

**EXPLANATORY MEMORANDUM TO THE**  
**FINANCIAL SERVICES AND MARKETS ACT 2000 (PROMOTION OF**  
**COLLECTIVE INVESTMENT SCHEMES) (EXEMPTIONS) (AMENDMENT)**  
**ORDER 2005**

**2005 No. 1532**

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order amends the Financial Services and Markets Act (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (“**the principal Order**”). The principal Order sets out a number of exemptions from the restriction on promotions of collective investment schemes in section 238 (1) of the Financial Services and Markets Act 2000 (“**FSMA**”). This Order amends the exemptions in the principal Order relating to promotions to self-certified sophisticated investors and to associations of high-net worth or sophisticated investors.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative background**

4.1 Section 238(1) of FSMA prohibits authorised persons from communicating an invitation or inducement to participate in a collective investment scheme. The principal Order (as amended) sets out a number of exemptions from this prohibition. This Order amends two exemptions in the principal Order. It enables, in the case of self-certified sophisticated investors (article 23A of the principal Order), the required warning to be given subsequent to the promotion where it is not practicable to give the warning at the time of the initial communication. This will be consistent with the exemption for certified high net worth individuals (article 21 of the principal Order). It also corrects a minor drafting error in relation to the content of the warning.

4.2 In addition, the Order amends the exemption relating to promotions to associations of high-net worth or sophisticated investors (article 24 of the principal Order) so that it also applies to promotions made to individual members of such associations.

**5. Extent**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 Not applicable.

## **7. Policy background**

7.1 The Two-Year Review of FSMA was carried out in light of the March 2000 Cruickshank Report on Competition in UK Banking. The Government also took this opportunity to review certain components of the FSMA framework more generally, including the scope of FSMA.

7.2 The policy objectives of FSMA are to create an efficient, effective and transparent framework for financial services regulation in the UK which promotes market confidence and protects consumers. The Order fulfils these objectives by facilitating the making of promotions to high-net worth or sophisticated investors, including to the class of investors commonly known as ‘business angels’.

7.3 Currently, financial promotions to individuals or associations of high-net worth or sophisticated investors can only be made subject to securing approval from an FSA-authorized person. A number of such investment opportunities might not be being promoted, or might not be being promoted as efficiently as otherwise might be the case, or the returns to such investments might be lower as a result of the increased costs of promotion. This may have adverse implications for this investment, which provides a vital source of early-stage finance for many innovative and growth-orientated firms which often do not have the track record, or the cash-flow, to obtain substantial bank or other debt-financing and find themselves too small for traditional venture-capital financing.

7.4 The original proposal behind this Order was publicly consulted on in February 2004 and was supported by consultation respondents.

7.5 The changes made by the Order are not of major political or legal importance.

## **8. Impact**

8.1 A Regulatory Impact Assessment may be found at

[http://www.hm-treasury.gov.uk./media/854/B3/RIA\\_2YRFBBack.pdf](http://www.hm-treasury.gov.uk./media/854/B3/RIA_2YRFBBack.pdf)

## **9. Contact**

9.1 Marcello Casale at HM Treasury (telephone: 020 7270 5173 or email: [marcello.casale@hm-treasury.x.gsi.gov.uk](mailto:marcello.casale@hm-treasury.x.gsi.gov.uk)) can answer any queries regarding this instrument.

**HM TREASURY**

**JUNE 2005**