



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVII

COLLECTIVE INVESTMENT SCHEMES

CHAPTER II

RESTRICTIONS ON PROMOTION

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;
 - (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 Authority for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of specified descriptions.
- (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—

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- (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.

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,
 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 Authority 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 Authority thinks appropriate, provision for purposes corresponding to those for which provision can be made under section 248 in relation to authorised unit trust schemes.

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.

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- (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, section 150 applies to the contravention as it applies to a contravention mentioned in that section.