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STATUTORY INSTRUMENTS

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**2001 No. 1335**

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

**PART VI**

**EXEMPT COMMUNICATIONS: CERTAIN CONTROLLED ACTIVITIES**

**Application of exemptions in this Part**

**27.** Except where otherwise stated, the exemptions in this Part apply to communications which relate to—

- (a) a controlled activity falling within paragraph 2 of Schedule 1 carried on in relation to a qualifying contract of insurance;
- (b) controlled activities falling within any of paragraphs 3 to 11 of Schedule 1.

**One off non-real time communications and solicited real time communications**

**28.—**(1) The financial promotion restriction does not apply to a one off communication which is either a non-real time communication or a solicited real time communication.

(2) If all the conditions set out in paragraph (3) are met in relation to a communication it is to be regarded as a one off communication. In any other case in which one or more of those conditions are met, that fact is to be taken into account in determining whether the communication is a one off communication (but a communication may still be regarded as a one off communication even if none of the conditions in paragraph (3) is met).

(3) The conditions are that—

- (a) the communication is made only to one recipient or only to one group of recipients in the expectation that they would engage in any investment activity jointly;
- (b) the identity of the product or service to which the communication relates has been determined having regard to the particular circumstances of the recipient;
- (c) the communication is not part of an organised marketing campaign.

(4) Notwithstanding article 11, the financial promotion restriction does not apply to a one off solicited real time communication relating to the controlled activity falling within paragraph 10 of Schedule 1 (or within paragraph 11 in so far as it relates to that activity) even if the communication also relates to the controlled activity falling within paragraph 1 of that Schedule.

**Communications required or authorised by enactments**

**29.—**(1) Subject to paragraph (2), the financial promotion restriction does not apply to any communication which is required or authorised by or under any enactment other than the Act.

(2) This article does not apply to a communication which relates to a controlled activity falling within paragraph 10 of Schedule 1 or within paragraph 11 in so far as it relates to that activity.

**Overseas communicators: solicited real time communications**

**30.**—(1) The financial promotion restriction does not apply to any solicited real time communication which is made by an overseas communicator from outside the United Kingdom in the course of or for the purposes of his carrying on the business of engaging in relevant investment activities outside the United Kingdom.

(2) In this article—

“overseas communicator” means a person who carries on relevant investment activities outside the United Kingdom but who does not carry on any such activity from a permanent place of business maintained by him in the United Kingdom;

“relevant investment activities” means controlled activities which fall within paragraphs 3 to 7 of Schedule 1 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule.

**Overseas communicators: non-real time communications to previously overseas customers**

**31.**—(1) The financial promotion restriction does not apply to any non-real time communication which is communicated by an overseas communicator from outside the United Kingdom to a previously overseas customer of his.

(2) In this article a “previously overseas customer” means a person with whom the overseas communicator has done business within the period of twelve months ending with the day on which the communication was received (“the earlier business”) and where—

- (a) at the time that the earlier business was done, the customer was neither resident in the United Kingdom nor had a place of business there; or
- (b) at the time the earlier business was done, the overseas communicator had on a former occasion done business with the customer, being business of the same description as the business to which the communication relates, and on that former occasion the customer was neither resident in the United Kingdom nor had a place of business there.

(3) For the purposes of this article, an overseas communicator has done business with a customer if, in the course of carrying on his relevant investment activities outside the United Kingdom, he has—

- (a) effected a transaction, or arranged for a transaction to be effected, with the customer;
- (b) provided, outside the United Kingdom, a service to the customer as described in paragraph 6 of Schedule 1 (whether or not that paragraph was in force at the time the business was done); or
- (c) given, outside the United Kingdom, any advice to the customer as described in paragraph 7 of that Schedule (whether or not that paragraph was in force at the time the business was done).

**Overseas communicators: unsolicited real time communications to previously overseas customers**

**32.**—(1) If the requirements of paragraphs (2) and (3) are met, the financial promotion restriction does not apply to an unsolicited real time communication which is made by an overseas communicator from outside the United Kingdom to a previously overseas customer of his.

(2) The requirements of this paragraph are that the terms on which previous transactions and services had been effected or provided by the overseas communicator to the previously overseas customer were such that the customer would reasonably expect, at the time that the unsolicited real time communication is made, to be contacted by the overseas communicator in relation to the investment activity to which the communication relates.

(3) The requirements of this paragraph are that the previously overseas customer has been informed by the overseas communicator on an earlier occasion—

- (a) that the protections conferred by or under the Act will not apply to any unsolicited real time communication which is made by the overseas communicator and which relates to that investment activity;
- (b) that the protections conferred by or under the Act may not apply to any investment activity that may be engaged in as a result of the communication; and
- (c) whether any transaction between them resulting from the communication would fall within the jurisdiction of any dispute resolution scheme or compensation scheme or, if there is no such scheme, of that fact.

(4) Where the earlier occasion referred to in paragraph (3) occurs before this article comes into force, the references in that paragraph to the protections conferred by or under the Act are to be construed as references to the protections to be conferred by or under the Act.

#### **Overseas communicators: unsolicited real time communications to knowledgeable customers**

**33.**—(1) If the requirements of paragraphs (2), (3) and (4) are met, the financial promotion restriction does not apply to an unsolicited real time communication which is made by an overseas communicator from outside the United Kingdom in the course of his carrying on relevant investment activities outside the United Kingdom.

(2) The requirements of this paragraph are that the overseas communicator believes on reasonable grounds that the recipient is sufficiently knowledgeable to understand the risks associated with engaging in the investment activity to which the communication relates.

(3) The requirements of this paragraph are that, in relation to any particular investment activity, the recipient has been informed by the overseas communicator on an earlier occasion—

- (a) that the protections conferred by or under the Act will not apply to any unsolicited real time communication which is made by him and which relates to that activity;
- (b) that the protections conferred by or under the Act may not apply to any investment activity that may be engaged in as a result of the communication; and
- (c) whether any transaction between them resulting from the communication would fall within the jurisdiction of any dispute resolution scheme or compensation scheme or, if there is no such scheme, of that fact.

(4) The requirements of this paragraph are that the recipient, after being given a proper opportunity to consider the information given to him in accordance with paragraph (3), has clearly signified that he understands the warnings referred to in paragraph (3)(a) and (b) and that he accepts that he will not benefit from the protections referred to.

(5) Where the earlier occasion referred to in paragraph (3) occurs before this article comes into force, the references in that paragraph to the protection conferred by or under the Act are to be construed as references to the protections to be conferred by or under the Act.

#### **Governments, central banks etc.**

**34.** The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is communicated by and relates only to controlled investments issued by—
  - (i) any government;
  - (ii) any local authority (in the United Kingdom or elsewhere);
  - (iii) any international organisation;

- (iv) the Bank of England;
- (v) the European Central Bank;
- (vi) the central bank of any country or territory outside the United Kingdom.

#### **Industrial and provident societies**

- 35.** The financial promotion restriction does not apply to any communication which—
- (a) is a non-real time communication or a solicited real time communication;
  - (b) is communicated by an industrial and provident society; and
  - (c) relates only to an investment falling within paragraph 15 of Schedule 1 which is issued by the society in question.

#### **Nationals of EEA States other than United Kingdom**

- 36.** The financial promotion restriction does not apply to any communication which—
- (a) is a non-real time communication or a solicited real time communication;
  - (b) is communicated by a national of an EEA State other than the United Kingdom in the course of any controlled activity lawfully carried on by him in that State; and
  - (c) conforms with any rules made by the Authority under section 145 of the Act (financial promotion rules) which are relevant to a communication of that kind.

#### **Financial markets**

- 37.—**(1) The financial promotion restriction does not apply to any communication—
- (a) which is a non-real time communication or a solicited real time communication;
  - (b) which is communicated by a relevant market; and
  - (c) to which paragraph (2) or (3) applies.
- (2) This paragraph applies to a communication if—
- (a) it relates only to facilities provided by the market; and
  - (b) it does not identify (directly or indirectly)—
    - (i) any particular investment issued by or available from an identified person as one that may be traded or dealt in on the market; or
    - (ii) any particular person as a person through whom transactions on the market may be effected.
- (3) This paragraph applies to a communication if—
- (a) it relates only to a particular investment falling within paragraph 21, 22 or 23 of Schedule 1; and
  - (b) it identifies the investment as one that may be traded or dealt in on the market.
- (4) “Relevant market” means a market which—
- (a) meets the criteria specified in Part I of Schedule 3; or
  - (b) is specified in, or is established under the rules of an exchange specified in, Part II, III or IV of that Schedule.

### **Persons in the business of placing promotional material**

**38.** The financial promotion restriction does not apply to any communication which is made to a person whose business it is to place, or arrange for the placing of, promotional material provided that it is communicated so that he can place or arrange for placing it.

### **Joint enterprises**

**39.—(1)** The financial promotion restriction does not apply to any communication which is communicated by a participator in a joint enterprise to another participator in the same joint enterprise in connection with or for the purposes of that enterprise.

(2) “Joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial purposes related to a business or businesses (other than the business of engaging in a controlled activity) carried on by them; and, where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the enterprise.

(3) “Participator” includes potential participator.

### **Participants in certain recognised collective investment schemes**

**40.** The financial promotion restriction does not apply to any non-real time communication or solicited real time communication which is made—

- (a) by a person who is the operator of a scheme recognised under section 270 or 272 of the Act; and
- (b) to persons in the United Kingdom who are participants in any such recognised scheme operated by the person making the communication,

and which relates only to such recognised schemes as are operated by that person or to units in such schemes.

### **Bearer instruments: promotions required or permitted by market rules**

**41.—(1)** The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is communicated by a body corporate (“A”) that is not an open-ended investment company;
- (c) is made to or may reasonably be regarded as directed at persons entitled to bearer instruments issued by A, a parent undertaking of A or a subsidiary undertaking of A; and
- (d) is required or permitted by the rules of a relevant market to be communicated to holders of instruments of a class which consists of or includes the bearer instruments in question.

(2) “Bearer instrument” means any of the following investments title to which is capable of being transferred by delivery—

- (a) any investment falling within paragraph 14 or 15 of Schedule 1;
- (b) any investment falling within paragraph 17 or 18 of that Schedule which confers rights in respect of an investment falling within paragraph 14 or 15.

(3) For the purpose of this article, a bearer instrument falling within paragraph 17 or 18 of Schedule 1 is treated as issued by the person (“P”) who issued the investment in respect of which the bearer instrument confers rights if it is issued by—

- (a) an undertaking in the same group as P; or
- (b) a person acting on behalf of, or pursuant to arrangements made with, P.

(4) “Relevant market”, in relation to instruments of any particular class, means any market on which instruments of that class can be traded or dealt in and which—

- (a) meets the criteria specified in Part I of Schedule 3; or
- (b) is specified in, or established under the rules of an exchange specified in, Part II or III of that Schedule.

**Bearer instruments: promotions to existing holders**

**42.**—(1) The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is communicated by a body corporate (“A”) that is not an open-ended investment company;
- (c) is made to or may reasonably be regarded as directed at persons entitled to bearer instruments issued by A, a parent undertaking of A or a subsidiary undertaking of A;
- (d) relates only to instruments of a class which consists of or includes either the bearer instruments to which the communication relates or instruments in respect of which those bearer instruments confer rights; and
- (e) is capable of being accepted or acted on only by persons who are entitled to instruments (whether or not bearer instruments) issued by A, a parent undertaking of A or a subsidiary undertaking of A.

(2) “Bearer instruments” has the meaning given by article 41.

(3) For the purposes of this article, an instrument falling within paragraph 17 or 18 of Schedule 1 is treated as issued by the person (“P”) who issued the investment in respect of which the bearer instrument confers rights if it is issued by—

- (a) an undertaking in the same group as P; or
- (b) a person acting on behalf of, or pursuant to arrangements made with, P.

**Members and creditors of certain bodies corporate**

**43.**—(1) The financial promotion restriction does not apply to any non-real time communication or solicited real time communication which is communicated—

- (a) by a body corporate (“A”) that is not an open-ended investment company; and
- (b) to persons whom the person making the communication believes on reasonable grounds to be persons to whom paragraph (2) applies,

and which relates only to a relevant investment which is issued or to be issued by A, or by an undertaking (“U”) in the same group as A that is not an open-ended investment company.

(2) This paragraph applies to—

- (a) a creditor or member of A or of U;
- (b) a person who is entitled to a relevant investment which is issued by A or by U;
- (c) a person who is entitled, whether conditionally or unconditionally, to become a member of A or U but who has not yet done so;
- (d) a person who is entitled, whether conditionally or unconditionally, to have transferred to him title to a relevant investment which is issued by A or U but has not yet acquired title to the investment.

(3) “Relevant investment” means—

- (a) an investment falling within paragraph 14 or 15 of Schedule 1;

- (b) an investment falling within paragraph 17 or 18 of that Schedule so far as relating to any investments within sub-paragraph (a).

(4) For the purposes of this article, an investment falling within paragraph 17 or 18 of Schedule 1 is treated as issued by the person (“P”) who issued the investment in respect of which the instrument confers rights if it is issued by—

- (a) an undertaking in the same group as P; or
- (b) a person acting on behalf of, or pursuant to arrangements made with, P.

### **Members and creditors of open-ended investment companies**

**44.**—(1) The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is communicated by an open-ended investment company;
- (c) is communicated to persons whom the person making or directing the communication believes on reasonable grounds to be persons to whom paragraph (2) applies; and
- (d) relates only to an investment falling within paragraph 15, 17 or 19 of Schedule 1 which is issued or to be issued by the open-ended investment company.

(2) This paragraph applies to—

- (a) a creditor or member of the open-ended investment company;
- (b) a person who is entitled to an investment falling within paragraph 15, 17 or 19 of Schedule 1 which is issued by the open-ended investment company;
- (c) a person who is entitled, whether conditionally or unconditionally, to become a member of the open-ended investment company but who has not yet done so;
- (d) a person who is entitled, whether conditionally or unconditionally, to have transferred to him title to an investment falling within paragraph 15, 17 or 19 of Schedule 1 which is issued by the open-ended investment company but has not yet acquired title to the investment.

(3) For the purposes of this article, an investment falling within paragraph 17 of Schedule 1 is treated as issued by the person (“P”) who issued the investment in respect of which the instrument confers rights if it is issued by—

- (a) an undertaking in the same group as P; or
- (b) a person acting on behalf of, or pursuant to arrangements made with, P.

### **Group companies**

**45.** The financial promotion restriction does not apply to any communication made by one body corporate in a group to another body corporate in the same group.

### **Qualifying credit to bodies corporate**

**46.** The financial promotion restriction does not apply to any communication which relates to a controlled activity falling within paragraph 10 of Schedule 1 (or within paragraph 11 so far as it relates to that activity) if the communication is—

- (a) made to or directed at bodies corporate only; or
- (b) accompanied by an indication that the qualifying credit to which it relates is only available to bodies corporate.

### **Persons in the business of disseminating information**

**47.**—(1) The financial promotion restriction does not apply to any communication which is made only to recipients whom the person making the communication believes on reasonable grounds to be persons to whom paragraph (2) applies.

- (2) This paragraph applies to—
- (a) a person who receives the communication in the course of a business which involves the dissemination through a publication of information concerning controlled activities;
  - (b) a person whilst acting in the capacity of director, officer or employee of a person falling within sub-paragraph (a) being a person whose responsibilities when acting in that capacity involve him in the business referred to in that sub-paragraph;
  - (c) any person to whom the communication may otherwise lawfully be made.

### **Certified high net worth individuals**

**48.**—(1) If the requirements of paragraph (4) are met, the financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is made to a certified high net worth individual;
- (c) does not invite or induce the recipient to engage in investment activity with the person who has signed the certificate of high net worth referred to in paragraph (2)(a);

and

- (d) relates only to one or more investments falling within paragraph (5).

(2) “Certified high net worth individual” means any individual—

- (a) who has a current certificate of high net worth; and
- (b) who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

“I make this statement so that I am able to receive promotions which are exempt from the restriction on financial promotion in section 21 of the Financial Services and Markets Act 2000. The exemption relates to certified high net worth individuals and I declare that I qualify as such. I accept that the content of promotions and other material that I receive may not have been approved by a person who has been authorised under that Act and that their content may not therefore be subject to controls which would apply if the promotion were made or approved by an authorised person. I am aware that it is open to me to seek advice from someone who is authorised under the Act and who specialises in advising on this kind of investment”.

(3) For the purposes of paragraph (2)(a) a certificate of high net worth—

- (a) must be in writing or other legible form;
- (b) is current if it is signed and dated within the period of twelve months ending with the day on which the communication is made;
- (c) must state that in the opinion of the person signing the certificate, the person to whom the certificate relates either—
  - (i) had, during the financial year immediately preceding the date on which the certificate is signed, an annual income of not less than £100,000; or
  - (ii) held, throughout the financial year immediately preceding the date on which the certificate is signed, net assets to the value of not less than £250,000;



(d) must be signed by the recipient's accountant or by the recipient's employer.

(4) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that it is exempt from the general restriction (in section 21 of the Financial Services and Markets Act 2000) on the communication of invitations or inducements to engage in investment activity on the grounds that it is made to a certified high net worth individual;
- (b) of the requirements that must be met for a person to qualify as a certified high net worth individual;
- (c) that the content of the communication has not been approved by an authorised person and that such approval is, unless this exemption or any other exemption applies, required by section 21 of the Act;
- (d) that reliance on the communication for the purpose of engaging in any investment activity may expose the individual to a significant risk of losing all of the property invested;
- (e) that any person who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.

(5) An investment falls within this paragraph if—

- (a) it is an investment falling within paragraph 14 of Schedule 1 being stock or shares in an unlisted company;
- (b) it is an investment falling within 15 of Schedule 1 being an instrument acknowledging the indebtedness of an unlisted company;
- (c) it is an investment falling within paragraphs 17 or 18 of Schedule 1 conferring entitlement or rights with respect to investments falling within sub-paragraph (a) or (b);
- (d) it comprises units in a collective investment scheme being a scheme which invests wholly or predominantly in investments falling within sub-paragraph (a) or (b);
- (e) it is an investment falling within paragraph 21 of Schedule 1 to acquire or dispose of an investment falling within sub-paragraph (a), (b) or (c);
- (f) it is an investment falling within paragraph 22 of Schedule 1 being rights under a contract for the sale of an investment falling within sub-paragraph (a), (b) or (c);
- (g) it is an investment falling within paragraph 23 of Schedule 1 being a contract relating to, or to fluctuations in the value or price of, an investment falling within sub-paragraph (a), (b) or (c),

provided in each case that it is an investment under the terms of which the investor cannot incur a liability or obligation to pay or contribute more than he commits by way of investment.

(6) In determining an individual's "net assets" no account shall be taken of—

- (a) the property which is his primary residence or any loan secured on that residence;
- (b) any rights of his under a qualifying contract of insurance; or
- (c) any benefits (in the form of pensions or otherwise) which are payable on the termination of his service or on his death or retirement and to which he is (or his dependents are), or may be, entitled.

#### **High net worth companies, unincorporated associations etc.**

**49.—**(1) The financial promotion restriction does not apply to any communication which—

- (a) is made only to recipients whom the person making the communication believes on reasonable grounds to be persons to whom paragraph (2) applies; or

- (b) may reasonably be regarded as directed only at persons to whom paragraph (2) applies.
- (2) This paragraph applies to—
- (a) any body corporate which has a called-up share capital or net asset of—
    - (i) in the case of a body corporate which has more than 20 members or which is a subsidiary undertaking of a parent undertaking which has more than 20 members, not less than £500,000;
    - (ii) in the case of any other body corporate, not less than £5 million;
  - (b) any unincorporated association or partnership which has net assets of not less than £5 million;
  - (c) the trustee of a high value trust;
  - (d) any person (“A”) whilst acting in the capacity of director, officer or employee of a person (“B”) falling within any of sub-paragraphs (a) to (c) where A’s responsibilities when acting in that capacity, involve him in B’s engaging in investment activity;
  - (e) any person to whom the communication may otherwise lawfully be made.
- (3) For the purposes of paragraph (1)(b)—
- (a) if all the conditions set out in paragraph (4)(a) to (c) are met, the communication is to be regarded as directed at persons to whom paragraph (2) applies;
  - (b) in any other case in which one or more of those conditions are met, that fact is to be taken into account in determining whether the communication is directed at persons to whom paragraph (2) applies (but a communication may still be regarded as so directed even if none of the conditions in paragraph (4) is met).
- (4) The conditions are that—
- (a) the communication includes an indication of the description of persons to whom it is directed and an indication of the fact that the controlled investment or controlled activity to which it relates is available only to such persons;
  - (b) the communication includes an indication that persons of any other description should not act upon it;
  - (c) there are in place proper systems and procedures to prevent recipients other than persons to whom paragraph (2) applies engaging in the investment activity to which the communication relates with the person directing the communication, a close relative of his or a member of the same group.
- (5) “Called-up share capital” has the meaning give in the 1985 Act or in the 1986 Order.
- (6) “High value trust” means a trust where the aggregate value of the cash and investments which form part of the trust’s assets (before deducting the amount of its liabilities)—
- (a) is £10 million or more; or
  - (b) has been £10 million or more at any time during the year immediately preceding the date on which the communication in question was first made or directed.
- (7) “Net assets” has the meaning give by section 264 of the 1985 Act or the equivalent provision of the 1986 Order.

### **Sophisticated investors**

**50.**—(1) “Certified sophisticated investor”, in relation to any description of investment, means a person—

- (a) who has a current certificate in writing or other legible form signed by an authorised person to the effect that he is sufficiently knowledgeable to understand the risks associated with that description of investment; and
  - (b) who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:
    - “I make this statement so that I am able to receive promotions which are exempt from the restrictions on financial promotion in the Financial Services and Markets Act 2000. The exemption relates to certified sophisticated investors and I declare that I qualify as such in relation to investments of the following kind [list them]. I accept that the contents of promotions and other material that I receive may not have been approved by an authorised person and that their content may not therefore be subject to controls which would apply if the promotion were made or approved by an authorised person. I am aware that it is open to me to seek advice from someone who specialises in advising on this kind of investment”.
- (2) If the requirements of paragraph (3) are met, the financial promotion restriction does not apply to any communication which—
- (a) is made to a certified sophisticated investor;
  - (b) does not invite or induce the recipient to engage in investment activity with the person who has signed the certificate referred to in paragraph (1)(a); and
  - (c) relates only to a description of investment in respect of which that investor is certified.
- (3) The requirements of this paragraph are that the communication is accompanied by an indication—
- (a) that it is exempt from the general restriction (in section 21 of the Financial Services and Markets Act 2000) on the communication of invitations or inducements to engage in investment activity on the ground that it is made to a certified sophisticated investor;
  - (b) of the requirements that must be met for a person to qualify as a certified sophisticated investor;
  - (c) that the content of the communication has not been approved by an authorised person and that such approval is, unless this exemption or any other exemption applies, required by section 21 of the Act;
  - (d) that reliance on the communication for the purpose of engaging in any investment activity may expose the individual to a significant risk of losing all of the property invested or of incurring additional liability;
  - (e) that any person who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.
- (4) For the purposes of paragraph (1)(a), a certificate is current if it is signed and dated not more than three years before the date on which the communication is made.

### **Associations of high net worth or sophisticated investors**

**51.** The financial promotion restriction does not apply to any non-real time communication or solicited real time communication which—

- (a) is made to an association the membership of which the person making the communication believes on reasonable grounds comprises wholly or predominantly persons who are—
  - (i) certified high net worth individuals within the meaning of article 48;
  - (ii) high net worth persons falling within article 49(2)(a) to (d);

- (iii) certified sophisticated investors within the meaning of article 50; and
- (b) relates only to an investment under the terms of which a person cannot incur a liability or obligation to pay or contribute more than he commits by way of investment.

### **Common interest group of a company**

**52.**—(1) “Common interest group”, in relation to a company, means an identified group of persons who at the time the communication is made might reasonably be regarded as having an existing and common interest with each other and that company in—

- (a) the affairs of the company; and
- (b) what is done with the proceeds arising from any investment to which the communication relates.

(2) If the requirements of paragraphs (3) and either (4) or (5) are met, the financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is made only to persons who are members of a common interest group of a company, or may reasonably be regarded as directed only at such persons; and
- (c) relates to investments falling within paragraph 14 or 15 of Schedule 1 which are issued by that company.

(3) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that the directors of the company (or its promoters named in the communication) have taken all reasonable care to ensure that every statement of fact or opinion included in the communication is true and not misleading given the form and context in which it appears;
- (b) that the directors of the company (or its promoters named in the communication) have not limited their liability with respect to the communication; and
- (c) that any person who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.

(4) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that the directors of the company (or its promoters named in the communication) have taken all reasonable care to ensure that any person belonging to the common interest group (and his professional advisers) can have access, at all reasonable times, to all the information that he or they would reasonably require, and reasonably expect to find, for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company and of the rights attaching to the investments in question; and

- (b) describing the means by which such information can be accessed.

(5) The requirements of this paragraph are that the communication is accompanied by an indication that any person considering subscribing for the investments in question should regard any subscription as made primarily to assist the furtherance of the company’s objectives (other than any purely financial objectives) and only secondarily, if at all, as an investment.

(6) For the purposes of paragraph (2)(b)—

- (a) if all the conditions set out in paragraph (7)(a) to (c) are met, the communication is to be regarded as directed at persons who are members of the common interest group;

- (b) in any other case in which one or more of those conditions are met, that fact shall be taken into account in determining whether the communication is directed at persons who are members of the common interest group (but a communication may still be regarded as directed only at such persons even if none of the conditions in paragraph (7) is met).
- (7) The conditions are that—
  - (a) the communication is accompanied by an indication that it is directed at persons who are members of the common interest group and that any investment or activity to which it relates is available only to such persons;
  - (b) the communication is accompanied by an indication that it must not be acted upon by persons who are not members of the common interest group;
  - (c) there are in place proper systems and procedures to prevent recipients other than members of the common interest group engaging in the investment activity to which the communication relates with the person directing the communication, a close relative of his or a member of the same group.
- (8) Person are not to be regarded as having an interest of the kind described in paragraph (1) if the only reason why they would be so regarded is that—
  - (a) they will have such an interest if they become members or creditors of the company;
  - (b) they all carry on a particular trade or profession; or
  - (c) they are persons with whom the company has an existing business relationship, whether by being its clients, customers, contractors, suppliers or otherwise.

#### **Settlers, trustees and personal representatives**

**53.** The financial promotion restriction does not apply to any communication which is made between—

- (a) a person when acting as a settlor or grantor of a trust, a trustee or a personal representative; and
- (b) a trustee of the trust, a fellow trustee or a fellow personal representative (as the case may be),

if the communication is made for the purposes of the trust or estate.

#### **Beneficiaries of trust, will or intestacy**

**54.** The financial promotion restriction does not apply to any communication which is made—

- (a) between a person when acting as a settlor or grantor of a trust, trustee or personal representative and a beneficiary under the trust, will or intestacy; or
- (b) between a beneficiary under a trust, will or intestacy and another beneficiary under the same trust, will or intestacy,

if the communication relates to the management or distribution of that trust fund or estate.

#### **Communications by members of professions**

**55.—(1)** The financial promotion restriction does not apply to a real time communication (whether solicited or unsolicited) which—

- (a) is made by a person (“P”) who carries on a regulated activity to which the general prohibition does not apply by virtue of section 327 of the Act; and
- (b) is made to a recipient who has, prior to the communication being made, engaged P to provide professional services,

where the controlled activity to which the communication relates is an excluded activity which would be undertaken by P for the purposes of, and incidental to, the provision by him of professional services to or at the request of the recipient.

(2) “Professional services” has the meaning given in section 327 of the Act.

(3) An “excluded activity” is an activity to which the general prohibition would apply but for the application of—

- (a) section 327 of the Act; or
- (b) article 67 of the Regulated Activities Order.

### **Remedy following report by Parliamentary Commissioner for Administration**

**56.** The financial promotion restriction does not apply to any communication made or directed by a person for the purpose of enabling any injustice, stated by the Parliamentary Commissioner for Administration in a report under section 10 of the Parliamentary Commissioner Act 1967(1) to have occurred, to be remedied with respect to the recipient.

### **Persons placing promotional material in particular publications**

**57.** The financial promotion restriction does not apply to any communication received by a person who receives the publication in which the communication is contained because he has himself placed an advertisement in that publication.

### **Acquisition of interest in premises run by management companies**

**58.—**(1) “Management company” means a company established for the purpose of—

- (a) managing the common parts or fabric of premises used for residential or business purposes; or
- (b) supplying services to such premises.

(2) The financial promotion restriction does not apply to any non-real time communication or solicited real time communication if it relates to an investment falling within paragraph 14 of Schedule 1 which—

- (a) is issued, or to be issued, by a management company; and
- (b) is to be acquired by any person in connection with the acquisition of an interest in the premises in question.

### **Annual accounts and directors' report**

**59.—**(1) If the requirements in paragraphs (2) to (5) are met, the financial promotion restriction does not apply to any communication by a body corporate (other than an open-ended investment company) which—

- (a) consists of, or is accompanied by, the whole or any part of the annual accounts of a body corporate (other than an open-ended investment company); or
- (b) is accompanied by any report which is prepared and approved by the directors of such a body corporate under—
  - (i) sections 234 and 234A of the 1985 Act(2);
  - (ii) the corresponding Northern Ireland enactment; or

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(1) 1967 c. 13. This Act has been amended by the Parliamentary Commissioner Act 1994 (c. 14).

(2) Section 234 was substituted, and section 234A was inserted, by section 8(1) of the Companies Act 1989 (c. 40). Section 234 was subsequently amended by S.I. 1996/189 and S.I. 1997/571.

- (iii) the law of an EEA State other than the United Kingdom which corresponds to the provisions mentioned in paragraph (i) or (ii).
- (2) The requirements of this paragraph are that the communication—
- (a) does not contain any invitation to persons to underwrite, subscribe for, or otherwise acquire or dispose of, a controlled investment; and
  - (b) does not advise persons to engage in any of the activities within sub-paragraph (a).
- (3) The requirements of this paragraph are that the communication does not contain any invitation to persons to—
- (a) effect any transaction with the body corporate (or with any named person) in the course of that body's (or person's) carrying on of any activity falling within any of paragraphs 3 to 11 of Schedule 1; or
  - (b) make use of any services provided by that body corporate (or by any named person) in the course of carrying on such activity.
- (4) The requirements of this paragraph are that the communication does not contain any inducement relating to an investment other than one issued by the body corporate (or another body corporate in the same group) which falls within—
- (a) paragraph 14 or 15 of Schedule 1; or
  - (b) paragraph 17 or 18 of that Schedule, so far as relating to any investments within sub-paragraph (a).
- (5) The requirements of this paragraph are that the communication does not contain any reference to—
- (a) the price at which investments issued by the body corporate have in the past been bought or sold; or
  - (b) the yield on such investments,
- unless it is also accompanied by an indication that past performance cannot be relied on as a guide to future performance.
- (6) For the purposes of paragraph (5)(b), a reference, in relation to an investment, to earnings, dividend or nominal rate of interest payable shall not be taken to be a reference to the yield on the investment.
- (7) “Annual accounts” means—
- (a) accounts produced by virtue of Part VII of the 1985 Act<sup>(3)</sup> (or of that Part as applied by virtue of any other enactment);
  - (b) accounts produced by virtue of the corresponding Northern Ireland enactment (or of that enactment as applied by virtue of any other enactment);
  - (c) a summary financial statement prepared under section 251 of the 1985 Act<sup>(4)</sup>;
  - (d) accounts delivered to the registrar under Chapter II of Part XXIII of the 1985 Act<sup>(5)</sup>;
  - (e) accounts which are produced or published by virtue of the law of an EEA State other than the United Kingdom and which correspond to accounts within any of sub-paragraphs (a) to (d).

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(3) Part VII of the 1985 Act has been amended by Part I of the Companies Act 1989 (c. 40) and has subsequently been amended by S.I. 1992/3003 and S.I. 2000/968.

(4) Section 251 was substituted by section 15 of the Companies Act 1989.

(5) Chapter II of Part XXIII of the 1985 Act was substituted by section 23 of the Companies Act 1989.

### **Participation in employee share schemes**

**60.**—(1) The financial promotion restriction does not apply to any communication by a person (“C”), a member of the same group as C or a relevant trustee where the communication is for the purposes of an employee share scheme and relates to any of the following investments issued by C—

- (a) investments falling within paragraph 14 or 15 of Schedule 1;
- (b) investments falling within paragraph 17 or 18 of that Schedule so far as relating to any investments within sub-paragraph (a); or
- (c) investments falling within paragraph 27 so far as relating to any investments within sub-paragraph (a) or (b).

(2) “Employee share scheme”, in relation to any investments issued by C, means arrangements made or to be made by C or by a person in the same group as C to enable or facilitate—

- (a) transactions in those investments between or for the benefit of—
  - (i) the bona fide employees or former employees of C or of another member of the same group as C;
  - (ii) the wives, husbands, widows, widowers, or children or step children under the age of eighteen of such employees or former employees; or
- (b) the holding of those investments by, or for the benefit of, such persons.

(3) “Relevant trustee” means a person who, in pursuance of an actual or proposed employee share scheme, holds as trustee or will hold as trustee investments issued by C.

### **Sale of goods and supply of services**

**61.**—(1) In this article—

“supplier” means a person whose main business is to sell goods or supply services and not to carry on controlled activities falling within any of paragraphs 3 to 7 of Schedule 1 and, where the supplier is a member of a group, also means any other member of that group;

“customer” means a person, other than an individual, to whom a supplier sells goods or supplies services, or agrees to do so, and, where the customer is a member of a group, also means any other member of that group;

“a related sale or supply” means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the same purpose as the sale or supply mentioned above.

(2) The financial promotion restriction does not apply to any non-real time communication or any solicited real time communication made by a supplier to a customer of his for the purposes of, or in connection with, the sale of goods or supply of services or a related sale or supply.

(3) But the exemption in paragraph (2) does not apply if the communication relates to—

- (a) a qualifying contract of insurance or units in a collective investment scheme; or
- (b) investments falling within paragraph 27 of Schedule 1 so far as relating to investments within paragraph (a).

### **Sale of body corporate**

**62.**—(1) The financial promotion restriction does not apply to any communication by a body corporate, a partnership, a single individual or a group of connected individuals which relates to a transaction falling within paragraph (2).

(2) A transaction falls within this paragraph if—



- (a) it is one to acquire or dispose of shares in a body corporate other than an open-ended investment company, or is entered into for the purposes of such an acquisition or disposal; and
- (b) either—
  - (i) the conditions set out in paragraph (3) are met; or
  - (ii) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.
- (3) The conditions mentioned in paragraph (2)(b) are that—
  - (a) the shares consist of or include 50 per cent or more of the voting shares in the body corporate; or
  - (b) the shares, together with any already held by the person acquiring them, consist of or include at least that percentage of such shares; and
  - (c) in either case, the acquisition or disposal is, or is to be, between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.
- (4) “A group of connected individuals” means—
  - (a) in relation to a party disposing of shares in a body corporate, a single group of persons each of whom is—
    - (i) a director or manager of the body corporate;
    - (ii) a close relative of any such director or manager; or
    - (iii) a person acting as trustee for any person falling within paragraph (i) or (ii); and
  - (b) in relation to a party acquiring shares in a body corporate, a single group of persons each of whom is—
    - (i) a person who is or is to be a director or manager of the body corporate;
    - (ii) a close relative of any such person; or
    - (iii) a person acting as trustee for any person falling within paragraph (i) or (ii).
- (5) “Voting shares”, in relation to a body corporate, means shares carrying voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of that body corporate.

### **Takeovers of relevant unlisted companies: interpretation**

**63.**—(1) In this article and in articles 64, 65 and 66, a “relevant unlisted company”, in relation to a takeover offer, means a company which is an unlisted company at the time that the offer is made and which has been an unlisted company throughout the period of ten years immediately preceding the date of the offer.

(2) In this article and in articles 64, 65 and 66, references to a takeover offer for a relevant unlisted company are references to an offer which meets the requirements of Part I of Schedule 4 and which is an offer—

- (a) for all the shares in, or all the shares comprised in the equity or non-equity share capital of, a relevant unlisted company (other than any shares already held by or on behalf of the person making the offer); or
- (b) for all the debentures of such a company (other than any debentures already held by or on behalf of the person making the offer).

(3) Shares in or debentures of an unlisted company are to be regarded as being held by or on behalf of the person making the offer if the person who holds them, or on whose behalf they are held, has agreed that an offer should not be made in respect of them.

#### **Takeovers of relevant unlisted companies**

**64.**—(1) If the requirements of paragraphs (2) and (3) are met, the financial promotion restriction does not apply to any communication which is communicated in connection with a takeover offer for a relevant unlisted company.

(2) The requirements of this paragraph are that the communication is accompanied by the material listed in Part II of Schedule 4.

(3) The requirements of this paragraph are that the material listed in Part III of Schedule 4 is available at a place in the United Kingdom at all times during normal office hours for inspection free of charge.

#### **Takeovers of relevant unlisted companies: warrants etc.**

**65.** The financial promotion restriction does not apply to any communication which—

- (a) is communicated at the same time as, or after, a takeover offer for a relevant unlisted company is made; and
- (b) relates to investments falling within paragraph 17 or 18 of Schedule 1 so far as relating to the shares in or debentures of the unlisted company which are the subject of the offer.

#### **Takeovers of relevant unlisted companies: application forms**

**66.** The financial promotion restriction does not apply to any communication made in connection with a takeover offer for a relevant unlisted company which is a form of application for—

- (a) shares in or debentures of the unlisted company; or
- (b) investments falling within paragraph 17 or 18 of Schedule 1 so far as relating to the shares in or debentures of the company which are the subject of the offer.

#### **Promotions required or permitted by market rules**

**67.**—(1) The financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) relates to an investment which falls within any of paragraphs 14 to 18 of Schedule 1 and which is permitted to be traded or dealt in on a relevant market; and
- (c) is required or permitted to be communicated by—
  - (i) the rules of the relevant market;
  - (ii) a body which regulates the market; or
  - (iii) a body which regulates offers or issues of investments to be traded on such a market.

(2) “Relevant market” means a market which—

- (a) meets the criteria specified in Part I of Schedule 3; or
- (b) is specified in, or established under the rules of an exchange specified in, Part II or III of that Schedule.

#### **Promotions in connection with admission to certain EEA markets**

**68.**—(1) The financial promotion restriction does not apply to any communication—

- (a) which is a non-real time communication or a solicited real time communication;
  - (b) which a relevant EEA market requires to be communicated before an investment can be admitted to trading on that market;
  - (c) which, if it were included in a prospectus issued in accordance with Part II of the Public Offers of Securities Regulations 1995, would be required to be communicated by those Regulations; and
  - (d) which is not accompanied by any information other than information which is required or permitted to be published by the rules of that market.
- (2) In this article “relevant EEA market” means any market on which investments can be traded or dealt in and which—
- (a) meets the criteria specified in Part I of Schedule 3; or
  - (b) is specified in, or established under the rules of an exchange specified in, Part II of that Schedule.

### **Promotions of securities already admitted to certain markets**

- 69.**—(1) In this article—
- “relevant investment” means any investment falling within—
- (a) paragraph 14 or 15 of Schedule 1; or
  - (b) paragraph 17 or 18 of that Schedule so far as relating to any investment mentioned in sub-paragraph (a);
- “relevant market” means any market on which investments can be traded or dealt in and which—
- (a) meets the criteria specified in Part I of Schedule 3; or
  - (b) is specified in, or established under the rules of an exchange specified in, Part II or III of that Schedule.
- (2) If the requirements of paragraphs (3) to (6) are met, the financial promotion restriction does not apply to any communication which is—
- (a) a non-real time communication or a solicited real time communication;
  - (b) communicated by a body corporate (“A”), other than an open-ended investment company; and
  - (c) relates only to investments issued by A or by another body corporate in the same group, if relevant investments issued by A or by any parent undertaking of A are permitted to be traded, or dealt in, on a relevant market.
- (3) The requirements of this paragraph are that the communication—
- (a) is not, and is not accompanied by, an invitation to underwrite, subscribe for, or otherwise acquire or dispose of, a controlled investment; and
  - (b) does not advise persons to engage in one of the activities within sub-paragraph (a).
- (4) The requirements of this paragraph are that the communication is not, and is not accompanied by, an invitation to—
- (a) effect any transaction with A (or with any named person) in the course of the carrying on by A (or the named person) of any activity falling within any of paragraphs 3 to 11 of Schedule 1; or
  - (b) make use of any services provided by A (or by any named person) in the course of carrying on such activity.

(5) The requirements of this paragraph are that the communication is not, and is not accompanied by, an inducement relating to a relevant investment other than one issued by A (or another body corporate in the same group).

(6) The requirements of this paragraph are that the communication does not refer, and is not accompanied by a reference, to—

- (a) the price at which the investments have been bought or sold in the past; or
- (b) the yield on such investments,

unless it is also accompanied by an indication that past performance cannot be relied on as a guide to future performance.

(7) For the purposes of paragraph (6)(b), a reference, in relation to an investment, to earnings, dividend or nominal rate of interest payable shall not be taken to be a reference to the yield on the investment.

#### **Promotions in connection with listing applications**

**70.** The financial promotion restriction does not apply to any non-real time communication or any solicited real time communication to which listing rules made under section 98(1) of the Act apply.

#### **Promotions included in listing particulars etc.**

**71.—**(1) The financial promotion restriction does not apply to any non-real time communication which is included in—

- (a) listing particulars;
- (b) supplementary listing particulars;
- (c) a prospectus approved in accordance with listing rules made under section 84 or 87 of the Act;
- (d) a supplementary prospectus approved in accordance with listing rules made for the purposes of section 81 of the Act as applied by section 86 or 87; or
- (e) any other document required or permitted to be published by listing rules under Part VI of the Act.

(2) In this article “listing particulars” and “listing rules” have the meaning given by Part VI of the Act.

#### **Promotions included in prospectus for public offer of unlisted securities**

**72.** The financial promotion restriction does not apply to any non-real time communication which is included in a prospectus or supplementary prospectus that is issued in accordance with Part II of the Public Offers of Securities Regulations 1995.

#### **Material relating to prospectus for public offer of unlisted securities**

**73.—**(1) The financial promotion restriction does not apply to any non-real time communication relating to a prospectus or supplementary prospectus where the only reason for considering it to be an invitation or inducement is that it does one or more of the following—

- (a) it states the name and address of the person by whom the securities to which the prospectus or supplementary prospectus relates are to be offered;
- (b) it gives other details for contacting that person;

- (c) it states the nature and the nominal value of the securities to which the prospectus or supplementary prospectus relates, the number offered and the price at which they are offered;
  - (d) it states that a prospectus or supplementary prospectus is or will be available (and, if it is not yet available, when it is expected to be);
  - (e) it gives instructions for obtaining a copy of the prospectus or supplementary prospectus.
- (2) In this article—
- (a) “securities” and “offer” have the same meaning as in Part II of the Public Offers of Securities Regulations 1995;
  - (b) references to a prospectus or supplementary prospectus are references to a prospectus or supplementary prospectus which is published in accordance with Part II of the Public Offers of Securities Regulations 1995.