
STATUTORY INSTRUMENTS

2001 No. 1335

The Financial Services and Markets Act
2000 (Financial Promotion) Order 2001

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.

(2) Except as provided by paragraph (3), this Order comes into force on the day on which section 19 of the Act comes into force.

(3) This Order comes into force—

- (a) for the purposes of paragraphs 9 and 25 of Schedule 1 (qualifying funeral plan contracts) on 1st January 2002; and
- (b) for the purposes of paragraphs 10 and 26 of Schedule 1 (qualifying credit) nine months after section 19 of the Act comes into force.

Interpretation: general

2.—(1) In this Order, except where the context otherwise requires—

“the 1985 Act” means the Companies Act 1985(1);

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(2).

“the Act” means the Financial Services and Markets Act 2000;

“close relative” in relation to a person means—

- (a) his spouse;
- (b) his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and
- (c) the spouse of any person within sub-paragraph (b);

“controlled activity” has the meaning given by article 4 and Schedule 1;

“controlled investment” has the meaning given by article 4 and Schedule 1;

“deposit” means a sum of money which is a deposit for the purposes of article 5 of the Regulated Activities Order;

“equity share capital” has the meaning given in the 1985 Act or in the 1986 Order;

“financial promotion restriction” has the meaning given by article 5;

(1) 1985 c. 6.

(2) S.I.1986/1032 (N.I. 6).

“government” means the government of the United Kingdom, the Scottish Administration, the Executive Committee of the Northern Ireland Assembly, the National Assembly for Wales and any government of any country or territory outside the United Kingdom;

“instrument” includes any record whether or not in the form of a document;

“international organisation” means any body the members of which comprise—

- (a) states including the United Kingdom or another EEA State; or
- (b) bodies whose members comprise states including the United Kingdom or another EEA State;

“overseas communicator” has the meaning given by article 30;

“previously overseas customer” has the meaning given by article 31;

“publication” means—

- (a) a newspaper, journal, magazine or other periodical publication;
- (b) a web site;
- (c) any programme forming part of a service consisting of the broadcast or transmission of television or radio programmes;
- (d) any teletext service, that is to say a service consisting of television transmissions consisting of a succession of visual displays (with or without accompanying sound) capable of being selected and held for separate viewing or other use;

“qualifying contract of insurance” has the meaning given in the Regulated Activities Order;

“qualifying credit” has the meaning given by paragraph 10 of Schedule 1;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(3);

“relevant insurance activity” has the meaning given by article 21;

“relevant investment activities” has the meaning given by article 30;

“solicited real time communication” has the meaning given by article 8;

“units”, in a collective investment scheme, has the meaning given by Part XVII of the Act;

“unsolicited real time communication” has the meaning given by article 8.

(2) References to a person engaging in investment activity are to be construed in accordance with subsection (8) of section 21 of the Act; and for these purposes, “controlled activity” and “controlled investment” in that subsection have the meaning given in this Order.

Interpretation: unlisted companies

3.—(1) In this Order, an “unlisted company” means a body corporate the shares in which are not—

- (a) listed or quoted on an investment exchange whether in the United Kingdom or elsewhere;
- (b) shares in respect of which information is, with the agreement or approval of any officer of the company, published for the purpose of facilitating deals in the shares indicating prices at which persons have dealt or are willing to deal in them other than persons who, at the time the information is published, are existing members of a relevant class;
- (c) subject to a marketing arrangement which accords to the company the facilities referred to in section 163(2)(b) of the 1985 Act or article 173(2)(b) of the 1986 Order; or

- (d) the subject of an offer (whether in the United Kingdom or elsewhere) in relation to which a copy of the prospectus must be delivered to the relevant registrar of companies in accordance with section 64 of the 1985 Act or article 74 of the 1986 Order or Part II of the Public Offers of Securities Regulations 1995⁽⁴⁾.
- (2) For the purpose of paragraph (1)(b), a person is to be regarded as a member of a relevant class if he was, at the relevant time—
 - (a) an existing member or debenture holder of the company;
 - (b) an existing employee of the company;
 - (c) a close relative of such a member or employee; or
 - (d) a trustee (acting in his capacity as such) of a trust, the principal beneficiary of which is a person within any of sub-paragraphs (a), (b) and (c).
- (3) In this Order references to shares in and debentures of an unlisted company are references to—
 - (a) in the case of a body corporate which is a company within the meaning of the 1985 Act, shares and debentures within the meaning of that Act;
 - (b) in the case of a body corporate which is a company within the meaning of the 1986 Order, shares and debentures within the meaning of that Order;
 - (c) in the case of any other body corporate, investments falling within paragraph 14 or 15 of Schedule 1 to this Order.

⁽⁴⁾ S.I. 1995/1537; various amendments have been made by the Public Offers of Securities (Amendment) Regulations 1999 (S.I. 1999/734) and the Public Offers of Securities (Amendment No. 2) Regulations 1999 (S.I. 1999/1146).