
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (“the Financial Promotion Order”), by specifying two new controlled activities for the purposes of section 21 of the Financial Services and Markets Act 2000 (“the Act”), and by providing a further exemption from the financial promotion restriction in that section. These amendments are made in parallel with amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 by S.I.2003/1475 which specify arranging regulated mortgage contracts and advising on regulated mortgage contracts as regulated activities under the Act.

Article 3 adds a new exemption to the Financial Promotion Order in respect of real time communications which relate to the provision of qualifying credit, arranging qualifying credit, or advising on qualifying credit, and are made for the purpose of introducing the recipient to an authorised person, an appointed representative, or an overseas person who carries on the controlled activity to which the communication relates. The exemption will only apply if the person making the communication complies with specified conditions. The first condition is that the maker of the communication does not handle client money, and the second is that he discloses specified information to the recipient.

Article 4 expands the existing exemptions in the Financial Promotion Order relating to communications required or authorised by enactments, solicited real time communications made by overseas communicators, and communications on qualifying credit directed at bodies corporate, so that they cover communications relating to the new controlled activities of arranging qualifying credit and advising on qualifying credit.

Article 5 inserts new paragraphs into Schedule 1 to the Financial Promotion Order, so as to specify arranging qualifying credit and advising on qualifying credit as controlled activities. Arranging qualifying credit consists of arranging for a borrower to enter into an agreement for the provision of qualifying credit or arranging for a borrower to vary the terms of a regulated mortgage contract. Advising on qualifying credit consists of giving advice to a borrower or potential borrower on the merits of that person entering into an agreement for the provision of qualifying credit or varying the terms of a regulated mortgage contract.