him."

*Francis Maude*

Parliamentary Under-Secretary of State,  
Department of Trade and Industry

28th April 1988

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#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order restricts the scope of the Financial Services Act 1986 in certain respects. Article 2 restricts the scope of paragraph 12 of Schedule 1 to the Act by excluding from that paragraph the acceptance of instruments creating or acknowledging indebtedness in respect of certain financial transactions. Article 3 restricts the scope of paragraph 13 of Schedule 1 to the Act in several ways. First, it excludes arrangements with a view to a person accepting an instrument creating or acknowledging indebtedness in respect of certain financial transactions. Second, it excludes loans made for the specific purpose of financing investment transactions. Third, it excludes arrangements for the introduction of persons to certain other persons if the introduction is with a view to independent advice being given or independent discretion being exercised. Article 4 restricts the scope of the Act by extending the exemption provided by paragraph 24 of Schedule 1 so that it covers certain arrangements made in the course of a profession or a business which is not investment business. Article 5 amends the references to a collective investment scheme in Schedule 1 and elsewhere in the Act so that they do not include references to business expansion schemes which meet the conditions described in the article. Article 5 also has the effect that the provisions of the Act relating to collective investment schemes do not extend to certain arrangements under which the rights or interests of participants are represented by investments of a kind described in the article or are rights to or interests in money held in a common account in the circumstances described in the article,

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