
STATUTORY INSTRUMENTS

1997 No. 963

FINANCIAL SERVICES

The Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1997

<i>Made</i>	- - - -	<i>19th March 1997</i>
<i>Laid before Parliament</i>		<i>19th March 1997</i>
<i>Coming into force</i>	- -	<i>1st June 1997</i>

The Treasury, in exercise of the powers conferred on them by section 58(3)(a) to (c) and (4) and section 205A(1) of the Financial Services Act 1986(2) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and Commencement

1. This Order may be cited as the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1997 and shall come into force on 1st June 1997.

Interpretation

2. In this Order—

“the Act” means the Financial Services Act 1986;

“the 1996 Order” means the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1996(3).

Overseas Persons

3. Article 10 of the 1996 Order shall be deleted and the following substituted:—

“Overseas persons

10.—(1) In this article “overseas person” means a person who does not fall within section 1(3)(a) of the Act.

(1) Section 205A was inserted by section 206 of the Companies Act 1989 (1989 c. 40).
(2) 1986 c. 60. Certain functions of the Secretary of State under the Financial Services Act 1986, including the functions under section 58(3) of that Act have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order (S.I. 1992/1315).
(3) S.I. 1996/1586.

(2) Subject to the provisions of paragraph (3) below, section 57 of the Act shall not apply to an investment advertisement which an overseas person issues or causes to be issued to another person if that other person is either—

- (a) a person with or for whom the overseas person has, in the course of carrying on investment business, effected or arranged for the effecting of a transaction within the period of twelve months ending with the date on which the investment advertisement was issued; or
- (b) a person to whom the overseas person has, in the course of carrying on such business, provided custody services falling within paragraph 13A of Schedule 1 to the Act⁽⁴⁾ within that period; or
- (c) a person to whom the overseas person has, in the course of carrying on such a business, given advice falling within paragraph 15 of Schedule 1 to the Act within that period; or
- (d) a person on whose behalf the overseas person has, in the course of carrying on such business, sent or caused to be sent dematerialised instructions falling within paragraph 16A of Schedule 1 to the Act⁽⁵⁾ within that period.

(3) The provisions of paragraph (2) shall not apply unless—

- (a) in a case within paragraph (2)(a) above, the transaction was effected or arranged at a time when the other person was neither resident nor had a place of business in the United Kingdom; or
- (b) in a case within paragraph (2)(b) above, the custody services were provided outside the United Kingdom at a time when the other person was neither resident nor had a place of business in the United Kingdom; or
- (c) in a case within paragraph (2)(c) above, the advice was given outside the United Kingdom at a time when the other person was neither resident nor had a place of business in the United Kingdom; or
- (d) in a case within paragraph (2)(d) above, the dematerialised instruction was sent, or caused to be sent when the other person was neither resident nor had a place of business in the United Kingdom; or
- (e) in a case within paragraph (2)(a), (b), (c) or (d), if the transaction was effected or arranged, or the custody services were provided, or the advice was given or the dematerialised instruction was sent or caused to be sent otherwise than in the circumstances described in whichever is relevant of sub-paragraph (a), (b), (c) or (d) of this paragraph, the overseas person had, on a previous occasion and in the course of carrying on investment business—
 - (i) effected or arranged for the effecting of a transaction with or for the other person in the circumstances described in sub-paragraph (a) of this paragraph; or
 - (ii) provided to the other person custody services falling within paragraph 13A of Schedule 1 to the Act in the circumstances described in sub-paragraph (b) of this paragraph; or
 - (iii) given the other person advice falling within paragraph 15 of Schedule 1 to the Act in the circumstances described in sub-paragraph (c) of this paragraph; or

(4) Paragraph 13A of Schedule 1 was inserted by The Financial Services Act 1986 (Extension of Scope of Act) Order 1996 (S.I. 1996/2958).

(5) Paragraph 16A of Schedule 1 was inserted by The Financial Services Act 1986 (Uncertificated Securities) (Extension of Scope of Act) Order 1996 (S.I. 1996/1322).

- (iv) sent or caused to be sent, on behalf of the other person a dematerialised instruction falling within paragraph 16A of Schedule 1 to the Act in the circumstances described in sub-paragraph (d) of this paragraph.”

Advertisements issued to persons sufficiently expert to understand the risks involved

- 4. Article 11 of the 1996 Order shall be amended as follows:
 - (a) in paragraph (1) after the words “not an authorised person” there shall be inserted—
“nor a European investment firm carrying on home-regulated investment business in the United Kingdom”
 - (b) after paragraph (3)(a) there shall be inserted—
“(aa) a European investment firm carrying on home-regulated business in the United Kingdom; or”
 - (c) at the end of paragraph (4) there shall be inserted—
“and in paragraphs (1) and (3)(aa) above, “European investment firm” and “home-regulated investment business” have the meanings given by regulation 2 of the Investment Services Regulations 1995”(6).

Exchanges operating relevant EEA markets

- 5. In Part I of Schedule 1 to the 1996 Order, “Amsterdam Stock Exchange” and “European Options Exchange” shall be deleted and “Amsterdam Exchanges AEX” shall be inserted below “Asociacion de Intermediarios de Activos Financieros”.

19th March 1997

Bowen Wells
Roger Knapman
Two of the Lords Commissioners of Her
Majesty’s Treasury

(6) S.I. 1995/3275.

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends certain provisions of the Financial Services (Investment Advertisements) (Exemptions) Order 1996 (S.I.1996/1586) (“the 1996 Order”) which sets out various exemptions from the restrictions on advertising imposed by section 57 of the Financial Services Act 1986 (“the FSA”).

Article 3 of this Order revokes article 10 of the 1996 Order and reproduces its provisions with amendments relating to the provision of custody services. According to article 10 of the 1996 Order, an overseas person who provides specified investment services to another person who is not resident and has no place of business in the United Kingdom may issue an investment advertisement to that other person if that other person subsequently resides in or establishes a place of business in the United Kingdom. The new article 10 substituted by this Order provides that custody services falling within paragraph 13A of Schedule 1 to the FSA are among the specified investment services for this purpose. Paragraph 13A was inserted in Schedule 1 by The Financial Services Act 1986 (Extension of Scope of Act) Order 1996 (S.I. 1996/2958).

Article 4 of this Order amends article 11 of the 1996 Order exempting investment advertisements issued to persons sufficiently expert to understand the risks involved. Article 4 provides that European investment firms carrying on home-regulated investment business in the United Kingdom are not relevant persons for the purpose of article 11 and that they fall within the category of persons who are sufficiently expert to understand the risks involved.

Article 5 amends the list of exchanges operating relevant EEA markets in Part I of Schedule 1 to the 1996 Order to take account of the merger of the Amsterdam Stock Exchange and European Options Exchange into the Amsterdam Exchanges AEX.