

**2001 No. 3800**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No. 2) Order 2001**

*Made - - - - - 28th November 2001*

*Laid before Parliament 28th November 2001*

*Coming into force on 1st December 2001*

The Treasury in the exercise of the powers conferred on them by section 21(5) of the Financial Services and Markets Act 2000<sup>(a)</sup> and of all other powers enabling them in that behalf hereby make the following Order:

1. This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No. 2) Order 2001 and comes into force on 1st December 2001.

**Exemption for communications by journalists**

2. For article 20 (communications by journalists) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001<sup>(b)</sup> substitute—

**“Communications by journalists**

20.—(1) Subject to paragraph (2), the financial promotion restriction does not apply to any non-real time communication if—

- (a) the content of the communication is devised by a person acting in the capacity of a journalist;
- (b) the communication is contained in a qualifying publication; and
- (c) in the case of a communication requiring disclosure, one of the conditions in paragraph (2) is met.

(2) The conditions in this paragraph are that—

- (a) the communication is accompanied by an indication explaining the nature of the author’s financial interest or that of a member of his family (as the case may be);
- (b) the authors are subject to proper systems and procedures which prevent the publication of communications requiring disclosure without the explanation referred to in sub-paragraph (a); or
- (c) the qualifying publication in which the communication appears falls within the remit of—
  - (i) the Code of Practice issued by the Press Complaints Commission;
  - (ii) the Programme Code of the Radio Authority; or
  - (iii) the Producers’ Guidelines issued by the British Broadcasting Corporation.

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<sup>(a)</sup> 2000 c. 8.

<sup>(b)</sup> S.I. 2001/1335. This Order has been amended by S.I. 2001/2633 and by S.I. 2001/3650.

- (3) For the purposes of this article, a communication requires disclosure if—
  - (a) an author of the communication or a member of his family is likely to obtain a financial benefit or avoid a financial loss if people act in accordance with the invitation or inducement contained in the communication;
  - (b) the communication relates to a controlled investment of a kind falling within paragraph (4); and
  - (c) the communication identifies directly a person who issues or provides the controlled investment to which the communication relates.
- (4) A controlled investment falls within this paragraph if it is—
  - (a) an investment falling within paragraph 14 of Schedule 1 to this Order (shares or stock in share capital);
  - (b) an investment falling within paragraph 21 of that Schedule (options) to acquire or dispose of an investment falling within sub-paragraph (a);
  - (c) an investment falling within paragraph 22 of that Schedule (futures) being rights under a contract for the sale of an investment falling within sub-paragraph (a); or
  - (d) an investment falling within paragraph 23 of that Schedule (contracts for differences) being rights under a contract relating to, or to fluctuations in, the value or price of an investment falling within sub-paragraph (a).
- (5) For the purposes of this article—
  - (a) the authors of the communication are the person who devises the content of the communication and the person who is responsible for deciding to include the communication in the qualifying publication;
  - (b) a “qualifying publication” is a publication or service of the kind mentioned in paragraph (1) or (2) of article 54 of the Regulated Activities Order and which is of the nature described in that article, and for the purposes of this article, a certificate given under article 54(3) of the Regulated Activities Order and not revoked is conclusive evidence of the matters certified;
  - (c) the members of a person’s family are his spouse and any children of his under the age of 18 years.”.

**Promotion broadcast by company director etc.**

3. After article 20 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 insert—

**“Promotion broadcast by company director etc.**

**20A.**—(1) The financial promotion restriction does not apply to a communication which is communicated as part of a qualifying service by a person (“D”) who is a director or employee of an undertaking (“U”) where—

- (a) the communication invites or induces the recipient to acquire—
    - (i) a controlled investment of a kind falling within article 20(4) which is issued by U (or by an undertaking in the same group as U); or
    - (ii) a controlled investment issued or provided by an authorised person in the same group as U;
  - (b) the communication—
    - (i) comprises words which are spoken by D and not broadcast, transmitted or displayed in writing; or
    - (ii) is displayed in writing only because it forms part of an interactive dialogue to which D is a party and in the course of which D is expected to respond immediately to questions put by a recipient of the communication;
  - (c) the communication is not part of an organised marketing campaign; and
  - (d) the communication is accompanied by an indication that D is a director or employee (as the case may be) of U.
- (2) For the purposes of this article, a “qualifying service” is a service—
- (a) which is broadcast or transmitted in the form of television or radio programmes; or

(b) displayed on a web site (or similar system for the electronic display of information) comprising regularly updated news and information, provided that the principal purpose of the service, taken as a whole and including any advertisements and other promotional material contained in it, is neither of the purposes described in article 54(1)(a) or (b) of the Regulated Activities Order.

(3) For the purposes of paragraph (2), a certificate given under article 54(3) of the Regulated Activities Order and not revoked is conclusive evidence of the matters certified.”.

*Tony McNulty*  
*John Heppell*

28th November 2001

Two of the Lords Commissioners of Her Majesty's Treasury

## EXPLANATORY NOTE

*(This note does not form part of the Order)*

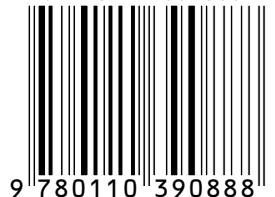
This Order amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I.2001/1335) (“the Financial Promotion Order”). Article 2 substitutes a new article 20 in the Financial Promotion Order widening the scope of the exemption for communications by journalists. It provides that authors of communications which fall within the remit of Codes promulgated by the Press Complaints Commission, the Radio Authority or the BBC or which are otherwise governed by proper systems and procedures are not subject to the obligation to disclose their financial interest in the product being promoted. It also substitutes the narrower class of “members of the person’s family” for the concept of “close relatives” used to describe the class of people whose financial interest in the product triggers the disclosure requirement. Article 3 inserts a further exemption for company directors and others who make a promotion about their company in the course either of speaking in a television or radio programme or via an equivalent electronic medium or of engaging in an interactive written exchange in response to a question from a recipient of the communication.

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