

2001 No. 2633

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Financial
Promotion) (Amendment) Order 2001**

Made - - - - - 20th July 2001

Laid before Parliament 20th July 2001

Coming into force in accordance with article 1

The Treasury in exercise of the powers conferred on them by sections 21(5) and 238(6) of the Financial Services and Markets Act 2000(a) and of all other powers enabling them in that behalf hereby make the following Order:

1. This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001 and comes into force on the day on which section 19 of the Financial Services and Markets Act 2000 comes into force.

2. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001(b) is amended as follows:

(a) After article 28 insert the following new article—

“One off unsolicited real time communications

28A.—(1) The financial promotion restriction does not apply to an unsolicited real time communication if the conditions in paragraph (2) are met.

(2) The conditions in this paragraph are that—

- (a) the communication is a one off communication;
- (b) the communicator believes on reasonable grounds that the recipient understands the risks associated with engaging in the investment activity to which the communication relates;
- (c) at the time that the communication is made, the communicator believes on reasonable grounds that the recipient would expect to be contacted by him in relation to the investment activity to which the communication relates.

(3) Paragraphs (2) and (3) of article 28 apply in determining whether a communication is a one off communication for the purposes of this article as they apply for the purposes of article 28.”

(b) After article 55 insert the following new article—

“Non-real time communication by members of professions

55A.—(1) The financial promotion restriction does not apply to a non-real time communication which is—

- (a) made by a person (“P”) who carries on Part XX activities; and
- (b) limited to what is required or permitted by paragraphs (2) and (3).

(a) 2000 c. 8.
(b) S.I. 2001/1335.

(2) The communication must be in the following terms—

“This [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of [relevant designated professional body]. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.”

(3) The communication may in addition set out the Part XX activities which P is able to offer to his clients, provided it is clear that these are the investment services to which the statement in paragraph (2) relates.

(4) “Part XX activities” means the regulated activities to which the general prohibition does not apply when they are carried on by P by virtue of section 327 of the Act.”

(c) In article 62(1), after “communication by” insert “, or on behalf of,”.

3. In the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001(a), after article 15 insert the following new article—

One off unsolicited real time communications

15A.—(1) The scheme promotion restriction does not apply to an unsolicited real time communication if the conditions in paragraph (2) are met.

(2) The conditions in this paragraph are that—

(a) the communication is a one off communication;

(b) the communicator believes on reasonable grounds that the recipient understands the risks associated with engaging in the investment activity to which the communication relates;

(c) at the time the communication is made, the communicator believes on reasonable grounds that the recipient would expect to be contacted by him in relation to the investment activity to which the communication relates.

(3) Paragraphs (2) and (3) of article 15 apply in determining whether a communication is a one off communication for the purposes of this article as they apply for the purposes of article 15.”

20th July 2001

Anne McGuire
Tony McNulty
Two of the Lords Commissioners of
Her Majesty's Treasury

(a) S.I. 2001/1060.

EXPLANATORY NOTE

(This note does not form part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (“the Financial Promotion Order”) by providing for two further exemptions from the financial promotion restriction in section 21 of the Financial Services and Markets Act 2000 (c. 8) (“the Act”). The first extends the exemption given to one off communications in article 28 of the Financial Promotion Order to cover certain unsolicited real time communications made to a recipient who understands the risks involved in engaged in the activity being promoted and who would expect to receive the communication. The second new article allows professional firms falling within Part XX of the Act to make non-real time communications to promote the activities that they are entitled to do because of Part XX. This exemption applies only where the communication does not go beyond the wording set out in the article.

Article 2(c) of the Order expands the existing exemption for promotions relating to the sale of a company so that it covers communications made on behalf of a person listed in article 62(1) of the Financial Promotion Order as well as communications made by such a person himself.

Article 3 of the Order adds a corresponding new exemption in respect of unsolicited one off real time communications to the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (S.I. 2001/1060).

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