



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVII

COLLECTIVE INVESTMENT SCHEMES

CHAPTER II

RESTRICTIONS ON PROMOTION

Modifications etc. (not altering text)

C1 Pt. XVII Ch. II (ss. 238-241) modified (31.10.2001) by [S.I. 2001/3347](#), [Sch. para. 8](#)

238 Restrictions on promotion.

- (1) An authorised person must not communicate an invitation or inducement to participate in a collective investment scheme.
- (2) But that is subject to the following provisions of this section and to section 239.
- (3) Subsection (1) applies in the case of a communication originating outside the United Kingdom only if the communication is capable of having an effect in the United Kingdom.
- (4) Subsection (1) does not apply in relation to—
 - (a) an authorised unit trust scheme;
 - ^{F1}(aa) an authorised contractual scheme;]
 - (b) a scheme constituted by an authorised open-ended investment company; or
 - (c) a recognised scheme.
- (5) Subsection (1) does not apply to anything done in accordance with rules made by the ^{F2}FCA] for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of specified descriptions.

Changes to legislation: Financial Services and Markets Act 2000, Chapter II is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (6) The Treasury may by order specify circumstances in which subsection (1) does not apply.
- (7) An order under subsection (6) may, in particular, provide that subsection (1) does not apply in relation to communications—
 - (a) of a specified description;
 - (b) originating in a specified country or territory outside the United Kingdom;
 - (c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or
 - (d) originating outside the United Kingdom.
- (8) The Treasury may by order repeal subsection (3).
- (9) “Communicate” includes causing a communication to be made.
- (10) “Promotion otherwise than to the general public” includes promotion in a way designed to reduce, so far as possible, the risk of participation by persons for whom participation would be unsuitable.
- (11) “Participate”, in relation to a collective investment scheme, means become a participant (within the meaning given by section 235(2)) in the scheme.

Textual Amendments

- F1** S. 238(4)(aa) inserted (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, **3(7)** (with reg. 24)
- F2** Word in ss. 237-239 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 9\(1\)\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

- I1** S. 238 wholly in force at 1.12.2001; s. 238 not in force at Royal Assent see s. 431(2); s. 238 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b), [Sch. Pt. 2](#); s. 238 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, [Sch.](#); s. 238 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. 2(1)

239 Single property schemes.

- (1) The Treasury may by regulations make provision for exempting single property schemes from section 238(1).
- (2) For the purposes of subsection (1) a single property scheme is a scheme which has the characteristics mentioned in subsection (3) and satisfies such other requirements as are prescribed by the regulations conferring the exemption.
- (3) The characteristics are—
 - (a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—
 - (i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme, or
 - (ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,

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- with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and
- (b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.
- (4) If regulations are made under subsection (1), the [F²FCA] may make rules imposing duties or liabilities on the operator and (if any) the trustee or depositary of a scheme exempted by the regulations.
- (5) The rules may include, to such extent as the [F²FCA] thinks appropriate, provision for purposes corresponding to those for which provision can be made under section 248 in relation to authorised unit trust schemes.

Textual Amendments

- F2** Word in ss. 237-239 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 9\(1\)\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

- I2** S. 239 wholly in force at 18.6.2001; s. 239 not in force at Royal Assent see s. 431(2); s. 239(1)-(3) in force at 25.2.2001 by [S.I. 2001/516, art. 2\(a\), Sch. Pt. 1](#); s. 239 in force in so far as not already in force at 18.6.2001 by [S.I. 2001/1820, art. 2, Sch.](#)

240 Restriction on approval of promotion.

- (1) An authorised person may not approve for the purposes of section 21 the content of a communication relating to a collective investment scheme if he would be prohibited by section 238(1) from effecting the communication himself or from causing it to be communicated.
- (2) For the purposes of determining in any case whether there has been a contravention of section 21(1), an approval given in contravention of subsection (1) is to be regarded as not having been given.

241 Actions for damages.

If an authorised person contravenes a requirement imposed on him by section 238 or 240, [F³section 138D] applies to the contravention as it applies to a contravention mentioned in [F³section 138D(2)].

Textual Amendments

- F3** Words in s. 241 substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\), art. 1\(2\), Sch. para. 6](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2023/1347 reg. 8](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 81\(10\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17 Ch. 3B inserted by [2023 c. 29 s. 64\(3\)](#)
- Pt. 20C inserted by [2016 c. 14 s. 30\(3\)](#)
- s. 31(1)(aa) inserted by [2021 c. 22 s. 22\(2\)](#)
- s. 32A inserted by [2021 c. 22 s. 22\(3\)](#)
- s. 32A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- s. 36A and cross-heading inserted by [2021 c. 22 s. 22\(4\)](#)
- s. 71J and cross-heading inserted by [2021 c. 22 Sch. 8 para. 4](#)
- s. 86(9A) inserted by [S.I. 2019/707 reg. 8\(9\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8(6)-(10) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 13(c))
- s. 87A(11) inserted by [S.I. 2019/707 reg. 10\(5\)](#) (This amendment not applied to legislation.gov.uk. Reg. 10(4)(5) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 15(b))
- s. 124(10)(c)(i) word omitted by [S.I. 2019/310 reg. 5\(11\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(11)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(e))
- s. 129(7)(a) word inserted by [S.I. 2019/310 reg. 5\(12\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 129(7)(c) omitted and word by [S.I. 2019/310 reg. 5\(12\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 214(5A) inserted by [2021 c. 22 Sch. 8 para. 8](#)
- s. 261E(A1) inserted by [2023 c. 29 s. 64\(2\)\(a\)](#)
- s. 367A inserted by [2021 c. 22 Sch. 8 para. 10](#)
- s. 395(13)(h)(i) inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(c\)](#)
- s. 395(13)(bc)-(be) word inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(b\)](#)
- s. 395(14) inserted by [2021 c. 22 Sch. 8 para. 12\(3\)](#)
- s. 427A(3) words substituted by [2002 c. 40 Sch. 17 para. 59](#) (This amendment not applied to legislation.gov.uk. The Financial Services and Markets Act 2000 does not contain a section 427A.)
- Sch. 1ZA para. 32(c) and word inserted by [2021 c. 22 Sch. 8 para. 18](#)
- Sch. 2A para. 19(2)(b)(iia) inserted by [2023 c. 29 Sch. 10 para. 19\(a\)](#)
- Sch. 2A2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2B inserted by [2021 c. 22 Sch. 7](#)
- Sch. 2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 11A para. 5(3) inserted by [S.I. 2019/707 reg. 38\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 38(2)-(5)(7)(8) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 20)

- Sch. 17A para. 12 words substituted by [S.I. 2019/662 reg. 13\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 13(1) substituted (25.6.2020) by S.I. 2020/646, regs. 1(2)(c), 11(3))