

SCHEDULE 2

AMENDMENTS TO THE CIS EXEMPTIONS ORDER

3. After that article, insert—

“Self-certified sophisticated investors

23A.—(1) “Self-certified sophisticated investor” means an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement complying with Part II of the Schedule.

(2) The validity of a statement signed for the purposes of paragraph (1) is not affected by a defect in the form or wording of the statement, provided that the defect does not alter the statement’s meaning and that the words shown in bold type in Part II of the Schedule are so shown in the statement.

(3) If the requirements of paragraphs (4) and (7) are met, the scheme promotion restriction does not apply to any communication which—

- (a) is made to an individual whom the person making the communication believes on reasonable grounds to be a self-certified sophisticated investor;
- (b) relates only to units falling within paragraph (8); and
- (c) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment.

(4) The requirements of this paragraph are—

- (a) in the case of a non-real time communication, that the communication contains a warning in accordance with paragraphs (5) and (6); and
- (b) in the case of a real time communication, that either the communication is accompanied by the giving of a warning in accordance with paragraphs (5) and (6) or, where because of the nature of the communication this is not reasonably practicable,—
 - (i) a warning in accordance with paragraph (5) is given to the recipient orally at the beginning of the communication together with an indication that he will receive the warning in legible form and that, before receipt of that warning, he should consider carefully any decision to participate in a collective investment scheme to which the communication relates; and
 - (ii) a warning in accordance with paragraphs (5) and (6) (d) to (h) is sent to the recipient of the communication within two business days of the day on which the communication is made.

(5) The warning must be in the following terms—

“Reliance on this promotion for the purpose of buying units to which the promotion relates may expose an individual to a significant risk of losing all of the property or other assets invested.”.

But, where a warning is sent pursuant to paragraph (4)(b), for the words “this promotion” in both places where they occur there must be substituted wording which clearly identifies the promotion which is the subject of the warning.

(6) The warning must—

- (a) be given at the beginning of the communication;
- (b) precede any other written or pictorial matter;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (c) be in a font size consistent with the text forming the remainder of the communication;
 - (d) be indelible;
 - (e) be legible;
 - (f) be printed in black, bold type;
 - (g) be surrounded by a black border which does not interfere with the text of the warning; and
 - (h) not be hidden, obscured or interrupted by any other written or pictorial matter.
- (7) The requirements of this paragraph are that the communication is accompanied by an indication—
- (a) that it is exempt from the scheme promotion restriction (in section 238 of the Act) on the communication of invitations or inducements to participate in unregulated schemes on the ground that it is made to a self-certified sophisticated investor;
 - (b) of the requirements that must be met for an individual to qualify as a self-certified sophisticated investor;
 - (c) that any individual who is in any doubt about the investment to which the invitation or inducement relates should consult an authorised person specialising in advising on investments of the kind in question.
- (8) A unit falls within this paragraph if it is in an unregulated scheme which invests wholly or predominantly in the shares in or debentures of one or more an unlisted companies.
- (9) “Business day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.
- (10) “Unlisted company” has the meaning given in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.”.