

SCHEDULE 2

Article 3

AMENDMENTS TO THE CIS EXEMPTIONS ORDER

1. For article 21 of the CIS Exemptions Order substitute—

**“Certified high net worth individuals**

**21.**—(1) If the requirements of paragraphs (4) and (7) are met, the scheme 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;
- (c) relates only to units falling within paragraph (8); and
- (d) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment.

(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 the Schedule<sup>(1)</sup>.

(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 the Schedule 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 participate in a collective investment scheme 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—

“Reliance on this promotion for the purpose of buying the units to which the promotion relates 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;

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(1) As inserted by paragraph 4 of this Schedule.

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- (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 restriction on the promotion of unregulated schemes (in section 238 of the Act) on the grounds that the communication 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;
- (c) that any individual who is in any doubt about the units to which the communication relates should consult an authorised person specialising in advising in participation in unregulated schemes.

(8) A unit falls within this paragraph if it is in an unregulated scheme which invests wholly or predominantly in the shares in or debentures of one or more unlisted companies.

(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 in any part of the United Kingdom.

(10) “Unlisted company” has the meaning given in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.”.

2. After paragraph (1) of article 23 of the CIS Exemptions Order insert—

“(1A) The validity of a statement signed in accordance with paragraph (1)(b) is not affected by a defect in the wording of the statement, provided that the defect does not alter the statement’s meaning.”.

3. After that article, insert—

**“Self-certified sophisticated investors**

**23A.**—(1) “Self-certified sophisticated investor” 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 II of the Schedule.

(2) The validity of a statement signed for the purposes of paragraph (1) 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 II of the Schedule are so shown in the statement.

(3) If the requirements of paragraphs (4) and (7) are met, the scheme promotion restriction does not apply to any communication which—

- (a) is made to an individual whom the person making the communication believes on reasonable grounds to be a self-certified sophisticated investor;
- (b) relates only to units falling within paragraph (8); and

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- (c) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment.
- (4) The requirements of this paragraph are—
  - (a) in the case of a non-real time communication, that the communication contains a warning in accordance with paragraphs (5) and (6); and
  - (b) in the case of a real time communication, 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,—
    - (i) 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 participate in a collective investment scheme to which the communication relates; and
    - (ii) 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—

“Reliance on this promotion for the purpose of buying units to which the promotion relates 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 scheme promotion restriction (in section 238 of the Act) on the communication of invitations or inducements to participate in unregulated schemes on the ground that it is made to a self-certified sophisticated investor;
  - (b) of the requirements that must be met for an individual to qualify as a self-certified sophisticated investor;
  - (c) that any individual who is in any doubt about the investment to which the invitation or inducement relates should consult an authorised person specialising in advising on investments of the kind in question.

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(8) A unit falls within this paragraph if it is in an unregulated scheme which invests wholly or predominantly in the shares in or debentures of one or more an unlisted companies.

(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 in any part of the United Kingdom.

(10) “Unlisted company” has the meaning given in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.”.

4. After article 30 of the CIS Exemptions Order insert—

“SCHEDULE

Articles 21 and 23A

STATEMENTS FOR CERTIFIED HIGH NET WORTH INDIVIDUALS  
AND SELF-CERTIFIED SOPHISTICATED INVESTORS

PART I

STATEMENT FOR CERTIFIED HIGH NET WORTH INDIVIDUALS

1. The statement to be signed for the purposes of article 21(2) (definition of high net worth individual) must be in the following form and contain the following content—

**“Statement for Certified High Net Worth Individual**

I declare that I am a certified high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

I understand that this means—

- (a) I can receive promotions, made by a person who is authorised by the Financial Services Authority, which relate to units in unregulated collective investment schemes that invest wholly or predominantly in unlisted companies;
- (b) the schemes to which the promotions will relate are not authorised or recognised for the purposes of the Financial Services and Markets Act 2000.

I am a certified high net worth individual because **at least one of the following applies—**

- (a) I had, during the financial year immediately preceding the date below, an annual income to the value of £100,000 or more;
- (b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more. Net assets for these purposes do not include—
  - (i) the property which is my primary residence or any loan secured on that residence;
  - (ii) any rights of mine under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a); or
  - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on unregulated collective investment schemes.

Signature

Date

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(a) S.I. 2001/544, to which there are amendments not relevant to this Order.

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## PART II

### STATEMENT FOR SELF-CERTIFIED SOPHISTICATED INVESTORS

2. The statement to be signed for the purposes of article 23A(1) (definition of self-certified sophisticated investor) must be in the following form and contain the following content—

**“Statement for Self-Certified Sophisticated Investor**

I declare that I am a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

I understand that this means—

- (a) I can receive promotions, made by a person who is authorised by the Financial Services Authority, which relate to units in unregulated collective investment schemes that invest wholly or predominantly in unlisted companies;
- (b) the schemes to which the promotions will relate are not authorised or recognised for the purposes of the Financial Services and Markets Act 2000.

I am a self-certified sophisticated investor because **at least one of the following applies**—

- (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
- (b) I have made more than one investment in an unlisted company in the two years prior to the date below;
- (c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;
- (d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on unregulated collective investment schemes.

Signature

Date