
STATUTORY INSTRUMENTS

2005 No. 1529

The Financial Services and Markets Act
2000 (Financial Promotion) Order 2005

PART VI

Exempt Communications: Certain Controlled Activities

Certified high net worth individuals

48.—(1) If the requirements of paragraphs (4) and (7) 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 an individual whom the person making the communication believes on reasonable grounds to be a certified high net worth individual, and
- (c) relates only to one or more investments falling within paragraph (8).

(2) “Certified high net worth individual” means an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement complying with Part I of Schedule 5.

(3) The validity of a statement signed for the purposes of paragraph (2) is not affected by a defect in the form or wording of the statement, provided that the defect does not alter the statement’s meaning and that the words shown in bold type in Part I of Schedule 5 are so shown in the statement.

(4) The requirements of this paragraph are that either the communication is accompanied by the giving of a warning in accordance with paragraphs (5) and (6) or where, because of the nature of the communication, this is not reasonably practicable,—

- (a) a warning in accordance with paragraph (5) is given to the recipient orally at the beginning of the communication together with an indication that he will receive the warning in legible form and that, before receipt of that warning, he should consider carefully any decision to engage in investment activity to which the communication relates; and
- (b) a warning in accordance with paragraphs (5) and (6) (d) to (h) is sent to the recipient of the communication within two business days of the day on which the communication is made.

(5) The warning must be in the following terms—

“The content of this promotion has not been approved by an authorised person within the meaning of the Financial Services and Markets Act 2000. Reliance on this promotion for the purpose of engaging in any investment activity may expose an individual to a significant risk of losing all of the property or other assets invested.”

But where a warning is sent pursuant to paragraph (4)(b), for the words “this promotion” in both places where they occur there must be substituted wording which clearly identifies the promotion which is the subject of the warning.

(6) The warning must—

- (a) be given at the beginning of the communication;
 - (b) precede any other written or pictorial matter;
 - (c) be in a font size consistent with the text forming the remainder of the communication;
 - (d) be indelible;
 - (e) be legible;
 - (f) be printed in black, bold type;
 - (g) be surrounded by a black border which does not interfere with the text of the warning; and
 - (h) not be hidden, obscured or interrupted by any other written or pictorial matter.
- (7) 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 Act) on the communication of invitations or inducements to engage in investment activity on the ground that it is made to a certified high net worth individual;
 - (b) of the requirements that must be met for an individual to qualify as a certified high net worth individual; and
 - (c) that any individual 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.
- (8) 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 paragraph 15 of Schedule 1 being an investment acknowledging the indebtedness of an unlisted company;
 - (c) it is an investment falling within paragraph 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 being an option 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 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.

(9) “Business day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽¹⁾ in any part of the United Kingdom.