
STATUTORY INSTRUMENTS

2001 No. 1060

The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001

PART III

OTHER EXEMPTIONS

High net worth companies, unincorporated associations etc.

- 22.**—(1) The scheme 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 assets 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 participation in unregulated schemes;
 - (e) any person to whom the communication might 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 in relation to the communication, it 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 units to which it relates are available only to such persons;
 - (b) the communication includes an indication that persons of any other description should not rely upon it;

(c) there are in place proper systems and procedures to prevent recipients other than persons to whom paragraph (2) applies from acquiring from the person directing the communication, a close relative of his or a company in the same group, units in the scheme to which the communication relates.

(5) In this article—

“called-up share capital” has the meaning given in the Companies Act 1985⁽¹⁾ or in the Companies (Northern Ireland) Order 1986⁽²⁾;

“high value trust” means a trust where the aggregate value of the cash and investments which form part of the trust’s assets (before deducing 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 communication in question was first made or directed;

“net assets” has the meaning given in section 264 of the Companies Act 1985 or the equivalent provision of the Companies (Northern Ireland) Order 1986.

(1) 1985 c. 6.

(2) S.I.1986/1032 (N.I. 6).