
STATUTORY INSTRUMENTS

2005 No. 1529

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

PART III

Exemptions: Interpretation and Application

Interpretation: financial promotion restriction

5. In this Order, any reference to the financial promotion restriction is a reference to the restriction in section 21(1) of the Act.

Interpretation: communications

6. In this Order—

- (a) any reference to a communication is a reference to the communication, in the course of business, of an invitation or inducement to engage in investment activity;
- (b) any reference to a communication being made to another person is a reference to a communication being addressed, whether orally 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 or directed;
- (e) a “recipient” of a communication is the 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;
- (f) “electronic commerce communication” means a communication, the making of which constitutes the provision of an information society service;
- (g) “incoming electronic commerce communication” means an electronic commerce communication made from an establishment in an EEA State other than the United Kingdom;
- (h) “outgoing electronic commerce communication” means an electronic commerce communication made from an establishment in the United Kingdom to a person in an EEA State other than the United Kingdom.

Interpretation: real time communications

7.—(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.

Status: Point in time view as at 06/10/2006.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, PART III. (See end of Document for details)

- (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

- 8.—**(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 controlled activities or investments to which the communications in fact made relate;
 - (c) it is immaterial whether the express request was made before or after this article 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 engage in any investment activity jointly with R.

Interpretation: outgoing electronic commerce communications

- 8A.—**(1) For the purposes of the application of those articles to outgoing electronic commerce communications—

- (a) any reference in article 48(7)(c), 50(1)(a) or (3)(e) or 52(3)(c) to an authorised person includes a reference to a person who is entitled, under the law of an EEA State other than the United Kingdom, to carry on regulated activities in that State;
 - (b) any reference in article 68(1) or 71 to rules or legislation includes a reference to provisions corresponding to those rules or legislation in the law of an EEA State other than the United Kingdom;
 - (c) any reference in article 49 to an amount in pounds sterling includes a reference to an equivalent amount in another currency.
- (2) For the purposes of the application of article 49 to outgoing electronic commerce communications, any reference in section 264(2) or 737 of the 1985 Act (or the equivalent provisions in the 1986 Order) to a body corporate or company includes a reference to a body corporate or company registered under the law of an EEA State other than the United Kingdom.
- (3) For the purposes of the application of article 3 in respect of outgoing electronic commerce communications—
- (a) any reference in section 163(2)(b) of the 1985 Act (or the equivalent provision in the 1986 Order) to a company includes a reference to a company registered under the law of an EEA State other than the United Kingdom;
 - (b) any reference in that section to an investment exchange includes a reference to an investment exchange which is recognised as an investment exchange under the law of an EEA State other than the United Kingdom.

Degree of prominence to be given to required indications

9. 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.

Application to qualifying contracts of insurance

- 10.—(1) Nothing in this Order exempts from the application of the financial promotion restriction a communication which invites or induces a person to enter into a qualifying contract of insurance with a person who is not—
- (a) an authorised person;
 - (b) an exempt person who is exempt in relation to effecting or carrying out contracts of insurance of the class to which the communication relates;
 - (c) a company which has its head office in an EEA State other than the United Kingdom and which is entitled under the law of that State to carry on there insurance business of the class to which the communication relates;
 - (d) a company which has a branch or agency in an EEA State other than the United Kingdom and is entitled under the law of that State to carry on there insurance business of the class to which the communication relates;
 - (e) a company authorised to carry on insurance business of the class to which the communication relates in any country or territory which is listed in Schedule 2.

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(2) In this article, references to a class of insurance are references to the class of insurance contract described in Schedule 1 to the Regulated Activities Order into which the effecting or carrying out of the contract to which the communication relates would fall.

Combination of different exemptions

11.—(1) In respect of a communication relating to—

- (a) a controlled activity falling within paragraph 2 of Schedule 1 carried on in relation to a qualifying contract of insurance; or
- (b) a controlled activity falling within any of paragraphs 3 to 11 of Schedule 1,

a person may rely on the application of one or more of the exemptions in Parts IV and VI.

(2) In respect of a communication relating to—

- (a) an activity falling within paragraph 1 of Schedule 1; or
- (b) a relevant insurance activity,

a person may rely on one or more of the exemptions in Parts IV and V; and, where a communication relates to any such activity and also to an activity mentioned in paragraph (1)(a) or (b), a person may rely on one or more of the exemptions in Parts IV and V in respect of the former activity and on one or more of the exemptions in Parts V and VI in respect of the latter activity.

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