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STATUTORY INSTRUMENTS

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**2003 No. 2067**

**FINANCIAL SERVICES AND MARKETS**

The Financial Services and Markets Act 2000  
(Promotion of Collective Investment Schemes  
etc.) (Exemptions) (Amendment) Order 2003

*Made* - - - - *11th August 2003*  
*Laid before Parliament* *11th August 2003*  
*Coming into force in accordance with article 1*

The Treasury, in exercise of the powers conferred upon them by sections 21(5), 238(6) and (7) and 428(3) of the Financial Services and Markets Act 2000(1), hereby make the following Order:

**Citation and commencement**

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes etc.) (Exemptions) (Amendment) Order 2003.

(2) This Order comes into force—

- (a) for the purposes of article 2(3), on 5th September 2003; and
- (b) for all other purposes, on 13th February 2004.

**Restrictions on promotion of collective investment schemes**

2.—(1) The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001(2) is amended as follows.

(2) In article 10A (incoming electronic commerce communications), in paragraph (3), for the words from “Directive [85/611/EEC](#)” to “transferable securities”, substitute “the UCITS directive”.

(3) After article 28 (persons placing promotional material in particular publications), insert—

**“Open-ended investment companies authorised in Northern Ireland**

29.—(1) The scheme promotion restriction does not apply in relation to a scheme constituted by an authorised Northern Ireland open-ended investment company.

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(1) 2000 c. 8.

(2) S.I. [2001/1060](#); amended by S.I. [2001/2633](#), S.I. [2002/1310](#) and S.I. [2002/2157](#).

(2) In this article—

- (a) “authorised Northern Ireland open-ended investment company” means a body incorporated by virtue of regulations made under section 1 of the Open-Ended Investment Companies Act (Northern Ireland) 2002<sup>(3)</sup> in respect of which an authorisation order is in force; and
- (b) “authorisation order” means an order made under (or having effect as made under) any provision of those regulations which is made by virtue of section 1(2)(1) of that Act (provision corresponding to Chapter 3 of Part 17 of the Act).”

(4) After article 29 (open-ended investment companies authorised in Northern Ireland), insert—

**“EEA management companies**

**30.** The scheme promotion restriction does not apply to any communication which is made by an EEA firm which—

- (a) falls within paragraph 5(f) of Schedule 3 to the Act (management companies of UCITS)<sup>(4)</sup>, and
- (b) qualifies for authorisation by virtue of paragraph 12 of that Schedule,

unless the Authority has given (and not withdrawn) a notice to that firm under paragraph 15A(2) of that Schedule (notice indicating that the way in which the firm intends to invite persons in the United Kingdom to become participants in any collective investment scheme which that firm manages does not comply with the law in force in the United Kingdom).”

**Amendment of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001**

**3.** In article 20B of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001<sup>(5)</sup> (incoming electronic commerce communications), in paragraph (3), for the words from “Directive 85/611/EEC” to “transferable securities”, substitute “the UCITS directive”.

*Jim Murphy*  
*Joan Ryan*

Two of the Lords Commissioners of Her Majesty’s Treasury

11th August 2003

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<sup>(3)</sup> Act of the Northern Ireland Assembly; 2002 c. 13.

<sup>(4)</sup> Amended by S.I. 2000/2952, S.I. 2001/1376, S.I. 2003/1473 and S.I. 2003/2006.

<sup>(5)</sup> S.I. 2001/1335; article 20B inserted by S.I. 2002/2157.

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## EXPLANATORY NOTE

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

This Order amends the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (S.I.2001/1060) (“the Collective Investment Scheme Order”) by specifying two further cases where the restriction on authorised persons (within the meaning of the Financial Services and Markets Act 2000) promoting collective investment schemes does not apply.

The first case is where the promotion is made by an open-ended investment company which is incorporated by virtue of regulations made under the Open-Ended Investment Companies Act (Northern Ireland) 2002 and is subject to an authorisation order made under such regulations.

The second case is where the promotion is made by an EEA management company of an undertaking for collective investment in transferable securities (within the meaning of Council Directive [85/611/EEC](#) on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as amended) which has exercised the rights conferred by that Directive to establish a branch or provide services in the United Kingdom.

This Order also amends the references to Council Directive [85/611/EEC](#) in the Collective Investment Scheme Order and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. [2001/1335](#)).

This Order implements in part Directive [2001/107/EC](#) of the European Parliament and of the Council amending Council Directive [85/611/EEC](#) with a view to regulating management companies and simplified prospectuses and Directive [2001/108/EC](#) of the European Parliament and of the Council [2001/107/EC](#) amending Council Directive [85/611/EEC](#) with regard to investments of UCITS. A Transposition Note setting out how the main elements of these Directives will be transposed into UK law is available from the Banking and General Insurance Team, HM Treasury, 1 Horseguards Road, London SW1A 2HQ. The Transposition Note is also on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).