

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part XVII: Collective Investment Schemes

Chapter II: Restrictions on promotion

Section 238: Restrictions on promotion

458. This section contains the basic marketing prohibition and some exemptions from it. The main exemption is for schemes which are marketed other than to the general public. Other exemptions include promotions made in respect of authorised unit trust schemes, authorised oeics and recognised overseas schemes. The marketing prohibition applies to communications which originate outside the United Kingdom if the communication is capable of having an effect in the United Kingdom.
459. *Subsection (6)* enables the Treasury by order to specify circumstances in which the *subsection (1)* prohibition does not apply. For incoming promotions, *subsection (7)* makes it clear that it will be possible to make exemptions dealing with promotions originating outside the United Kingdom even if they are capable of having an effect in the United Kingdom. Thus, *subsection (7)* makes clear that the order-making power in *subsection (6)* enables the Treasury to adjust the scope of the restriction on promotion of collective investment schemes by authorised persons to take full account of international and technological developments.
460. The term “promotion otherwise than to the general public” is amplified in *subsection (10)* and includes promotions which are designed, so far as possible, to reduce the risk of participation by persons for whom it would be unsuitable. The prohibition on marketing to the general public will not therefore necessarily be breached if a promotion is inadvertently received by a member of the general public.

Section 239: Single property schemes

461. A single property scheme is, broadly, a collective investment scheme which relates to a single building or a group of buildings managed as a single enterprise. This section gives the Treasury power to make regulations exempting the promotion of participation in single property schemes to the general public from the prohibition in section 238. If the Treasury make regulations under this section, the Authority may then make rules imposing duties on the operator and trustee or depositary of schemes exempted under the regulations.

Section 240: Restriction on approval of promotion

462. This is a new provision designed to prevent an authorised person from approving a financial promotion under section 21 if the authorised person would not himself be permitted to make the communication under section 238.

Section 241: Actions for damages

463. If an authorised person contravenes a requirement under section 238 or 240, a private person, and other persons falling within such categories as may be prescribed in regulations made by the Treasury, who suffers loss as a result may claim damages.