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STATUTORY INSTRUMENTS

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**2005 No. 1529**

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

**PART IV**

*Exempt Communications: All Controlled Activities*

**Communications to overseas recipients**

**12.**—(1) Subject to [<sup>F1</sup>paragraphs (2) and (7)][<sup>F1</sup>paragraphs (2), (7) and (8)], the financial 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 is made for the purposes of a business which is carried on outside the United Kingdom and which is not carried on in the United Kingdom.
- (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 is to be taken into account in determining whether or not a 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 made to a person or directed at persons in the United Kingdom by the person directing the communication;

- (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 by the person directing it or a member of the same group) 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;
  - (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 purpose 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 19(1)(b), at investment professionals falling within article 19(5) (but disregarding paragraph (6) of that article for this purpose);
  - (b) it is also directed, for the purposes of article 49(1)(b), at high net worth persons to whom article 49 applies (but disregarding paragraph (2)(e) of that article for this purpose) and it relates to a controlled activity to which article 49 applies;
  - (c) it is a communication to which article 31 applies.
- (6) Where a communication falls within paragraph (5)(a) or (b)—
- (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 except by persons who have professional experience in matters relating to investments or who are not high net worth persons (as the case may be);
  - (c) the condition in paragraph (4)(c) will not apply where the other communication referred to in that paragraph is made to a person or directed at a person in the United Kingdom to whom paragraph (5) applies.

<sup>F2</sup>(7) .....

[<sup>F3</sup>(8) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.]

**Textual Amendments**

- F1** Words in art. 12(1) substituted (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), **13(a)**
- F2** [Art. 12\(7\)](#) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **167** (with [reg. 162\(2\)](#)) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 33(u) and with savings in [S.I. 2019/680](#), [reg. 11](#) (as amended by [S.I. 2019/1212](#), regs. 1(3), 22(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F3** [Art. 12\(8\)](#) 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), **13(b)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Section 12.