
STATUTORY INSTRUMENTS

2005 No. 1529

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

PART VI

Exempt Communications: Certain Controlled Activities

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, or which is a member of the same group as an undertaking which has, a called-up share capital or net assets of not less than—
 - (i) if the body corporate has more than 20 members or is a subsidiary undertaking of an undertaking which has more than 20 members, £500,000;
 - (ii) otherwise, £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 given in [^{F1}the 2006 Act (see section 547)].
- (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 anytime during the year immediately preceding the date on which the communication in question was first made or directed.
- (7) “Net assets” has the meaning given by [^{F2}section 831 of the 2006 Act].
- [^{F3}(8) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.]

Textual Amendments

- F1** Words in art. 49(5) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), arts. 1(2), **26(6)(a)**
- F2** Words in art. 49(7) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), arts. 1(2), **26(6)(b)**
- F3** Art. 49(8) inserted (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), arts. 1(2)(3), **31**

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Section 49.