STATUTORY INSTRUMENTS

1992 No. 813

FINANCIAL SERVICES

The Financial Services Act 1986 (Investment Advertisements) (Exemptions) (No. 2) Order 1992

Laid before Parliament in draft

Made - - - -	*13th March 1992*
Coming into force - -	*14th March 1992*

Whereas a draft of this Order has been approved by resolution of each House of Parliament in pursuance of section 58(5) of the Financial Services Act 1986(**1**):

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 58(3)(d) of the Financial Services Act 1986 hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services Act 1986 (Investment Advertisements) (Exemptions) (No. 2) Order 1992 and shall come into force on the day after the day on which it is made.

(2) In this Order–

"the Act" means the Financial Services Act 1986; and

"relevant EC market" means a market in a member State which is established under the rules of an investment exchange specified in Part I of Schedule 1 to this Order or which meets the criteria specified in Part II of that Schedule.

Advertisements directed at informing or influencing persons of a particular kind

2.—(1) Section 57 of the Act shall not apply to an investment advertisement to which it would, apart from this article, otherwise apply if the advertisement may reasonably be regarded as being directed at informing or influencing only persons who fall within any one or more of the following categories–

(a) a government, local authority or public authority;

(b) persons whose ordinary activities involve them, as principal or as agent, in acquiring, holding, managing or disposing of investments for the purposes of a business carried on by

(**1**) 1986 c. 60. persons whose ordinary business involves making arrangements with a view to another person acquiring or disposing of investments.

them or whom it is reasonable to expect will, as principal or agent, acquire, hold, manage or dispose of investments for the purposes of such a business;

(c) persons whose ordinary business involves the giving of advice which may lead to another person acquiring or disposing of an investment or refraining from so doing; and

(2) For the purposes of paragraph (1) of this article–

(a) the expression "government, local authority or public authority" has the meaning given in Note (1) to paragraph 3 of Schedule 1 to the Act; and

(b) an advertisement may be regarded as directed at informing or influencing a person of a kind specified in paragraph (1) if it is addressed to some other person in his capacity as an employee of that person, and, for these purposes, employment includes employment otherwise than under a contract of service.

3.—(1) For the purposes of article 2 of this Order, each of the following is an indication that an advertisement is directed at informing or influencing persons of a kind specified in paragraph (1) of that article–

(a) the advertisement expressly states that it is directed at persons of a kind specified in article 2(1) of this Order and that it would be imprudent for persons of any other kind to respond to it;

(b) the advertisement expressly states that any investment or service to which it relates is available only to persons having professional experience in matters relating to investment;

(c) the manner in which the advertisement is disseminated is such that it is unlikely to come to the attention of persons who are not professionally experienced in matters relating to investment; and

(d) any invitation or information contained in the advertisement is unlikely to appeal to persons who do not have professional experience in matters relating to investment.

(2) None of the indications given in paragraph (1) above is to be taken as showing conclusively that an advertisement is directed as there mentioned and, equally, the fact that an advertisement contains none of those indications is not to be taken to indicate that it is not so directed.

4.—(1) For the purposes of article 2 of this Order, each of the following is an indication that an advertisement is directed at informing or influencing persons of a kind not specified in paragraph (1) of that article–

(a) the advertisement concerns an investment which is likely to be of interest mainly to persons acting in their personal capacity;

(b) the minimum amount which may be expended in order to enter into any transaction to which the advertisement relates is sufficiently small that it is unlikely to deter persons who do not have professional experience in matters relating to investment from responding to the advertisement; and

(c) the advertisement is a direct offer advertisement within the meaning given to that expression for the purposes of the core rules for the conduct of investment business(**2**).

(2) None of the indications given in paragraph (1) above is to be taken as showing conclusively that an advertisement is directed as there mentioned and, equally, the fact that an advertisement contains none of those indications is not to be taken to indicate that it is not so directed.

(**2**) The core rules for the conduct of investment business were made by the Securities and Investments Board, and published in January 1991. Advertisements by certain markets 6. Section 57 of the Act shall not apply to an investment advertisement which is issued or caused to be issued by a market which is a relevant EC market or is established under the rules of an investment exchange specified in Schedule 2 or 3 to this Order if the only reason why section 57 would otherwise apply to the advertisement is that it contains information which identifies a particular investment falling within paragraph 7, 8 or 9 of Schedule 1 to the Act as one which may be traded or dealt in on the market.

Advertisements required or permitted to be published by exchange or market rules

5. Section 57 of the Act shall not apply to any advertisement relating to any investment falling within any of paragraphs 1 to 5 of Schedule 1 to the Act which is permitted to be traded or dealt in on a relevant EC market or a market established under the rules of an investment exchange specified in Schedule 2 to this Order if the advertisement consists of or of any part of a document which is required or permitted to be published by the rules of the relevant market.

John Redwood
Minister of State,
13th March 1992 Department of Trade and Industry

SCHEDULE 1 Article 1

relevant ec markets

part i

exchanges operating relevant ec markets

Asociacion de Intermediarios de Activos Financieros.

Amsterdam Financial Futures Market.

Amsterdam Stock Exchange.

Antwerp Stock Exchange.

Athens Stock Exchange.

Barcelona Stock Exchange.

Berlin Stock Exchange.

Bilbao Stock Exchange.

Bologna Stock Exchange.

Bordeaux Stock Exchange.

Bremen Stock Exchange.

Brussels Stock Exchange.

Copenhagen Stock Exchange.

Deutsche Terminboerse.

Dusseldorf Stock Exchange.

European Options Exchange.

Florence Stock Exchange.

Frankfurt Stock Exchange.

Genoa Stock Exchange.

Hamburg Stock Exchange.

Hanover Stock Exchange.

The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.

Irish Futures and Options Exchange.

Lille Stock Exchange.

Lisbon Stock Exchange.

Luxembourg Stock Exchange.

Lyon Stock Exchange.

Madrid Stock Exchange.

Marseilles Stock Exchange.

Marche a Terme d'Instruments Financiers.

Mercado de Futures Financieros.

Milan Stock Exchange.

Marche des Options Negociables de Paris.

Munich Stock Exchange.

Nancy Stock Exchange.

Nantes Stock Exchange.

Naples Stock Exchange.

OM Iberica.

Oporto Stock Exchange.

Palermo Stock Exchange.

Paris Stock Exchange.

Rome Stock Exchange.

Stuttgart Stock Exchange.

Trieste Stock Exchange.

Turin Stock Exchange.

Valencia Stock Exchange.

Venice Stock Exchange.

part ii

criteria relevant to definition of "relevant ec market"

The criteria relevant for the purposes of the definition of "relevant EC market" in article 1 of this Order are the following–

(a) the head office of the market must be situated in a member State; and

(b) the market must be subject to requirements in the member State in which its head office is situated as to–

(i) the manner in which it operates;

(ii) the means by which access may be had to the facilities it provides;

(iii) the conditions to be satisfied before an investment may be traded or dealt in by means of its facilities; and

(iv) the reporting and publication of transactions effected by means of its facilities.

SCHEDULE 2

Articles 5 and 6

Alberta Stock Exchange.

American Stock Exchange.

Australian Stock Exchange Limited.

Basler Effektenbourse.

Boston Stock Exchange.

Bourse de Geneve.

Chicago Board Options Exchange.

Cincinnati Stock Exchange.

Effektenborsenverein Zurich.

Fukuoka Stock Exchange.
Helsinki Stock Exchange.
Hiroshima Stock Exchange.
Johannesburg Stock Exchange.
Korean Stock Exchange.
Kuala Lumpur Stock Exchange.
Kyoto Stock Exchange.
Midwest Stock Exchange.
Montreal Stock Exchange.
Nagoya Stock Exchange.
NASDAQ.
New York Stock Exchange.
New Zealand Stock Exchange.
Niigita Stock Exchange.
Osaka Stock Exchange.
Oslo Stock Exchange.
Pacific Stock Exchange.
Philadelphia Stock Exchange.
Sapporo Stock Exchange.
Securities Exchange of Thailand.
Singapore Stock Exchange.
Stock Exchange of Hong Kong Limited.
Stockholm Stock Exchange.
Tokyo Stock Exchange.
Toronto Stock Exchange.
Vancouver Stock Exchange.
Wiener Bourse.
Winnipeg Stock Exchange.

SCHEDULE 3

Article 6

non-ec exchanges relevant for the purposes of article 6

American Commodity Exchange.
Amex Commodity Corporation.
Australian Financial Futures Market.
Chicago Board of Trade.
Chicago Mercantile Exchange.
Chicago Rice and Cotton Exchange.
Coffee, Sugar and Cocoa Exchange, Inc.

Commodity Exchange, Inc.

International Securities Market Association.

Kansas City Board of Trade.

Mid-America Commodity Exchange.

Minneapolis Grain Exchange.

New York Cotton Exchange (including the Citrus Associates of the New York Stock Exchange).

New York Futures Exchange.

New York Mercantile Exchange.

New Zealand Futures Exchange.

Pacific Commodity Exchange.

Pacific Futures Exchange.

Philadelphia Board of Trade.

Singapore International Monetary Exchange.

Stockholm Options Market.

Sydney Futures Exchange.

Toronto Futures Exchange.

Twin Cities Board of Trade.

EXPLANATORY NOTE

(This note is not part of the Order)

The order provides various exemptions from the restrictions on advertising imposed by section 57 of the Financial Services Act 1986. Article 2 of the order concerns advertisements directed at informing or influencing persons of the kind described in the article. Articles 3 and 4 give certain indications as to whether an advertisement may be regarded as being directed at informing or influencing persons of the relevant kind. Article 5 of the order concerns advertisements relating to an investment falling within any of paragraphs 1 to 5 of Schedule 1 to the Financial Services Act 1986 which is traded or dealt in on a market of a kind referred to in the article. Article 6 of the order concerns advertisements issued or caused to be issued by a market of a kind referred to in the article which identify a particular investment falling within paragraph 7, 8 or 9 of Schedule 1 to the Financial Services Act as one which can be traded or dealt in on the market.