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STATUTORY INSTRUMENTS

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**2001 No. 2659**

**The Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) (No. 2) Order 2001**

**Rehabilitation of offenders—transitional modification of the Financial Services Act**

6.—(1) Section 189 of the Financial Services Act has effect until commencement as if—

(a) after subsection (4)(c) there were inserted—

“(d) as respects action within paragraph 5 or 6 of that Part, a person who is connected with that person;

(e) as respects action within paragraph 5 of that Part consisting of a decision of a kind mentioned in paragraph 7(e) of Part I of that Schedule, the operator or trustee (within the meaning of the Financial Services and Markets Act 2000) of the scheme or a person who is connected with that person.”; and

(b) after subsection (6), there were inserted—

“(6A) In this section and that Schedule, a person is connected with another (“A”) if he is—

(a) where A is a body corporate, a director, manager or controller of A;

(b) where A is a partnership, a partner or manager of A;

(c) where A is an unincorporated association, a member of its governing body or an officer, manager or controller of A;

(d) where A is an individual, a manager of A.

(6B) In subsection (6A), “director”, “manager” and “controller” have the meanings given by the Financial Services and Markets Act 2000.”.

(2) Schedule 14 to the Financial Services Act has effect until commencement as if—

(a) after paragraph 6 of Part I (exempted proceedings) there were inserted—

“7. Any proceedings with respect to a decision or proposed decision of the Financial Services Authority—

(a) refusing an application for permission under Part IV of the Financial Services and Markets Act 2000 (“Part IV”) to carry on relevant activities;

(b) deciding to impose requirements under Part IV that relate to relevant activities;

(c) varying or cancelling permission to carry on relevant activities given under Part IV;

(d) refusing to vary or cancel such permission; or

(e) refusing to make or revoking an authorisation order under section 243 of that Act or an order under section 272 of that Act declaring a scheme to be a recognised scheme or refusing to give its approval to a scheme being recognised under section 270 of that Act or directing that a scheme recognised under that section is to cease to be recognised.”;

(b) after paragraph 8 of Part II (exempted questions) there were inserted—

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- “9. The Financial Services Authority.
- (a) An applicant for permission under Part IV to carry on relevant activities whose application has not been determined.
  - (b) A person who has been given permission under Part IV to carry on relevant activities (albeit that permission is not yet in force).
  - (c) A transitional authorised person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, immediately before commencement) he will, at commencement, be treated as having permission under Part IV to carry on relevant activities.
  - (d) The operator or trustee (within the meaning of the Financial Services and Markets Act 2000) of a collective investment scheme (within the meaning of that Act) in respect of which a notice has been given under section 270 of that Act or an application has been made under section 272 of that Act.
  - (e) The operator or trustee (within the meaning of that Act) of a prospective recognised scheme.
  - (f) An individual who is connected with a person (whether or not an individual) described in paragraph (a), (b), (c), (d) or (e) above.

**10.** A person (whether or not an individual) described in paragraph 9(a), (b), (c), (d) or (e). An individual who is or is seeking to become connected with the person in column 1.”;

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(c) in Part III (exempted actions), there were inserted—

(i) after the words “Part I of this Schedule” in each place they appear in column 2, “, except for any decision or proposed decision as is mentioned in paragraph 7 of that Part”; and

(ii) after paragraph 4—

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“5. The Financial Services Authority.	Any such decision or proposed decision as is mentioned in paragraph 7 of Part I of this Schedule.
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6. A person (whether or not an Dismissing or excluding an individual individual) described in paragraph from being or becoming conneced with the 9(a), (b), (c), (d) or (e) of Part II of this person in column 1.”; Schedule.

(d) in Part IV (supplemental), there were inserted after paragraph 3—

“4. “Relevant activities” means any regulated activity of the kind specified by any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(1), or article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any such activity—

- (a) article 14 (dealing in investments as principal);
- (b) article 21 (dealing in investments as agent);
- (c) article 25 (arranging deals in investments);
- (d) article 37 (managing investments);
- (e) article 40 (safeguarding and administering investments);
- (f) article 45 (sending dematerialised instructions);
- (g) article 51 (establishing etc. a collective investment scheme);
- (h) article 53 (advising on investments).

5. In paragraph 9 of Part II of this Schedule—

“commencement” means the beginning of the day on which section 19 of the Financial Services and Markets Act 2000 comes into force;

“prospective recognised scheme” means a collective investment scheme (within the meaning of the Financial Services and Markets Act 2000)—

- (a) in respect of which the Financial Services Authority has given approval under section 270(1)(d)(i) of that Act or in respect of which an order has been made under section 272 of that Act (even though the approval or order is not yet in force); or
- (b) which is of such a description, and with respect to which such conditions are met that (if it is of that description, and if those conditions are met, immediately before commencement) it will, at commencement (within the meaning given by this paragraph) be treated as a recognised scheme under section 270 or 272 of that Act by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001;

“transitional authorised person” has the meaning given by the Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) (No. 2) Order 2001.

6. In Parts II and III of this Schedule, references to an applicant for permission are references to an applicant who has not yet been informed of the determination of his application.

7. Paragraph 9(d) and (e) of Part II of this Schedule and so much of paragraph 9(f) as relates to those paragraphs—

- (a) apply only if the question is put to elicit information for the purpose of determining whether the operator or trustee is a fit and proper person to act as operator or trustee of the scheme in question;

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- (b) apply in the case of a scheme in respect of which a notice has been given under section 270 of the Financial Services and Markets Act 2000 or an application has been made under section 272 of that Act only until the applicant has been informed of the determination of the application.”.