
EXPLANATORY NOTE

(This note does not form part of the Order)

This Order revokes and re-enacts, with certain amendments, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I.2001/1335) (“the 2001 Order”), as amended. The Order continues to specify the kinds of activities and investments which are controlled activities and controlled investments for the purposes of section 21 of the Financial Services and Markets Act 2000 (c. 8) (“the Act”). Any invitation or inducement which is made in the course of business and which invites or induces someone either to enter into an agreement the making of which constitutes a controlled activity or to exercise rights conferred by a controlled investment is subject to the restriction imposed by section 21(1). Section 21(1) precludes anyone from communicating such an invitation or inducement unless either he is an authorised person within the meaning of the Act or the content of the communication is approved by an authorised person. Contravention of this prohibition is a criminal offence.

The terms “controlled activities” and “controlled investment” are defined for the purposes of section 21 of the Act by reference to the activities and investments set out in Schedule 1 to the Order.

The Order also continues to set out a number of exemptions from the restriction on financial promotions contained in section 21(1) of the Act, some of which apply to communications relating to all kinds of controlled activity while others relate to some activities only.

The principal changes made by this Order are—

- (1) the exemption in respect of communications made for the purpose of introducing the recipient to an authorised or an exempt person in certain circumstances is extended so as to apply to non-real time communications in addition to a real-time communications (article 15);
- (2) a new exemption is provided for certain communications made by an authorised person on behalf of an unauthorised person (article 17A);
- (3) the exemption in respect of communications made to associations of high net worth and sophisticated investors is extended so as to apply to communications made to individual members of such associations (article 51);
- (4) the exemption relating to communications by members of professions is not affected by a defect in the prescribed wording of the communication provided the defect does not affect the communication's meaning (article 55A);
- (5) a new exemption is provided in respect of a communication made by an employer to an employee in relation to a group personal pension scheme or a stakeholder pension scheme (article 72); and
- (6) a new exemption is provided in respect of communications made by advice centres in relation to qualifying credit, qualifying contracts of insurance and child trust funds (article 73).

A regulatory impact assessment has been prepared in relation to this Order and a copy can be obtained from the Financial Stability and Regulatory Policy Team, H M Treasury, 1 Horse Guards Road, London SW1A 2HQ.

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.