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*Draft Order laid before Parliament under section 429(3) and (9) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2023 No. [000]**

# FINANCIAL SERVICES AND MARKETS

## The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023

*Made* - - - - *\*\*\**  
*Coming into force* - - *31st January 2024*

The Treasury make the following Order in exercise of the powers conferred by sections 21(5) and (6), 55NB(1), 238(6) and (7), 426(1) and 428(3) of the Financial Services and Markets Act 2000(1). A draft of this Order has been approved by a resolution of each House of Parliament in accordance with section 429(3) and (9) of the Financial Services and Markets Act 2000.

### **Citation, commencement and extent**

- 1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023.
- (2) This Order comes into force on 31st January 2024.
- (3) This Order extends to England and Wales, Scotland and Northern Ireland.

### **Amendment of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005**

2. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(2) is amended in accordance with articles 3 to 9.
3. In article 2(1) (interpretation), after the definition of “financial promotion restriction” insert—  
““Full name”, in relation to a person, means the name under which that person carries on business and, if different, that person’s corporate name.”.

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(1) 2000 c. 8.

(2) S.I. 2005/1529; relevant amending instruments are S.I. 2010/86, 2013/472 and 2023/612.

4. In article 22(3) (deposits: non-real time communications), omit the definition of “full name”.
5. Omit article 24(3) (relevant insurance activity: non-real time communications).
- 6.—(1) Article 48 (certified high net worth individuals) is amended as follows.
  - (2) In the heading, omit “Certified”.
  - (3) In paragraph (1)(b), paragraph (7)(a) and paragraph (7)(b), omit “certified”.
  - (4) For paragraph (2) substitute—
    - “(2) “High net worth individual” means an individual—
      - (a) who has completed and signed, within the period of twelve months ending with the day on which the communication is made, a statement complying with Part 1 of Schedule 5; and
      - (b) whose completion of that statement indicates that they satisfy the conditions set out in the statement to be classified as a high net worth individual.”.
  - (5) In paragraph (3), for “signed” substitute “completed and signed”.
  - (6) In paragraph (4), in the words before sub-paragraph (a) and in sub-paragraph (b)—
    - (a) after “a warning”, insert “and information”; and
    - (b) after “in accordance with paragraphs (5)”, insert “, (5A)”.
  - (7) After paragraph (5), insert—
    - “(5A) The warning must be accompanied by the following information—
      - (a) the full name of the person making the communication, or on whose behalf the communication is made;
      - (b) a postal or electronic address to which a person should send requests for further information or any other enquiry regarding the matters to which the communication relates; and
      - (c) if applicable—
        - (i) the country or territory in which the person making the communication, or on whose behalf the communication is made, is incorporated;
        - (ii) where different from the information provided under (b), the address of the registered office of the person making the communication, or on whose behalf the communication is made; and
        - (iii) the company number, or unique identification equivalent to a registered number required by the law of the state in which it is incorporated, of the person making the communication, or on whose behalf the communication is made.”.
  - (8) In paragraph (6), after “The warning”, insert “and information”.
- 7.—(1) Article 50A (self-certified sophisticated investors) is amended as follows.
  - (2) For paragraph (1) substitute—
    - “(1) “Self-certified sophisticated investor” means an individual—
      - (a) who has completed and signed, within the period of twelve months ending with the day on which the communication is made, a statement complying with Part 2 of Schedule 5; and
      - (b) whose completion of that statement indicates that they satisfy the conditions set out in the statement to be classified as a self-certified sophisticated investor.”.

- (3) In paragraph (2), for “signed” substitute “completed and signed”.
- (4) In paragraph (4), in the words before sub-paragraph (a) and in sub-paragraph (b)—
- (a) after “a warning”, insert “and information”;
  - (b) after “in accordance with paragraphs (5)” insert “, (5A)”.
- (5) After paragraph (5), insert—
- “(5A) In addition to the warning in paragraph (5), the requirements of this paragraph are that the communication is accompanied by the following information—
- (a) the full name of the person making the communication, or on whose behalf the communication is made;
  - (b) a postal or electronic address to which a person should send requests for further information or any other enquiry regarding the matters to which the communication relates; and
  - (c) if applicable—
    - (i) the country or territory in which the person making the communication, or on whose behalf the communication is made, is incorporated;
    - (ii) where different from the information provided under (b), the address of the registered office of the person making the communication, or on whose behalf the communication is made; and
    - (iii) the company number, or unique identification equivalent to a registered number required by the law of the state in which it is incorporated, of the person making the communication, or on whose behalf the communication is made.”.
- (6) In paragraph (6), after “The warning”, insert “and information”.

**8.** In article 51 (associations of high net worth or sophisticated investors), in paragraph (a)(i), omit “certified or self-certified”.

**9.—(1)** Schedule 5 (statements for certified high net worth individuals and self-certified sophisticated investors) is amended as follows.

(2) In the heading for Schedule 5, for “certified high net worth individuals” substitute “high net worth individuals”.

(3) In the heading for Part 1 of Schedule 5, omit “certified”.

(4) For Part 1 of Schedule 5, substitute the introductory words and statement appended at Schedule 1.

(5) For Part 2 of Schedule 5, substitute the introductory words and statement appended at Schedule 2.

### **Amendment of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001**

**10.** The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001(3) is amended in accordance with articles 11 to 15.

**11.** In article 2(1) after the definition of “close relative” insert—

““Full name”, in relation to a person, means the name under which that person carries on business and, if different, that person’s corporate name.”.

- 12.**—(1) Article 21 (certified high net worth individuals) is amended as follows.
- (2) In the heading, omit “Certified”.
- (3) In paragraph (1)(b) and paragraph (7)(a) and (b), omit “certified”.
- (4) For paragraph (2) substitute—
- “(2) “High net worth individual” means an individual—
- (a) who has completed and signed, within the period of twelve months ending with the day on which the communication is made, a statement complying with Part 1 of the Schedule; and
- (b) whose completion of that statement indicates that they satisfy the conditions set out in the statement to be classified as a high net worth individual.”.
- (5) In paragraph (3), for “signed” substitute “completed and signed”.
- (6) In paragraph (4), in the words before sub-paragraph (a) and in sub-paragraph (b)—
- (a) after “a warning”, insert “and information”; and
- (b) after “in accordance with paragraphs (5)” insert “, (5A)”.
- (7) After paragraph (5), insert—
- “(5A) The warning must be accompanied by the following information—
- (a) the full name of the person making the communication, or on whose behalf the communication is made;
- (b) a postal or electronic address to which a person should send requests for further information or any other enquiry regarding the matters to which the communication relates; and
- (c) if applicable—
- (i) the country or territory in which the person making the communication, or on whose behalf the communication is made, is incorporated;
- (ii) where different from the information provided under (b), the address of the registered office of the person making the communication, or on whose behalf the communication is made; and
- (iii) the company number, or unique identification equivalent to a registered number required by the law of the state in which it is incorporated, of the person making the communication, or on whose behalf the communication is made.”.
- (8) In paragraph (6), after “The warning”, insert “and information”.
- 13.**—(1) Article 23A (self-certified sophisticated investors) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) “Self-certified sophisticated investor” means an individual—
- (a) who has completed and signed, within the period of twelve months ending with the day on which the communication is made, a statement complying with Part 2 of the Schedule; and
- (b) whose completion of that statement indicates that they satisfy the conditions set out in the statement to be classified as a self-certified sophisticated investor.”.
- (3) In paragraph (2), for “signed” substitute “completed and signed”.
- (4) In paragraph (4)(b), in the words before paragraph (i) and in paragraph (ii)—
- (a) after “a warning”, insert “and information”; and

(b) after “in accordance with paragraphs (5)” insert “, (5A)”.

(5) After paragraph (5), insert—

“(5A) The warning must be accompanied by the following information—

- (a) the full name of the person making the communication, or on whose behalf the communication is made;
- (b) a postal or electronic address to which a person should send requests for further information or any other enquiry regarding the matters to which the communication relates; and
- (c) if applicable—
  - (i) the country or territory in which the person making the communication, or on whose behalf the communication is made, is incorporated;
  - (ii) where different from the information provided under (b), the address of the registered office of the person making the communication, or on whose behalf the communication is made; and
  - (iii) the company number, or unique identification equivalent to a registered number required by the law of the state in which it is incorporated, of the person making the communication, or on whose behalf the communication is made.”

(6) In paragraph (6), after “The warning”, insert “and information”.

**14.** In article 24 (Associations of high net worth or sophisticated investors), in paragraph (a)(i), omit “certified”.

**15.—(1)** In the heading for the Schedule, omit “Certified”.

(2) In the heading for Part 1 of the Schedule, omit “certified”.

(3) For Part 1 of the Schedule, substitute the introductory words and statement appended at Schedule 3.

(4) For Part 2 of the Schedule, substitute the introductory words and statement appended at Schedule 4.

### **Miscellaneous amendments relating to ‘high net worth individuals’**

**16.—(1)** The Insolvency Act 1986<sup>(4)</sup> is amended in accordance with this article.

(2) In Schedule ZA1, in paragraph 14(5)(b), omit “certified”.

(3) In Schedule 2A—

- (a) in paragraph 3(1)(a), for “2001” substitute “2005 (S.I. 2005/1529)”;  
(b) in paragraph 3(1)(b), omit “certified”.

**17.—(1)** The Insolvency (Northern Ireland) Order 1989<sup>(5)</sup> is amended in accordance with this article.

(2) In Schedule ZA1, in paragraph 14(5)(b), omit “certified”.

(3) In Schedule 1A, in paragraph 3(1)—

- (a) in paragraph (a), for “2001” substitute “2005”;
- (b) in paragraph (b), omit “certified”.

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<sup>(4)</sup> 1986 c. 45, amended by the Enterprise Act 2002 (c. 40) and the Corporate Insolvency and Governance Act 2020 (c. 12).

<sup>(5)</sup> S.I. 1989/2405 (N.I. 19).

**18.**—(1) Article 72F(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(6)</sup> (interpretation) is amended in accordance with this article.

(2) In each place “(Financial Promotion) Order 2001” occurs substitute “(Financial Promotion) Order 2005”.

(3) In each place “Financial Services Authority” occurs substitute “Financial Conduct Authority”.

(4) In the definition of “high net worth individual”, omit “certified” in each place it occurs.

**Amendment of the Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023**

**19.**—(1) —Regulation 3 (exemptions from the general requirement relating to financial promotion approval) of the Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023<sup>(7)</sup> is amended in accordance with this article.

(2) In the words before paragraph (a), omit “, for communication by an unauthorised person (“U”),”.

(3) In paragraph (b)—

(i) for “U”, in the first place it occurs, substitute “an unauthorised person”;

(ii) for “U”, in the second place it occurs, substitute “that unauthorised person”.

(4) In paragraph (c)—

(i) for “U”, in the first place it occurs, substitute “an unauthorised person”;

(ii) for “U”, in the second place it occurs, substitute “that unauthorised person”;

(iii) for “U’s” substitute “that unauthorised person’s”.

Date

*Name*  
*Name*  
Two of the Lords Commissioners of His  
Majesty’s Treasury

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<sup>(6)</sup> S.I. 2001/544, amended by S.I. 2005/1518; there are other amending instruments, but none is relevant.

<sup>(7)</sup> S.I. 2023/966.

## SCHEDULES

### SCHEDULE 1

Article 9(4)

#### High Net Worth Individual Investor Statement

“1. The statement to be completed and signed for the purposes of article 48(2) (definition of high net worth individual) must be in the following form and contain the following information—

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023 No. 1411

HIGH NET WORTH INDIVIDUAL INVESTOR STATEMENT
<p>If you meet <b>condition A or B below</b>, you may choose to be classified as a high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.</p> <p>In the last financial year, did you have:</p> <p>A) An annual <b>income of £170,000 or more</b>? Income does <u>NOT</u> include any one-off pension withdrawals.</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>If yes, please specify your income (as defined above) to the nearest £10,000 in the last financial year [£_____]</p> <p>AND/OR</p> <p>B) <b>Net assets of £430,000 or more</b>? Net assets do <u>NOT</u> include: your home (primary residence), any loan secured on it or any equity released from it; your pension (or any pension withdrawals) or any rights under insurance contracts. Net assets are total assets minus any debts you owe.</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>If yes, please specify your net assets (as defined above) to the nearest £100,000 in the last financial year [£_____]</p> <p>OR</p> <p>C) None of these apply to me. <input type="checkbox"/> Yes</p>
<p>I declare that I have answered yes to A and/or B, and wish to be treated as a high net worth individual.</p> <p>I understand that this means:</p> <p>a) I can receive financial promotions where the contents may not comply with rules made by the Financial Conduct Authority (FCA);</p> <p>b) I can expect <b>no protection</b> from the FCA, the Financial Ombudsman Service or the Financial Services Compensation Scheme.</p> <p>I am aware that it is open to me to seek advice from someone who specialises in advising on investments.</p> <p><b>I accept that I could lose all of the money I invest.</b></p> <p>Signature _____ Date _____</p>

SCHEDULE 2

Article 9(5)

Self-Certified Sophisticated Investor Statement

“2. The statement to be completed and signed for the purposes of article 50A(1) (definition of self-certified sophisticated investor) must be in the following form and contain the following information—



SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT	
<p>If you meet <b>condition A, B or C below</b>, you may choose to be classified as a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.</p> <p>Have you:</p> <p>A) Worked in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises, in the last two years?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the business/organisation? [_____]</p> <p>B) Been the director of a company with an annual turnover of at least £1.6 million, in the last two years?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the company, and its Companies House number (or international equivalent)? [_____]</p> <p>C) Been a member of a network or syndicate of business angels for more than six months, and are still a member?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is the name of the network or syndicate? [_____]</p> <p>OR</p> <p>D) None of these apply to me.</p> <p><input type="checkbox"/> Yes</p>	
<p>I declare that I have answered yes to A and/or B and/or C, and wish to be treated as a self-certified sophisticated investor.</p> <p>I understand that this means:</p> <p>a) I can receive financial promotions where the contents may not comply with rules made by the Financial Conduct Authority (FCA);</p> <p>b) I can expect <b>no protection</b> from the FCA, the Financial Ombudsman Service, or the Financial Services Compensation Scheme.</p> <p>I am aware that it is open to me to seek advice from someone who specialises in advising on investments.</p> <p><b>I accept that I could lose all of the money I invest.</b></p> <p>Signature _____ Date _____</p>	

SCHEDULE 3

Article 15(3)

High Net Worth Individual Investor Statement

“1. The statement to be completed and signed for the purposes of article 21(2) (definition of high net worth individual) must be in the following form and contain the following information—

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023 No. 1411

<b>HIGH NET WORTH INDIVIDUAL INVESTOR STATEMENT</b>
<p>If you meet <b>condition A or B below</b>, you may choose to be classified as a high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.</p> <p>In the last financial year, did you have:</p> <p>A) An annual <b>income of £170,000 or more</b>? Income does <u>NOT</u> include any one-off pension withdrawals.</p> <p style="padding-left: 40px;"> <input type="checkbox"/> No  <input type="checkbox"/> Yes                 </p> <p style="padding-left: 40px;">If yes, please specify your income (as defined above) to the nearest £10,000 in the last financial year [£_____]</p> <p>AND/OR</p> <p>B) <b>Net assets of £430,000 or more</b>? Net assets do <u>NOT</u> include: your home (primary residence), any loan secured on it or any equity released from it; your pension (or any pension withdrawals) or any rights under insurance contracts. Net assets are total assets minus any debts you owe.</p> <p style="padding-left: 40px;"> <input type="checkbox"/> No  <input type="checkbox"/> Yes                 </p> <p style="padding-left: 40px;">If yes, please specify your net assets (as defined above) to the nearest £100,000 in the last financial year [£_____]</p> <p>OR</p> <p>C) None of these apply to me.</p> <p style="padding-left: 40px;"><input type="checkbox"/> Yes</p>
<p>I declare that I have answered yes to A and/or B, and wish to be treated as a high net worth individual.</p> <p>I understand that this means:</p> <p style="padding-left: 40px;">a) I can receive financial promotions where the contents may not comply with rules made by the Financial Conduct Authority (FCA);</p> <p style="padding-left: 40px;">b) I can expect <b>no protection</b> from the FCA, the Financial Ombudsman Service, or the Financial Services Compensation Scheme.</p> <p>I am aware that it is open to me to seek advice from someone who specialises in advising on investments.</p> <p><b>I accept that I could lose all of the money I invest.</b></p> <p>Signature _____ Date _____</p>

SCHEDULE 4

Article 15(4)

Self-Certified Sophisticated Investor Statement

“2. The statement to be completed and signed for the purposes of article 23A(1) (definition of self-certified sophisticated investor) must be in the following form and contain the following information—

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023 No. 1411

SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT	
<p>If you meet <b>condition A, B or C below</b>, you may choose to be classified as a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.</p> <p>Have you:</p> <p>A) Worked in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises, in the last two years?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the business/organisation? [ _____ ]</p> <p>B) Been the director of a company with an annual turnover of at least £1.6 million, in the last two years?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the company, and its Companies House number (or international equivalent)? [ _____ ]</p> <p>C) Been a member of a network or syndicate of business angels for more than six months, and are still a member?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is the name of the network or syndicate? [ _____ ]</p> <p>OR</p> <p>D) None of these apply to me.</p> <p><input type="checkbox"/> Yes</p>	
<p>I declare that I have answered yes to A and/or B and/or C, and wish to be treated as a self-certified sophisticated investor.</p> <p>I understand that this means:</p> <p>a) I can receive financial promotions where the contents may not comply with rules made by the Financial Conduct Authority (FCA);</p> <p>b) I can expect <b>no protection</b> from the FCA, the Financial Ombudsman Service, or the Financial Services Compensation Scheme.</p> <p>I am aware that it is open to me to seek advice from someone who specialises in advising on investments.</p> <p><b>I accept that I could lose all of the money I invest.</b></p> <p>Signature _____ Date _____</p>	

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) (“the Financial Promotion Order”), the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (S.I. 2001/1060) (“the CIS Order”) and the Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023 (S.I. 2023/966) (“the Financial Promotion Gateway Exemptions Regulations”).

Article 6 makes minor amendments to article 48 of the Financial Promotion Order to remove references to a high net worth individual being “certified” and adds an additional requirement that the promoter provide contact information to the investor.

Article 7 makes minor amendments to article 50A of the Financial Promotion Order and adds an additional requirement that the promoter provide contact information to the investor.

Article 9 substitutes the investor statements contained in Schedules 1 and 2 for completion and signature. The investor statement at Schedule 1 contains increased income and asset thresholds for an individual to be considered a “high net worth individual”. The investor statement in Schedule 2 contains an increased annual company turnover threshold for the directors of companies to be considered a “self-certified sophisticated investor”. The investor statement in Schedule 2 no longer provides an exemption for individuals who have made an investment in an unlisted company in the previous two years. The format of the investor statements is also amended.

Article 12 makes minor amendments to article 21 of the CIS Order to remove references to a high net worth individual being “certified” and adds an additional requirement that the promoter provide contact information to the investor.

Article 13 makes minor amendments to article 23A of the CIS Order and adds an additional requirement that the promoter provide contact information to the investor.

Article 15 substitutes the investor statements contained in Schedules 3 and 4 for completion and signature. The investor statement at Schedule 3 contains increased income and asset thresholds for an individual to be considered a “high net worth individual”. The investor statement in Schedule 4 contains an increased annual company turnover threshold for the directors of companies to be considered a “self-certified sophisticated investor”. The investor statement in Schedule 4 no longer provides an exemption for individuals who have made an investment in an unlisted company in the previous two years. The format of the investor statements is also amended.

Articles 16 to 18 make consequential amendments to other legislation to reflect the changes made by the preceding provisions of this Order.

Article 19 of this Order corrects a defect in the Financial Promotion Gateway Exemptions Regulations. The effect of this correction is that the exemptions in regulation 3(b) and 3(c) of those regulations are expanded so that, as with regulation 3(a) of those regulations, following the approval of the content of a communication by an authorised person in the circumstances provided for in regulation 3(b) and (c), any unauthorised person may communicate the financial promotion.

A de minimis impact assessment of the effect of this instrument is available from HM Treasury, 1 Horse Guard’s Road, London, SW1A 2HQ and is published alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:  
*The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023 No. 1411*