EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (COLLECTIVE INVESTMENT SCHEMES) (AMENDMENT) ORDER 2015

2015 No. 2061

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2015 clarifies the boundary between peer-to-peer lending platforms and collective investment schemes (CIS) such that it is clear that if a platform is a regulated peer-to-peer lending platform is not also a CIS.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument amends the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001. The Schedule sets out the kinds of arrangement which do not amount to a CIS. CIS is defined in section 235 of the Financial Services and Markets Act 2000 for the purposes of Part 17 of that Act.

4.2 The activity of operating an electronic system in relation to lending is specified as a regulated activity in article 36H of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. This activity is what is commonly known as operating a peer-to-peer lending platform.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Financial Conduct Authority regulates both CIS and peer-to-peer lending platforms. The two business models are distinct and are regulated according to different frameworks, however, there is some overlap, both in the activities the operators of such systems carry on and in the way in which the two are defined, which can create uncertainty about which framework a firm should be regulated under.

7.2 The consequences of this uncertainty are undesirable. If a peer-to-peer lending platform were also to be considered a CIS then both regulatory frameworks would apply, adding a large regulatory burden for these firms, and they would need to be properly authorised to market their websites to retail investors. This is inappropriate as the UK has a specific regulatory regime for peer-to-peer lending platforms under which they are regulated proportionately and consumers are provided with appropriate protection.

7.3 As such this Order distinguishes between the definitions of peer-to-peer lending platforms and a CIS in legislation such that it is clear that if a platform is a regulated peer-to-peer platform it is not also a CIS.

Consolidation

7.4 The government does not currently intend to consolidate the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001.

8. Consultation outcome

8.1 The Financial Conduct Authority was consulted on, and involved in, the preparation of this Order.

9. Guidance

9.1 No guidance is necessary for this amendment.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 Some article 36H platforms may be small businesses and will therefore benefit from the added clarity this amendment provides.

12. Monitoring & review

12.1 The Economic Secretary to the Treasury has made the following statement regarding review:

"In my view, and having had regard to the "*Small Business, Enterprise and Employment Act 2015 – Statutory Guidance for Departments*", it is not appropriate to

make provision for the review of the provisions of the Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2015. This is because a review would be disproportionate taking into account the economic impact of this Order."

13. **Contact**

13.1 Rob Wareing at HM Treasury can answer any queries regarding the instrument Telephone: 020 7270 4504 or email: rob.wareing@hmtreasury.gsi.gov.uk