

**A Consultative Paper
Collective Investment Schemes (Definition) Order 2008**

25th March 2008



Financial Supervision Commission Barrantee Oaseiry's

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SECTION 1 - INTRODUCTION

1.1 Background

Section 1 of the Collective Investment Schemes Bill 2008 (“the Bill”) sets out the characteristics of a Collective Investment Scheme and provides that the Financial Supervision Commission (“the Commission”) can make an Order which set out the characteristics of arrangements which do not constitute collective investment schemes for the purpose of the Bill (see Appendix B).

This consultation paper sets out a draft Collective Investment Schemes (Definition) Order 2008 (“the draft Order” attached at Appendix A) which is intended to ensure that the status quo is maintained. As such the wording used in the draft Order in most cases replicates the current regime (Section 30 of the Financial supervision Act 1988 is set out at Appendix C to this Order). The only changes made are to referencing to ensure the draft Order is consistent with the regime that will be enacted under the Financial Services Bill 2008.

1.2 Cost and Impact

The draft Order aims to ensure that the effect of the current regime is replicated when the Bill is enacted and as such does not constitute a change in policy. It is therefore not expected that the Order will result in any costs to the Commission or industry.

1.3 Consultation

The Commission views open dialogue with Industry as an essential element in developing an optimal regulatory framework. The Commission therefore appreciates the time that respondees will spend in reading and commenting upon these proposals.

The closing date for comments is **25th April 2008**. We would be most grateful if comments could be received by, or before, this date.

Responses to:

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COLLECTIVE INVESTMENT SCHEMES ACT 2008
COLLECTIVE INVESTMENT SCHEMES (DEFINITION)
ORDER 2008

Approved by Tynwald on

Coming into operation on

In exercise of the powers conferred on the Financial Supervision Commission by section 1(5) of the Collective Investment Schemes Act 2008^(a), and of all other enabling powers, the following Order is hereby made:-

Citation, commencement and interpretation

1. (1) This Order may be cited as the Collective Investment Schemes (Definition) Order 2008 and shall come into operation on XXXXXX 2008.
- (2) In this Order, “the Act” means the Collective Investment Schemes Act 2008.

Characteristics of arrangements which do not amount to a collective investment schemes under section 1 of the Act

2. Arrangements do not amount to a collective investment scheme if –
 - (a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares, debentures, government securities, instruments, certificates representing securities, long-term insurance and or units in relation to a collective investment scheme (so far as relating to units in authorised schemes and recognised schemes) as defined in Part 1 of Schedule 2 to the Regulated Activities Order 2008;
 - (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
 - (c) the arrangements do not have the characteristics mentioned in section 1(3)(a) of the Act and have those mentioned in section 1(3)(b) only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.

(a) 2008 c.XX

Arrangements which do not amount to a collective investment schemes under section 1 of the Act

3. The following are not collective investment schemes -
- (a) arrangements operated by a person otherwise than by way of business;
 - (b) arrangements where each of the participants carries on a business and enters into the arrangements for commercial purposes related to that business;
 - (c) arrangements where each of the participants is a body corporate in the same group as the operator;
 - (d) arrangements where -
 - (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate or of another body corporate in the same group as that body corporate; and
 - (ii) the property to which the arrangements relate consists of cash or near cash or of securities (as defined in Part 1 of Schedule 2 to the Regulated Activities Order 2008) in or of a member of that group, and in this paragraph, "near cash" means -
 - (A) money in a current account with a deposit taker;
 - (B) money in a deposit account with, or on short term loan to, a deposit taker which can be withdrawn on not more than 7 days call; and
 - (C) investments falling within Part 1 of Schedule 1 to the Trustee Investments Act 1961 (an Act of Parliament) (National Savings investments, etc.) and equivalent investments issued or guaranteed by the Government of any country or territory.
 - (e) arrangements where the entire contribution of each participant is a deposit within the meaning of deposit as defined in Part 1 of Schedule 2 to the Regulated Activities Order 2008 or a sum -
 - (i) paid by a deposit taker;
 - (ii) paid by a person in the course of carrying on a business consisting wholly or mainly of lending money;
 - (iii) paid by one company to another at a time when the same individual would be treated as the controller of both of them if, in the definition of controller in section 26, the percentage referred to in paragraph (d) was 50;
 - (iv) which is paid by a person who, at the time when it is paid, is the spouse or a close relative of the person receiving it or who is, or is the spouse or a close relative of, a director or controller of that person, and in this sub-

paragraph "close relative" means a child, step-child, parent, stepparent, brother, sister, step-brother, step-sister or spouse of such person;

- (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
- (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (h) arrangements under which the rights or interests of the participants are securities as defined in Part 1 of Schedule 2 to the Regulated Activities Order 2008;
- (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
- (j) contracts of insurance;
- (k) occupational pension schemes;
- (l) a limited partnership formed under the law of the Island whose interests are admitted to the Official List of the UK Listing Authority, and in this paragraph "interests" means –
 - (i) limited partnership interests of an irredeemable nature however termed; and
 - (ii) depositary receipts or similar certificates representing such interests."

4. No body incorporated under the law of the Island, or of, or of any part of, the United Kingdom, relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, shall be regarded as constituting a collective investment scheme.

Made this XXth day of XXXX 2008.

Chairman

Chief Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the types of arrangements that will not constitute a collective investment scheme under section 1 of the Collective Investment Schemes Act 2008.

Collective Investment Schemes Bill 2008 Meaning of collective investment scheme

P2000/8/235

I. (1) “**Collective investment scheme**” means arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming or being owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of those profits or income.

(2) The arrangements must be such that the persons who participate (“participants”) do not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics—

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property is managed as a whole by or on behalf of the governing body of the scheme.

(4) If arrangements provide for pooling in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(5) The Commission may by order provide that arrangements do not amount to a collective investment scheme—

- (a) in prescribed circumstances; or
- (b) if the arrangements fall within a prescribed character of arrangement.

Financial Supervision Act 1988 Collective investment schemes: interpretation

30. (1) In this Act "a collective investment scheme" means, subject to the provisions of this section, any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1) (in this Act referred to as "participants") do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the characteristics mentioned in subsection (3).

(3) Those characteristics are -

- (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.

(4) Where any arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(5) Arrangements are not a collective investment scheme if -

- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any of paragraphs 1 to 5, 6 (so far as relating to units in authorised schemes and recognised schemes) and paragraph 10 of Schedule 2 to the Investment Business Order 1991;
- (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
- (c) the arrangements do not have the characteristics mentioned in subsection (3)(a) and have those mentioned in paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.

(6) The following are not collective investment schemes -

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business other than investment business within the meaning of the Investment Business Order 1991 and enters into the arrangements for commercial purposes related to that business;
- (c) arrangements where each of the participants is a body corporate in the same group as the operator;

- (d) arrangements where -
- (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate or of another body corporate in the same group as that body corporate; and
 - (ii) the property to which the arrangements relate consists of cash or near cash or of shares or debentures (as defined in paragraph 12(4) of Schedule 1 to the Investment Business Order 1991) in or of a member of that group, and in this paragraph, "near cash" means –
 - (A) money in a current account with a banking institution;
 - (B) money in a deposit account with, or on short term loan to, a banking institution which can be withdrawn on not more than 7 days call; and
 - (C) investments falling within Part I of Schedule 1 to the Trustee Investments Act 1961 (an Act of Parliament) (National Savings investments, etc.) and equivalent investments issued or guaranteed by the Government of any country or territory.
- (e) arrangements where the entire contribution of each participant is a deposit within the meaning of section 13(1) of the Banking Act 1975 or a sum –
- (i) paid by a banking institution;
 - (ii) paid by a person in the course of carrying on a business consisting wholly or mainly of lending money;
 - (iii) paid by one company to another at a time when the same individual would be treated as the controller of both of them if the percentage referred to in section 31(4)(a) was 50;
 - (iv) which is paid by a person who, at the time when it is paid, is the spouse or a close relative of the person receiving it or who is, or is the spouse or a close relative of, a director or controller of that person, and in this sub-paragraph

"close relative" means a child, step-child, parent, stepparent, brother, sister, step-brother, step-sister or spouse of such person;
- (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
- (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (h) arrangements under which the rights or interests of the participants are investments falling within paragraph 5 of Schedule 2 to the Investment Business Order 1991;

- (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
- (j) contracts of insurance;
- (k) occupational pension schemes.

(6A) No limited partnership formed under the law of the Island shall be regarded as constituting a collective investment scheme if its interests are admitted to the Official List of the UK Listing Authority.

(6B) For the purposes of subsection (6A), “interests” means limited partnership interests of an irredeemable nature however termed together with depositary receipts or similar certificates representing such interests.

(7) No body incorporated under the law of the Island, or of, or of any part of, the United Kingdom, relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, shall be regarded as constituting a collective investment scheme.

(8) The Treasury may by order modify this section.