
STATUTORY INSTRUMENTS

2001 No. 1060

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

PART II

TERRITORIAL SCOPE

Communications to overseas recipients

8.—(1) Subject to paragraph (2), the scheme promotion restriction does not apply to any communication—

- (a) which is made (whether from inside or outside the United Kingdom) to a person who receives the communication outside the United Kingdom; or
- (b) which is directed (whether from inside or outside the United Kingdom) only at persons outside the United Kingdom.

(2) Paragraph (1) does not apply to an unsolicited real time communication unless—

- (a) it is made from a place outside the United Kingdom; and
- (b) it relates to an overseas scheme.

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

- (a) if the conditions set out in paragraph (4)(a), (b), (c) and (d) are met, a communication directed from a place inside the United Kingdom is to be regarded as directed only at persons outside the United Kingdom;
- (b) if the conditions set out in paragraph (4)(c) and (d) are met, a communication directed from a place outside the United Kingdom is to be regarded as directed only at persons outside the United Kingdom;
- (c) in any other case where one or more of the conditions in paragraph (4)(a) to (e) are met, that fact shall be taken into account in determining whether the communication is to be regarded as directed only at persons outside the United Kingdom (but a communication may still be regarded as directed only at persons outside the United Kingdom even if none of the conditions in paragraph (4) is met).

(4) The conditions are that—

- (a) the communication is accompanied by an indication that it is directed only at persons outside the United Kingdom;
- (b) the communication is accompanied by an indication that it must not be acted upon by persons in the United Kingdom;
- (c) the communication is not referred to in, or directly accessible from, any other communication which is made to a person or directed at persons in the United Kingdom by or on behalf of the same person;

- (d) there are in place proper systems and procedures to prevent recipients in the United Kingdom (other than those to whom the communication might otherwise lawfully have been made or directed) 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;
 - (e) the communication is included in—
 - (i) a web site, newspaper, journal, magazine or periodical publication which is principally accessed in or intended for a market outside the United Kingdom;
 - (ii) a radio or television broadcast or teletext service transmitted principally for reception outside the United Kingdom.
- (5) For the purposes of paragraph (1)(b), a communication may be treated as directed only at persons outside the United Kingdom even if—
- (a) it is also directed, for the purposes of article 14(1)(b), at investment professionals falling within article 14(5) (but disregarding paragraph (6) of that article for this purpose);
 - (b) it is also directed, for the purposes of article 22(1)(b), at high net worth persons to whom article 22 applies (but disregarding paragraph (2)(e) of that article for this purpose).
- (6) Where a communication falls within paragraph (5)—
- (a) the condition in paragraph (4)(a) is to be construed as requiring an indication that the communication is directed only at persons outside the United Kingdom or persons having professional experience in matters relating to investments or high net worth persons (as the case may be);
 - (b) the condition in paragraph (4)(b) is to be construed as requiring an indication that the communication must not be acted upon by persons in the United Kingdom or by persons who do not have professional experience in matters relating to investments or who are not high net worth persons (as the case may be).

Solicited real time communications from overseas

9. The scheme promotion restriction does not apply to any solicited real time communication which is made from outside the United Kingdom and which relates to units in an overseas scheme.

Communications from overseas to previously overseas customers

10.—(1) The scheme promotion restriction does not apply to a non-real time or unsolicited real time communication which—

- (a) is made from outside the United Kingdom by an authorised person to a previously overseas customer of his; and
- (b) relates to units in an overseas scheme.

(2) In this article—

“previously overseas customer” means a person with whom the authorised person has done business within the period of twelve months ending with the day on which the communication was made (“the earlier business”) and where—

- (a) at the time that the earlier business was done, the customer was neither resident in the United Kingdom nor had a place of business there; or
- (b) at the time the earlier business was done, the authorised person had on a former occasion done business with the customer, being business of the same description as the business to which the communication relates, and on that former occasion the customer was neither resident in the United Kingdom nor had a place of business there.

(3) For the purposes of this article, an authorised person has done business with a customer if, in the course of his overseas business, he has—

- (a) effected a transaction, or arranged for a transaction to be effected, with the customer in respect of units in an overseas scheme; or
- (b) given, outside the United Kingdom, any advice on the merits of the customer buying or selling units in an overseas scheme.