
STATUTORY INSTRUMENTS

2001 No. 1060

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

PART I

GENERAL AND INTERPRETATION

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

(2) This Order comes into force on the day on which section 19 of the Act comes into force.

Interpretation: general

2.—(1) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“authorised unit trust scheme” has the meaning given by section 237 of the Act;

“close relative”, in relation to a person means—

- (a) his spouse;
- (b) his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and
- (c) the spouse of any person within sub-paragraph (b);

“overseas scheme” means an unregulated scheme which is operated and managed in a country or territory outside the United Kingdom;

“publication” means—

- (a) a newspaper, journal, magazine or other periodical publication;
- (b) a web site;
- (c) any programme forming part of a service consisting of the broadcast or transmission of television or radio programmes; and
- (d) any teletext service, that is to say a service consisting of television transmissions consisting of a succession of visual displays (with or without accompanying sound) capable of being selected and held for separate viewing or other use;

“qualifying contract of insurance” has the meaning given in the Regulated Activities Order;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(1);

“relevant scheme activities” means—

- (i) the activity specified by article 51 of the Regulated Activities Order; or
- (ii) any activity specified by article 14, 21, 25, 37 or 53 of that Order when carried on in relation to units;

“solicited real time communication” has the meaning given by article 5;

“units” has the meaning given by section 237(2) of the Act;

“unregulated scheme” means a collective investment scheme which is not an authorised unit trust scheme nor a scheme constituted by an authorised open-ended investment company nor a recognised scheme for the purposes of Part XVII of the Act;

“unsolicited real time communication” has the meaning given by article 5.

(2) In this Order, any reference to the “scheme promotion restriction” means the restriction imposed by section 238(1) of the Act.

Interpretation: communications

3. In this Order—

- (a) any reference to a communication is a reference to the communication, by an authorised person in the course of business, of an invitation or inducement to participate in an unregulated scheme;
- (b) any reference to a communication being made to another person is a reference to a communication being addressed, whether verbally or in legible form, to a particular person or persons (for example where it is contained in a telephone call or letter);
- (c) any reference to a communication being directed at persons is a reference to a communication being addressed to persons generally (for example where it is contained in a television broadcast or web site);
- (d) “communicate” includes causing a communication to be made;
- (e) a “recipient” of a communication is a person to whom the communication is made or, in the case of a non-real time communication which is directed at persons generally, any person who reads or hears the communication.

Interpretation: real time communications

4.—(1) In this Order, references to a real time communication are references to any communication made in the course of a personal visit, telephone conversation or other interactive dialogue.

(2) A non-real time communication is a communication not falling within paragraph (1).

(3) For the purposes of this Order, non-real time communications include communications made by letter or e-mail or contained in a publication.

(4) For the purposes of this Order, the factors in paragraph (5) are to be treated as indications that a communication is a non-real time communication.

(5) The factors are that—

- (a) the communication is made to or directed at more than one recipient in identical terms (save for details of the recipient’s identity);
- (b) the communication is made or directed by way of a system which in the normal course constitutes or creates a record of the communication which is available to the recipient to refer to at a later time;
- (c) the communication is made or directed by way of a system which in the normal course does not enable or require the recipient to respond immediately to it.

Interpretation: solicited and unsolicited real time communications

5.—(1) A real time communication is solicited where it is made in the course of a personal visit, telephone call or other interactive dialogue if that call, visit or dialogue—

- (a) was initiated by the recipient of the communication; or
- (b) takes place in response to an express request from the recipient of the communication.

(2) A real time communication is unsolicited where it is made otherwise than as described in paragraph (1).

(3) For the purposes of paragraph (1)—

- (a) a person is not to be treated as expressly requesting a call, visit or dialogue—
 - (i) because he omits to indicate that he does not wish to receive any or any further visits or calls or to engage in any or any further dialogue;
 - (ii) because he agrees to standard terms that state that such visits, calls or dialogue will take place, unless he has signified clearly that, in addition to agreeing to the terms, he is willing for them to take place;
- (b) a communication is solicited only if it is clear from all the circumstances when the call, visit or dialogue is initiated or requested that during the course of the visit, call or dialogue communications will be made concerning the kind of activities or investments to which the communications in fact made relate;
- (c) it is immaterial whether the express request is made before or after this Order comes into force.

(4) Where a real time communication is solicited by a recipient (“R”), it is treated as having also been solicited by any other person to whom it is made at the same time as it is made to R if that other recipient is—

- (a) a close relative of R; or
- (b) expected to participate in the unregulated scheme jointly with R.

Degree of prominence to be given to required indications

6. Where a communication must, if it is to fall within any provision of this Order, be accompanied by an indication of any matter, the indication must be presented to the recipient—

- (a) in a way that can be easily understood; and
- (b) in such manner as, depending on the means by which the communication is made or directed, is best calculated to bring the matter in question to the attention of the recipient and to allow him to consider it.

Combination of different exemptions

7. Nothing in this Order is to be construed as preventing a person from relying on more than one exemption in respect of the same communication.