

Long awaited reforms to financial promotion exemptions for high net worth individuals and self-certified sophisticated investors

Almost two years have elapsed since the Treasury first consulted on proposed changes to two key exemptions from the general financial promotion restriction contained in the Financial Promotion Order 2005 (“FPO”). The draft regulations are now with us and will come into force on 31 January 2024 (the “Effective Date”) impacting both authorised and unauthorised firms who communicate promotions in reliance of such exemptions.

The exemptions in question are those for (a) **high net worth individuals** and (b) **self-certified sophisticated investors**. Persons in those categories can receive invitations or inducements to engage in investment activity without such promotions requiring the approval of an FCA authorised firm.

The exemptions are an important part of the UK's private investment ecosystem, significantly reducing the cost and regulatory burden faced by companies looking to raise money from persons with a level of wealth or investment experience which obviates the need for additional layers of protection.

The way the tests were framed, however, left their effectiveness open to erosion over time by two factors: (i) inflation and (ii) a shifting investment landscape driven by technological and social change.

The salary and assets of a "high net worth" individual in 2001 are now almost half as valuable in real terms and pension reforms mean investors can more easily swell their net asset base with withdrawal from DC pension pots. And whereas making one investment per year in an unquoted company might have been a badge of sophistication at the turn of the millennium, it is now possible to make 10 such investments in 10 minutes using your smartphone and only spend £100.

Updating the exemptions in light of these realities, alongside some minor legislative tidy ups, is the principal goal of [an amending order](#) published in draft by the Treasury on 7 November.

The other key change has been an overhaul of the certificates themselves. The language of the risk warnings section has been simplified and strengthened and, from being a static set of statements with a single signature block, the forms now require a level of interaction from the signatory, taking on a more questionnaire style approach with a view to minimising the risk of investors unthinkingly 'click-signing' the certificates. This is in keeping with other recent changes to the regime for higher risk promotions which *are* approved by an FCA authorised firm – for more detail on which, please refer to our article [here](#).

As the Treasury's explanatory notes to the draft order explains:

“The exemptions were last substantively updated in 2005. Since then, there have been significant economic, social and technological changes to the context in which the exemptions operate. In addition, the government is aware of concerns about misuse of the exemptions, including some businesses seeking to use the exemptions to market products inappropriately to ordinary retail investors. This issue was recognised in the Treasury Select Committee’s report on the failure of London Capital and Finance and led to a recommendation for the government to “re-evaluate the Financial Promotion Order exemptions to determine their appropriateness and consider what changes need to be made to protect consumers”.

Changes to the exemptions at a glance

The changes mostly relate to the content and style of the two investor statements required to be completed by HNWI and self-certified sophisticated investors respectively prior to receiving unapproved financial promotions. In each case, thresholds have been amended, language has been simplified, and an element of interaction is now required beyond simply “checking the box”. The following table summarises these changes:

	Old regime	New regime (applies from 31 January 2024)
Annual Income required to be a HNWI	£100,000	£170,000
Net assets required to be a HNWI	£250,000	£430,000
Criterion to be 'sophisticated investor'	One unlisted investment in the last year	Removed due to ease of making such investments (e.g. via a crowdfunding website)
Criterion to be 'sophisticated investor'	Director of a company with £1m turnover	Director of a company with £1.6m turnover
Risk warnings re: protections	"[I understand that] I may have no right to complain to the Financial Conduct Authority, the Financial Ombudsman [and that] I may have no right to seek compensation from the Financial Services Compensation Scheme"	"[I understand that] I can expect no protection from the FCA, the Financial Ombudsman or the Financial Services Compensation Scheme"
Risk warning re: loss of capital	"I accept that I can lose my property and other assets from making investment decisions based on financial promotions"	"I accept that I could lose all of the money I invest"
Style of certificate	Series of statements with a signature block at the foot	Questionnaire style requiring the signatory to tick boxes and write in details of income, assets or experience

We note that the prescribed risk warning and disclaimer remain unchanged by the new changes which come into force on the Effective Date. Only the content of the investor statements has been updated.

It's also worth noting that the new investor statements are for the FPO exemptions for HNWI and self-certified sophisticated investors. The equivalent exemptions for the promotion of collective investment schemes pursuant to the Promotion of Collective Investment Schemes (Exemptions) Order 2001 ("**PCIS**") (which mirror their FPO counterparts) will also be subject to the incoming changes, and the only differences in text between the PCIS and FPO investor statements will be the references to the relevant legislation in the first sentence of each statement.

Other useful points to note (particularly for syndicate leads and platforms)

In implementing the updates to your own communication and/or membership onboarding processes, the following points are worth having in mind:

- New financial promotions made after the Effective Date, even if made to angels already promoted to under the current exemptions, will need to be made in accordance with the updated exemptions.
- We recommend that you review your existing membership records to check if you hold sufficient data on your members to confirm whether or not they satisfy the strengthened thresholds.
- Since the FPO already requires an annual re-confirmation of investor statements for HNWI and self-certified sophisticated investors, you may consider requesting all members to provide a new investor statement (in the new format) prior to the Effective Date.
- Where financial promotions have been made in compliance with the existing regime prior to the Effective Date, the follow up communications provisions in the FPO will remain available. This means that any follow up financial promotions relating to the *same* investment made within 12 months of the first communication will not require updated investor statements, provided that the other relevant requirements of those provisions are met.
- The Treasury decided to not impose additional responsibility on those who communicate unapproved financial promotions in reliance on the two exemptions beyond a “belief on reasonable grounds” that the recipient has truthfully certified their investor status. This will be a relief for many given the additional cost and burden which may have been involved in further due diligence of prospective and existing members (and the sensitivities of requiring a more granular level of personal data from angels).
- Any communication which relies on the two exemptions must include (e.g. in footer text) your company address, company registration number and contact information (where you are a business or incorporated association) so that recipients can perform basic due diligence on you if needed.

We have released a short guide to the changes together with the template new investor statements to help syndicate leads, platform operators and other affected businesses with implementing the updates prior to the Effective Date. If you would like a free copy, please feel free to reach out to us on enquiries@blears.com.

Frank Daly and Ollie Blears
RW Blears LLP
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