

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (FINANCIAL PROMOTION)
(AMENDMENT NO.2) ORDER 2007**

2007 No. 2615

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends article 70 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) ("the Financial Promotion Order"). The amendment made by article 2 of this Order extends the exemptions to prospectuses (and their constituent parts) which have been approved by another Member State and which approval has been notified to the competent authority in the UK in accordance with section 87H of the Financial Services and Markets Act 2000 ("FSMA"). It also extends the exemption to communications made in accordance with the prospectus directive comprising the final terms of the offer or the final offer price or amount of securities.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Financial Promotion Order sets out a number of exemptions from the restriction on financial promotions contained in section 21(1) of FSMA. Article 70 of the Financial Promotion Order exempts prospectuses approved in accordance with prospectus rules made under Part 6 of FSMA from the financial promotion restriction.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Prospectus Directive sets out the initial disclosure obligations for issuers of securities that are offered to the public or admitted to trading on a regulated market in the EU. It provides a passport for issuers that enables them to raise capital across the EU on the basis of a single prospectus.

7.2. The Directive makes clear that once a prospectus has been approved by a home Member State, another Member State cannot require it to be approved or impose any other requirements relating to the content or dissemination of the prospectus.

7.4 The Financial Promotion Order currently exempts prospectuses or supplementary prospectuses which have been approved by the home competent authority of another Member State and which have been notified to the Financial Services Authority in accordance with section 87H of FSMA. However it does not expressly include prospectuses approved by the competent authority of another Member State (EEA approved prospectuses). This Order extends the exemption to cover EEA approved prospectuses.

7.5 An initial prospectus may be followed by a separate document setting out, for example, the final terms of the offer or the final offer price or amount of securities. To avoid any uncertainty about whether the financial promotion exemption covered such documents, this Order extends the exemption to cover any non-real time communication comprising the final terms of the offer or the final offer price or amount of securities, provided such communication complies with the prospectus directive.

8. Impact

8.1 A partial regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the HM Treasury website or from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

9. Contact

9.1 John Sparrow at HM Treasury Tel: 020 7270 5312 or e-mail: john.sparrow@hm-treasury.gov.uk can answer any queries regarding this instrument.

FINAL REGULATORY IMPACT ASSESSMENT

TITLE OF THE PROPOSAL

1. The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No.2) Order 2007.

PURPOSE AND INTENDED EFFECT

2. The Prospectus Directive (2003/71/EC) sets out the initial disclosure obligations for issuers of securities that are offered to the public or admitted to trading on a regulated market in the EU. It provides a passport for issuers that enables them to raise capital across the EU on the basis of a single prospectus.
3. The Directive makes clear that once a prospectus has been approved by a home Member State, another Member State cannot require it to be approved or impose any other requirements relating to the content or dissemination of the prospectus.
4. The Financial Promotion Order sets out a number of exemptions from the restriction on financial promotions contained in the Financial Services and Markets Act 2000 (FSMA).
5. Currently the relevant exemption is arguably limited to prospectuses approved by the UK where it is the home Member State. It currently does not expressly include prospectuses approved by the competent authority of another Member State (EEA approved prospectuses).
6. These regulations amend article 70 of the Financial Promotion Order to include more clearly prospectuses or supplementary prospectuses which have been approved by the home competent authority of another Member State and which have been notified to the Financial Services Authority in accordance with section 87H of the Financial Services and Markets Act 2000 (FSMA).
7. An initial prospectus may be followed by a separate document setting out, for example, the final terms of the offer or the final offer price or amount of securities. One respondent to the consultation felt there was uncertainty about the financial promotion exemption covered by such documents. Therefore these regulations also extend the exemption to cover any non-real time communication comprising the final terms of the offer or the final offer price or amount of securities, provided such communication complies with the prospectus directive.

RATIONALE FOR INTERVENTION

8. Currently the Financial Promotion Order exemption does not expressly include prospectuses approved by the competent authority of another Member State (EEA approved prospectuses). These regulations will remove this inconsistency between the Financial Promotion Order and the Prospectus Directive.

LEGISLATION

9. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 sets out a number of exemptions from the restriction on financial promotions contained in section 21(1) of the Financial Services and Markets Act 2000. The amendment made by article 2 of this Order extends the exemptions to prospectuses (and their constituent parts) which have been approved by another Member State and which approval has been notified to the competent authority in the UK in accordance with section 87H of the Financial Services and Markets Act 2000. It also extends the exemption to communications made in accordance with the Prospectus Directive (Directive 2003/71/EC) comprising the final terms of the offer or the final offer price or amount of securities.

COSTS AND BENEFITS

10. These regulations will remove an inconsistency between the Financial Promotion Order and the Prospectus Directive. It is not easy to quantify the benefits of the proposed changes.

SMALL FIRMS IMPACT TEST

11. The change in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 introduced by these regulations is unlikely to have a significant effect on small firms.

COMPETITION ASSESSMENT

12. Minimal impact is foreseen on the position of individual firms, in the sense that the changes are relatively small and apply to all those doing particular activities and are not specific to individual firms.

ENFORCEMENT, SANCTIONS AND MONITORING

13. Compliance with the requirements of financial services regulation will continue to be monitored and enforced by the FSA.

SUMMARY AND RECOMMENDATION

The effect of these regulations is to include more clearly prospectuses or supplementary prospectuses which have been approved by the home competent authority of another Member State and which have been notified to the Financial Services Authority in accordance with section 87H of the Financial Services and Markets Act 2000 (FSMA) and to extend the Financial Promotion Order exemption to communications made in accordance with the Prospectus Directive comprising the final terms of the offer or the final offer price or amount of securities.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Kitty Ussher MP
Economic Secretary to the Treasury
HM Treasury
August 2007