

UK Financial Services Update: The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023

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The UK's HM Treasury recently published the response to its consultation on the financial promotion exemptions for high net worth individuals and self-certified sophisticated investors under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "**FPO**"). A financial promotion can currently be made to any person falling within one of the exemptions set out in the FPO, and those exemptions were designed to allow businesses to raise finance from high net worth individuals and sophisticated private investors, whilst protecting those deemed not to be such persons. The FPO sought to achieve this aim by defining what it means to be a high net worth individual or self-certified sophisticated investor and then exempting those persons from the general prohibition regarding financial promotions. As the FPO is approaching twenty years of age and given that the exemptions were primarily drafted by reference to various financial thresholds which are now outdated, HM Treasury's consultation determined that the FPO is no longer achieving this aim and needed to be updated.

In response to the HM Treasury's consultation and in order to update the FPO and make it fit for purpose again, the UK Government has laid draft legislation before Parliament under the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023 (the "**FPO Amendment Order**"). Among other things, the FPO Amendment Order would:

1. update the financial thresholds so that, in order to meet the definition of a high net worth individual, that individual will need to have:
 - a. income of at least £170,000 in the last financial year (up from £100,000 under the FPO); or
 - b. net assets of at least £430,000 throughout the last financial year (up from £250,000 under the FPO);
2. update the eligibility criteria relating to directorships of self-certified sophisticated investors, meaning that, in order to meet that criterion and thereby rely on the exemption, a self-certified sophisticated investor must have been a director of a company with an annual turnover of at least £1,600,000 in the last two years (up from £1,000,000 under the FPO); and
3. remove the criterion relating to previous investments in unlisted companies, which is no longer considered to be an indicator of sophistication.

The FPO Amendment Order retains the liability threshold of the FPO, so that whilst it is the individual's responsibility to ensure that where they are self-certifying their status as a high net worth individual or as a sophisticated investor, they do so accurately; a business will be liable only if, in the circumstances, it was not reasonable for it to believe such self-certification.

The FPO Amendment Order must be approved by a resolution of each of the UK's Houses of Parliament in accordance with the FPO and once approved will come into force on 31 January 2024.

Conclusion

Issuers, arrangers and distributors should note the updated thresholds for high net worth individuals and self-certified sophisticated investors applicable from 31 January 2024. Issuers should review (and, where necessary, update) their offering documents (for example investment memoranda) to ensure that they reflect the updated thresholds and criteria in the FPO Amendment Order and no promotional material should be circulated to any individual or investor from 31 January 2024 that does not meet the updated thresholds or criteria. Additionally, updated Investor Statements should be used for any promotion or sale of securities to high net worth individuals (as set out in Schedule 1 of the FPO Amendment Order) and self-certified sophisticated investors (as set out in Schedule 2 of the FPO Amendment Order) on or after 31 January 2024.

For further information, please contact a member of the Haynes Boone [Capital Markets and Securities Practice Group](#).