



HM Treasury

# Financial promotion exemptions for high net worth individuals and sophisticated investors: **A consultation**

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December 2021



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# Chapter 1

## Introduction

- 1.1 A financial promotion is a communication that contains an invitation or inducement to engage in a financial product or service. Such communications can take a wide variety of forms, including advertisements placed through print, broadcast or online media; marketing brochures; direct mail; or use of social media. Financial promotions are often consumers' first contact with an investment opportunity and so can have a significant influence over their financial decisions.
- 1.2 The communication of financial promotions is subject to regulatory safeguards which seek to ensure that consumers are appropriately protected such that they are able to make informed and appropriate decisions. The UK financial promotion regime provides safeguards in two key ways:
- In general, an individual or business cannot communicate a financial promotion unless either the content of the promotion is approved by a firm which is authorised by the Financial Conduct Authority (FCA) or Prudential Regulation Authority to carry on a regulated financial services activity, or the individual or business holds such an authorisation itself. This is referred to as the 'financial promotion restriction'.
  - The FCA sets binding rules that authorised firms must comply with when communicating or approving financial promotions, for example, the requirement that financial promotions must be fair, clear and not misleading.
- 1.3 The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO) includes a number of exemptions from the financial promotion restriction. In practice, these enable unauthorised individuals or businesses to communicate financial promotions without requiring the approval of an authorised firm. The scope of the exemptions must therefore be carefully designed given these financial promotions aren't subject to the safeguards outlined in paragraph 1.2.
- 1.4 This consultation will consider three specific exemptions, those for:
- Certified high net worth individuals (Article 48 of the FPO)
  - Sophisticated investors (Article 50)
  - Self-certified sophisticated investors (Article 50A)
- 1.5 These exemptions (hereafter referred to as 'the exemptions') were introduced in 2001 and then expanded and updated in 2005 to enable small and

medium sized enterprises (SMEs) to raise finance from sophisticated private investors, or 'business angels', without the cost of having to comply with the financial promotion regime.

- 1.6 It is now over 20 years since these exemptions were introduced, and 15 years since they were last reviewed. Since then, there have been significant economic, social and technological changes that have changed the context in which the exemptions must be viewed. These include the development of the online retail investment market, which allows many more investment decisions to be taken online (often without the involvement of a financial intermediary) and price inflation and pensions freedoms, which have effectively eroded the value of the high net worth individual exemption thresholds over time.
- 1.7 In addition, the government has been made aware of misuse of the exemptions, for example, they have been used by some firms to market inappropriate products 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"<sup>1</sup>.
- 1.8 In light of the changes outlined above and the recommendation from the Treasury Select Committee, the government has carried out a review of the three financial promotions exemptions listed in paragraph 1.4. As part of this review, and now this consultation, the government has sought to:
- Set out why the financial promotion exemptions were introduced and how the current exemptions regime operates (see Chapter 2);
  - Explain its understanding of the issues with the financial promotion regime (Chapter 3);
  - Outline five proposals for how the exemptions could be updated (Chapter 4). These are:
    - i. Increasing the financial thresholds for high net worth individuals;
    - ii. Amending the criteria for self-certified sophisticated investors;
    - iii. Placing a greater degree of responsibility on firms to ensure individuals meet the criteria to be deemed high net worth or sophisticated;
    - iv. Updating the high net worth individual and self-certified sophisticated investor statements;
    - v. Updating the name of the high net worth individual exemption.

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<sup>1</sup> This recommendation can be found in paragraph 180 of the Treasury Select Committee report, found [here](#).

- 1.9 The proposals included in Chapter 4 seek to balance the government’s intention to address the issues outlined in paragraphs 1.6 and 1.7 while ensuring the exemptions continue to allow SMEs to raise finance from high net worth and sophisticated investors.
- 1.10 A glossary of terms used throughout this consultation can be found in Annex B.

## Related government and FCA initiatives

### Financial promotions gateway

- 1.11 Currently, any authorised firm is able to approve any financial promotion of an unauthorised firm. There is no specific process through which a firm must be assessed as suitable and competent before it is able to approve the financial promotions of unauthorised firms.
- 1.12 In July 2020 the government published a consultation<sup>2</sup> with proposals to establish a regulatory ‘gateway’, which a firm must pass through before it is able to approve the financial promotions of unauthorised firms. Any firm wishing to approve the financial promotions of unauthorised firms would first need to obtain the specific consent of the FCA to do so. In its response to the consultation, published in June 2021<sup>3</sup>, the government outlined its intention to establish the regulatory gateway by restricting the approval of the financial promotions of unauthorised firms through the imposition of a specific financial promotion requirement on all new and existing authorised persons. An existing authorised firm wishing to undertake approval of financial promotions would then need to apply to the FCA to have this requirement varied or cancelled. A firm applying for authorisation would be able to specify whether it would like to have the financial promotion requirement varied or cancelled as part of the broader application process.

### FCA discussion paper on high-risk investments

- 1.13 In April 2021 the FCA published a discussion paper<sup>4</sup>, ‘Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions’. The discussion paper examined several possible changes to the FCA’s financial promotion rules including the classification of high-risk investments; the segmentation of the high-risk investment market and the role of authorised persons who approve financial promotions. The FCA intend to publish a consultation paper with specific proposals early in the new year.
- 1.14 As part of this work the FCA announced that it would conduct behavioural testing on how best to influence consumer behaviour to make effective investment decisions. The results of the FCA’s testing have been shared with

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<sup>2</sup> This consultation can be found [here](#).

<sup>3</sup> The consultation response can be found [here](#).

<sup>4</sup> The discussion paper can be found [here](#).

the government to support this consultation. The FCA will make public the full results of the testing early in the new year.

## How to respond to this consultation

- 1.15 The government welcomes views from all interested parties on this consultation, including from firms or individuals who use or have used the financial promotion exemptions. The government would particularly welcome responses to the questions in Chapter 4 on the proposals for reform to the financial promotions regime. When providing answers to these questions the government would appreciate if stakeholders could explain their thinking, and provide any additional information that they feel would assist the government when considering its next steps.
- 1.16 The consultation will run from 15<sup>th</sup> December to 9<sup>th</sup> March. You can respond by emailing [FinProms@hmtreasury.gov.uk](mailto:FinProms@hmtreasury.gov.uk).

# Chapter 2

## How the existing financial promotion regime operates

2.1 This consultation concerns three exemptions in the FPO: the certified high net worth individual exemption (outlined in Article 48 of the FPO), the sophisticated investor exemption (Article 50) and the self-certified sophisticated investor exemption (Article 50A). This chapter gives an overview of the financial promotions regime as a whole and then explains these exemptions, including why they were introduced and what form they take in legislation.

### The Financial Promotion Restriction

2.2 Section 21 of the Financial Services and Markets Act 2000 (FSMA) contains the financial promotion restriction. This restriction is broad in scope and provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity<sup>5</sup> or claims management activity. This includes invitations or inducements to engage in certain activities which are not regulated activities<sup>6</sup>. For example, a person may not necessarily carry on a regulated activity requiring authorisation in issuing bonds, but the marketing of the bonds is likely to be subject to the financial promotion restriction.

2.3 The financial promotion restriction does not apply if:

- the communication is made by an authorised person<sup>7</sup>;
- the content of the communication is approved by an authorised person<sup>8</sup>; or
- the financial promotion otherwise meets the conditions of an exemption<sup>9</sup> within the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO).

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<sup>5</sup> Section 21(8) FSMA defines “engaging in investment activity”. This is defined further by section 21(9) and (10) and by the list of “controlled activities” and “controlled investments” within the FPO.

<sup>6</sup> Section 19 of FSMA sets out the ‘general prohibition’. This provides that no person may carry on a regulated financial services activity in the UK unless they are authorised or exempt. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) specifies the financial services activities which are subject to regulation. In order to undertake a regulated activity, a firm must generally be authorised by the FCA or, in the case of banks, credit unions and certain insurers and investment firms, by the Prudential Regulation Authority (PRA).

<sup>7</sup> Section 21(2)(a) FSMA.

<sup>8</sup> Section 21(2)(b) FSMA.

<sup>9</sup> Section 21(5) FSMA.

- 2.4 The effect of the financial promotion restriction is that an unauthorised person must have its financial promotions approved by an authorised person before they are communicated (unless an exemption applies). Communicating a financial promotion in breach of section 21 is a criminal offence on the part of the unauthorised person under section 25 of FSMA.

## **FCA Handbook rules and high-risk investments**

- 2.5 The FCA's Handbook contains rules on financial promotions which authorised persons must comply with when communicating or approving financial promotions<sup>10</sup>. These rules include the basic requirement that financial promotions must be "fair, clear and not misleading"<sup>11</sup>. Authorised firms, whether communicating their own financial promotions or approving the promotions of unauthorised firms, are obliged to ensure that promotions are compliant with these rules. The FCA rules do not generally apply to financial promotions where an exemption applies.
- 2.6 In addition, the FCA has used its financial promotions rule making power over recent years to impose marketing restrictions which limit the extent to which firms can promote investments which the FCA has classified as high-risk<sup>12</sup> to retail investors. For example, speculative mini-bonds cannot be marketed to retail investors (unless they are high net worth or sophisticated)<sup>13</sup>. In recent years the FCA's marketing restrictions have taken on an increasingly significant role as structural changes in the retail investment market mean consumers have become more likely to be exposed to high-risk products. This is discussed more in paragraphs 3.13-3.14.
- 2.7 The FCA's marketing restrictions also contain exemptions which enable promotion to high net worth individuals and sophisticated investors where relevant conditions are met. The government notes that if the conditions for the FPO exemptions were updated (for example, if the thresholds were increased) then the FCA may determine to consult on replicating some or all of these updates to the exemptions in its own rules.

## **Evolution of exemptions relating to high net worth individuals, self-certified sophisticated investors and sophisticated investors**

- 2.8 The FPO includes a number of exemptions from the financial promotion restriction. These enable unauthorised persons to communicate financial promotions in certain circumstances, including to defined groups or

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<sup>10</sup> Section 137R of FSMA sets out the legislative basis for this rule making power.

<sup>11</sup> See COBS 4.2, [here](#).

<sup>12</sup> The FCA has limited powers over many issuers of high-risk investments because they are often not carrying out a regulated activity when they issue an investment product and so they may not be authorised persons. However, the marketing of these investment does generally fall within the Financial Promotions regime.

<sup>13</sup> The FCA's marketing restrictions are explained in more detail in paragraphs 2.18 to 2.29 in the FCA's discussion paper, "Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions", which can be found [here](#).

individual investors, without requiring approval<sup>14</sup>. These include exemptions for governments, overseas firms and for journalists. Since financial promotions which are communicated within the scope of the exemptions do not require the approval of an authorised person, they are also not subject to the FCA rules, including the marketing restrictions described in paragraph 2.6.

2.9 When the FPO was introduced in 2001 it sought to clarify and rationalise the application of exemptions that had been set out under the Financial Services Act 1986. When undertaking this process, the government also considered whether any new exemptions should be introduced. As part of this process, several groups<sup>15</sup> recommended to the government that it should make it easier for firms to directly promote investment opportunities to sophisticated private investors, commonly known as ‘business angels’. This recommendation reflected the view of these groups<sup>16</sup> that:

1. private individuals (those who are not investment professionals) are an extremely important source of finance for early stage firms;
2. the costs of approval of investment advertisements by an authorised person were prohibitive in the case of smaller companies seeking relatively modest sums of money; and
3. it would be desirable to define a category of private investors of greater sophistication and resources for whom the degree of investor protection provided by the current investment advertising restrictions may be disproportionate.

2.10 To reduce the cost of SMEs raising finance from sophisticated private investors (i.e. the cost of having a financial promotion approved), the government therefore created two new financial promotions exemptions:

- **The Certified High Net Worth Individual exemption (Article 48 FPO)** – This exempted from the financial promotion restriction communications to individuals where their accountant or employer had certified that they had an income of £100,000 or more in the last year, or net assets of £250,000 or more<sup>17</sup>. Reflecting the purpose of the exemption to encourage investment in SMEs, this exemption could only be used to market investments related to unlisted companies.
- **The Sophisticated Investor exemption (Article 50)** – This exempted from the financial promotion restriction communications to investors who had:

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<sup>14</sup> The FCA’s financial promotion rules may also not apply to authorised persons when they communicate financial promotions within the scope of an FPO exemption (section 137R(3) FSMA).

<sup>15</sup> See, 1) the Working Group on the Financing of High Technology Businesses, Final Report, Published HM Treasury, November 1998 and 2) Smaller Quoted Companies, A Report to the Paymaster General, Published HM Treasury, November 1998.

<sup>16</sup> See Part Five, paragraph 1.1 of HM Treasury’s Financial Promotions, consultation document. Found [here](#).

<sup>17</sup> This excludes an investor’s primary residence, or any loan secured on that residence; any rights under a qualifying contract of insurance; and any benefits in the form of pensions or otherwise which are payable on termination of service or on death or retirement to which the individual in question or their dependents are or may be entitled.

- i. a certificate signed in the preceding three years by an authorised person stating that they were sufficiently knowledgeable to understand the risks associated with the relevant type of investment; and
- ii. themselves signed a certificate in the preceding 12 months stating they qualified for this exemption and understood the implications.

There was no limit to the type of investment that could be marketed using this exemption.

**2.11** As part of a review of FSMA undertaken two years after its introduction, the government reviewed the operation of the high net worth individual and sophisticated investor exemptions<sup>18</sup>. As part of this review the government received feedback<sup>19</sup> that the exemptions were not working as intended, as levels of certification had been low, particularly for sophisticated investors. It was suggested that this was because of authorised persons being reluctant to certify investors as sophisticated because of the subjective nature of the test, leading to concerns that they themselves may be liable if investors made bad investment decisions. Certifications that did take place were also reported to be expensive, reflecting the due diligence that authorised persons wished to undertake to avoid certifying someone incorrectly.

**2.12** Take up of the high net worth individual exemption had also reportedly been poor, despite this test being more straightforward, as certification from an employer may not be available or appropriate to many in this investor class. For example, business angels may be serial entrepreneurs rather than being in regular employment.

**2.13** This undermined the intention of the exemptions, which was that they should facilitate relatively small levels of capital raising by smaller firms. In light of this, the exemptions were reformed in 2005 to address the issues that had been identified, with two significant changes made to the regime:

- 1. Reform of the high net worth individual exemption** – the requirement for an accountant or employer to certify an individual’s high net worth status was removed and replaced with a requirement that investors had to sign a statement confirming that they met the relevant criteria (the prescribed statement is shown in Annex C)<sup>20</sup>.
- 2. Introduction of the self-certified sophisticated investor exemption (Article 50A FPO)** – a new exemption for self-certified sophisticated investors was introduced which allowed individuals to self-certify as sophisticated, again by signing a prescribed statement (shown in Annex C)<sup>21</sup>, if they met one of the four criteria:

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<sup>18</sup> This culminated in the publication of a consultation document, *Informal capital raising and high net worth and sophisticated investors: A consultation document on proposed changes to the Financial Promotions Order*, found [here](#). This outlined the issues that had been identified with the exemptions, and proposals for reform.

<sup>19</sup> Refer to paragraphs 3.7 and 3.8 in the consultation document outlined in footnote 18.

<sup>20</sup> This statement is set out in Schedule 5, Part 1 of the FPO, found [here](#), also shown in Annex C.

<sup>21</sup> This statement is set out in Schedule 5, Part 2, of the FPO, found [here](#), also shown in Annex C.

- i. They are a member of a network or syndicate of business angels (and have been for at least six months prior);
- ii. They have made more than one investment in an unlisted company in the previous two years;
- iii. They are working or have worked in the previous two years in a professional capacity in the private equity sector or in the provision of finance for SMEs; or
- iv. They are currently or have been in the previous two years a director of a company with an annual turnover of at least £1 million.

Like the high net worth individual exemption, this exemption can only be used to market investments related to unlisted companies.

**2.14** These updates and additions to the exemptions placed a greater degree of responsibility on investors to correctly certify when categorising themselves in the hope that this would make the exemptions easier to use. The revised high net worth individual exemption and new self-certified sophisticated investor exemption require the firm relying on the exemption to “believe on reasonable grounds” that the recipients meet the relevant definition of ‘certified high net worth individual’ or ‘self-certified sophisticated investor’. The government has previously set out that test pertains merely to the existence of a signed investor statement<sup>22</sup>.

**2.15** No material changes were made to the sophisticated investor exemption.

## **Investor warning requirements under the exemptions**

**2.16** In addition to the statements investors must sign, communications made under the exemptions must also be accompanied by an indication<sup>23</sup>:

- a) that the communication is exempt from the financial promotion restriction on the grounds that it is made to an investor that meets the relevant exemption;
- b) of the requirements to be considered a high net worth/sophisticated investor/self-certified sophisticated investor;
- c) that if the person is any doubt about the investment, they should consult an authorised person specialised in advising on investments of the kind in question.

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<sup>22</sup> See paragraph 2.3 of the government response to the ‘Informal capital raising and high net worth and sophisticated investors’ consultation, found [here](#).

<sup>23</sup> Set out in Article 48(7), Article 50(3) and Article 50A(7) for each of the respective exemptions.

- 2.17 Communications made using the high net worth individual or self-certified sophisticated investor exemption must also be accompanied by a warning that precedes the communication, worded in the following terms<sup>24</sup>:

*“The content of this promotion has not been approved by an authorised person within the meaning of the Financial Services and Markets Act 2000. Reliance on this promotion for the purpose of engaging in any investment activity may expose an individual to a significant risk of losing all of the property or other assets invested.”*

- 2.18 Communications made using the sophisticated investor exemption do not have to be accompanied by this exact statement, but they must be accompanied by the following indications (which largely reflect what is in the statement in paragraph 2.17):
- a) that the content of the communication has not been approved by an authorised person;
  - b) that reliance on the communication for the purpose of engaging in any investment activity may expose the individual to a significant risk of losing all property invested or of incurring additional liability<sup>25</sup>.

## Collective investment schemes

- 2.19 In addition to the financial promotion restriction contained in section 21, section 238 of FSMA also sets out a specific restriction on the promotion of collective investment schemes. This restriction sets out that an authorised person must not communicate a financial promotion to participate in a collective investment scheme unless:

- it is an authorised or recognised scheme<sup>26</sup>;
- the promotion is made in compliance with FCA rules that exempt it from the restriction for promotion other than to the general public;
- they use an exemption in an order made by HM Treasury.

- 2.20 Exemptions to this restriction are set out in the Promotion of Collective Investment Schemes (Exemptions) Order 2001 (PCIS). There are exemptions for promotions to high net worth individuals (article 21), sophisticated investors (article 23) and self-certified sophisticated investors (article 23A) which mirror those in the FPO. It is the government’s intention that any

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<sup>24</sup> This provision is set out in articles 48(5) and 50A(5) respectively. There are also requirements as to the form of the warning, set out in articles 48(6) and 50A(6), which state that the risk warning must:

- a) be given at the beginning of the communication;
- b) precede any other written or pictorial matter;
- c) be in a font size consistent with the text forming the remainder of the communication;
- d) be indelible;
- e) be legible;
- f) be printed in black, bold type;
- g) be surrounded by a black border which does not interfere with the text of the writing; and
- h) not be hidden, obscured or interrupted by any other written or pictorial matter.

<sup>25</sup> Article 50(3) FPO.

<sup>26</sup> Section 238(4) outlines that the collective investment scheme restriction does not apply to an authorised unit trust scheme; an authorised contractual scheme; a scheme constituted by an authorised open-ended investment company; or a recognised scheme.

reforms to the exemptions in the FPO carried out following this consultation should also be applied to the exemptions in the PCIS.

## Overseas Persons Exclusion

- 2.21 The overseas persons exclusion (OPE) is an exclusion from the general prohibition which applies to ‘overseas persons’ under article 72 of the RAO<sup>27</sup>. This allows overseas firms to provide financial services in the UK that would otherwise be regulated without the need for FCA or PRA authorisation.
- 2.22 The ability to use the OPE is not linked to being regulated, or the standards of regulation applied, in the firm’s home state, or any requirement for firms to be registered or report on the business they undertake. The OPE applies to a range of regulated activities, including dealing in investments as principal, arranging deals in investments and agreeing to do those activities<sup>28</sup>.
- 2.23 Where the exclusion applies, it is generally available where one of two conditions is satisfied. One of these is if the regulated activity is carried on a result of a ‘legitimate approach’, which is an approach to, by, or on behalf of an overseas person that does not breach the financial promotion restriction, for example, by relying on an exemption in the FPO<sup>29</sup>. The government understands that a number of overseas firms rely on the high net worth individual and sophisticated investor exemptions in order to undertake regulated activities with UK clients by way of a legitimate approach. If implemented, the proposals outlined in Chapter 4 will have an impact upon the operation of the OPE and the government will consider this when determining its next steps.
- 2.24 In July 2021, the government committed to initiating a consultation on potential changes to the UK’s regime for overseas firms and activities, including any proposed changes to the OPE, following a review of the overseas regulatory perimeter<sup>30</sup>.

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<sup>27</sup> An ‘overseas person’ is defined in article 3 of the RAO as a person who carries on certain regulated activities but who does not do so, or offer to do so, from a permanent place of business in the UK.

<sup>28</sup> The exclusion in article 72 of RAO applies, in specified circumstances, to the following regulated activities:

- i. Dealing in investments as principal or agent;
- ii. Arranging deals in investments;
- iii. Operating a multilateral trading facility (MTF) or organised trading facility (OTF);
- iv. Advising on investments;
- v. Arranging, entering into or administering regulated mortgage contracts;
- vi. Arranging, entering into and administering regulated home reversion and home purchase plans, and sale and rent back agreements.

<sup>29</sup> The second is if the regulated activity is done ‘with or through’ an authorised or exempt person. Entering into a transaction ‘with or through’ an authorised or exempt person can involve entering into a transaction ‘with’ an authorised or exempt person as a counterparty, or ‘through’ an authorised or exempt person as an agent or arranger.

<sup>30</sup> The Government’s response to the Call for Evidence on the UK’s Overseas Framework sets out this commitment and can be found [here](#).

# Chapter 3

## Issues with the existing financial promotion regime

3.1 The high net worth individual and sophisticated investor exemptions were introduced in 2001. Since then, there have been significant economic, social and technological changes which have altered the context in which they should be considered. In addition, the government has been made aware of instances in which the exemptions have been misused, leading to investors who are not high net worth or sophisticated being marketed products without the proper regulatory protections afforded by the financial promotions regime. This chapter will explore these issues, which have informed the principles for reform that are outlined in Chapter 4.

### The effect of inflation

3.2 Since the financial thresholds for high net worth individuals were introduced in 2001, inflation has eroded their value in real terms. For example, earning an income of over £100,000 would have in 2001 placed an individual in the top 1% of earners, whereas in 2019 this would have put an individual in the top 3% of earners<sup>31</sup>.

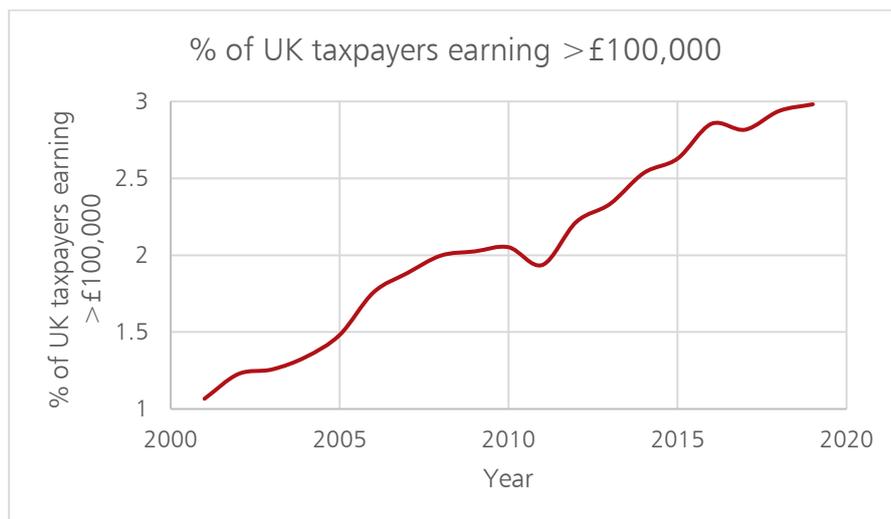


Figure 1: % of UK taxpayers earning more than £100,000 between 2001 and 2019<sup>32</sup>.

<sup>31</sup> This information is taken from HMRC data showing the percentile points of the income distribution, estimated from the Survey of Personal Incomes each year. This can be found [here](#).

<sup>32</sup> These figures are calculated using information taken from the HMRC data showing the percentile points of the income distribution.

## Increased responsibility on consumers for investment decisions

- 3.3 In recent years there have been significant changes to how consumers save for later life and how they can access these savings. For example, pension freedoms<sup>33</sup> introduced in 2015 have provided pensions savers with greater flexibility regarding how much they can withdraw from their Defined Contribution (DC) pensions pots and invest outside of a pension wrapper. This creates a greater possibility that individuals meet the high net worth asset threshold as a result of funds withdrawn from their pension, that previously would not have counted towards this calculation (as outlined in footnote 17, the high net worth individual threshold excludes pension wealth). The long-term shift from Defined Benefit (DB) to DC pensions and the growth of DB to DC transfers<sup>34</sup> increases the likelihood of this situation occurring.

## Technological changes in the investment market

- 3.4 As outlined in paragraph 2.13.ii, one of the tests to qualify as a self-certified sophisticated investor is to have made more than one investment in an unlisted company in the previous two years. When the exemption was introduced in 2005, this would have been a reasonable test of sophistication, given that ordinary retail investors typically wouldn't have been able to invest in unlisted securities, other than through a broker<sup>35</sup>.
- 3.5 However, the rise of online investing, and in particular the emergence of the crowdfunding market, has made it much easier for ordinary retail investors to invest in unlisted securities. Data from the FCA's Financial Lives Survey illustrates how widespread investments in unlisted securities have become. The latest version of the survey conducted in October 2020 shows that at least 1.6 million consumers hold investments in unlisted companies<sup>36</sup>. This would suggest that holding an investment in more than one unlisted company is no longer an accurate measure of an individual's experience in investing.

## Non-compliance with exemption requirements

- 3.6 The government has been made aware of some firms misusing the high net worth individual and sophisticated investor exemptions to market products to investors who are not high net worth or sophisticated. The FCA has

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<sup>33</sup> Before the enactment of the Pension Freedoms legislation in April 2015 consumers were restricted in how they could access Defined Contribution (DC) pension pots. Upon retirement, after a tax-free cash withdrawal allowance of 25%, the remaining part of any pension savings had to be taken as a regular payment for life, typically an annuity to avoid incurring a significant tax penalty. The Pension Freedoms legislation enabled consumers to flexibly access their DC pension pots from the age of 55 and use the funds for a wider range of options including cash withdrawal and/or retirement income.

<sup>34</sup> Between October 2018 and March 2020, the average value of a DB to DC pension transfer was £405k This comes from an FCA review of the DB to DC pensions transfer market which can be found [here](#).

<sup>35</sup> This is explained in page 56 of a report carried out by London Economics on non-transferable debt securities, found [here](#).

<sup>36</sup> See the FCA's Financial Lives 2020 survey, [here](#).

provided the government with several examples of firms engaged in such behaviour. This ranges from instances in which firms undertake only superficial checks to cases where ordinary retail investors are coached to answer questions about the exemptions, so they are classified as high net worth or sophisticated, when in reality they don't meet the criteria. The FCA has also seen examples where the statements investors are required to sign (explained in paragraph 2.13) are hidden amongst significant amounts of detail and instances in which investors are told to sign the statements as a formality without any real explanation as to what it means or the regulatory protections the consumer is giving up.

- 3.7 As explained in paragraph 2.5, promotions which are communicated within the scope of the exemptions do not have to be made or approved by an authorised person or comply with the FCA's financial promotion rules. This means that in these instances ordinary retail investors are receiving financial promotions that are not subject to the regulatory protections afforded by the financial promotion regime.
- 3.8 Authorised firms promoting products within the scope of the exemptions are still supervised by the FCA, which means the FCA would have the ability to identify such behaviour and address it. However, unauthorised firms using the high net worth individual and self-certified sophisticated investor exemptions have no touch point with the regulatory system, either through an authorised person approving their communication or through FCA supervision directly. It can therefore be difficult for the FCA to proactively identify such behaviour.
- 3.9 It may also be difficult to prove that the exemptions have been misused given that (as explained in paragraph 2.14) the current drafting within the FPO provides that firms are only required to 'believe on reasonable grounds' that the individual has signed the requisite statement outlining they are high net worth or sophisticated<sup>37</sup> as opposed to believing on reasonable grounds that they meet the criteria to be a high net worth individual or sophisticated investor. This places the evidential burden on the investor to show they were misled into certifying, which may be difficult if the investor did not document all of their engagement with the firm or if that engagement took place over the telephone or face-to-face<sup>38</sup>.

## Lack of engagement with the exemption requirements

- 3.10 As explained in paragraphs 2.16-2.18, firms are required to provide particular information when making communications to high net worth individuals and sophisticated investors, including specific risk warnings. Investors must also sign prescribed statements (shown in Annexes C and D) declaring they meet the relevant criteria and understand the regulatory

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<sup>37</sup> As explained in paragraph 2.3 of the government response to the 'Informal capital raising and high net worth and sophisticated investors' consultation, found [here](#).

<sup>38</sup> This is referred to as a 'real time' communication. This is one made in the course of a personal visit, telephone conversation or other interactive dialogue (Article 7(1) of the FPO).

protections they are losing by doing so. However, the government has been presented with evidence that some investors do not understand or engage with this information. For example, in behavioural testing conducted by the FCA, when investors were required to certify after having read the investor statements, many more consumers signed the declaration than those who met the objective criteria. In addition, an FCA investigation into a firm that was marketing unlisted securities found that 71% of investors could not remember when asked how they had categorised themselves (i.e. high net worth, or sophisticated) when receiving promotions from that firm.

- 3.11 It is well documented that internet users often do not engage with technical information they are presented online which they have to declare they have read or understood (for example when presented with terms and conditions<sup>39</sup> or when engaging with cookie consent notices<sup>40</sup>). It is likely that the same phenomenon is partly at play when consumers are presented with the investor statement, with it being viewed by some as a piece of information to 'click through' as quickly as possible before reaching the next part of the investment journey.
- 3.12 The result of this is that investors may not understand the regulatory protections they are giving up when receiving financial promotions made using the exemptions. They also may not fully understand the criteria to meet the exemptions and instead rely on their own subjective judgement about whether they are 'high net worth' or 'sophisticated'.

## Interaction between the FCA's marketing restrictions and the exemptions

- 3.13 As explained in paragraph 2.5, the FCA's Handbook contains rules which restrict the promotion of certain high-risk investment products to retail investors<sup>41</sup>. The FPO exemptions effectively preclude these marketing restrictions from applying to high net worth individuals and sophisticated investors. The FCA believe that unauthorised persons are increasingly marketing investments to consumers using the exemptions rather than having their promotions approved by authorised persons. This fact is important given the retail investment landscape has undergone significant change in recent years which has encouraged or made it easier for retail consumers to invest in high-risk investments<sup>42</sup>.
- 3.14 While this does not expose an issue with the exemptions themselves, the interplay between the financial promotion exemptions, the evolution of the high risk investment market and the FCA's marketing restrictions is important to bear in mind when considering any amendments to the

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<sup>39</sup> See, 'Study on consumers' attitudes towards Terms and Conditions', found [here](#).

<sup>40</sup> See, 'Studying GDPR Cost Notices in the Field', found [here](#).

<sup>41</sup> These restrictions have all been introduced over the last 10 years, after the exemptions were first introduced in 2001 and then updated in 2005.

<sup>42</sup> This includes long-term low interest rates (which has driven some savers towards riskier investments in a search for better returns) and the development of the online retail investment market mean many more complex/high-risk investment opportunities are more immediately accessible to retail consumers.

regime. Were the conditions for the thresholds to change the FCA could consult on replicating some or all of these changes to the exemptions contained in its own rules.

# Chapter 4

## Reforms to the Financial Promotion regime

4.1 This chapter sets out why the government believes the high net worth individual and sophisticated investor exemptions should be retained in legislation while explaining the case for reform and objectives to underpin any changes to the legislative framework. Five proposals are then outlined for how these objectives could be delivered. The chapter includes questions on which the government would be grateful for the views of stakeholders. When providing answers to these questions the government would appreciate if stakeholders could explain their thinking, and provide any additional information that they feel would assist the government when considering its next steps. The government is looking for views from members of the public and industry, but would particularly welcome responses from firms or individuals who have experience of using the financial promotion exemptions.

### The continued case for the high net worth individual and sophisticated investor exemptions

4.2 SMEs form a major part of our economy, accounting for three fifths of employment and around half of turnover in the UK private sector<sup>43</sup>. Access to finance is essential for SMEs to invest and to implement new technologies and strategies. While only a small proportion of these firms are appropriate for equity finance, they are potentially high-growth, innovative firms that can make an important contribution to increasing prosperity and boosting productivity.

4.3 High net worth and sophisticated investors, or business angels, are an important source of finance for these businesses<sup>44</sup>. By acting as long-term investors, they can play a significant role in getting innovative businesses' ideas off the ground. For a growing business, this combination of expertise and capital can be crucial for success.

4.4 The high net worth and sophisticated investor exemptions continue to play a role in allowing SMEs to raise finance from this investor class without the cost of having a financial promotion approved. Subject to the criteria being

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<sup>43</sup> UK Small Business Statistics (FSB) found [here](#).

<sup>44</sup> Oxford Economics have estimated the economic impact on the UK of firms using venture capital or business angel finance or both. This analysis identified 15,000 angel-backed businesses over five years to 2015. It estimated that angel supported businesses had a turnover of over £9 billion, contributed £4.5 billion to GDP and created 69,700 full-time equivalent jobs in the UK economy. This information can be found [here](#).

calibrated correctly, the government also believes that these investors are better placed than ordinary retail investors to manage without the regulatory protections afforded by the financial promotion regime and to absorb any losses resulting from their investments.

- 4.5 The government therefore continues to believe that exemptions for high net worth and sophisticated investors should be retained in legislation.

## The case for change

- 4.6 However, as explained in paragraphs 3.2-3.5, economic, social and technological changes over the last 15-20 years mean that a significant number of additional consumers will now technically fall within the definitions for high net worth individuals and sophisticated investors, who would not have done so when the exemptions were created in 2001, or when they were updated in 2005. In addition, the government has been made aware of instances in which the exemptions have been misused, leading to investors who are not high net worth or sophisticated being marketed products without the proper regulatory protections afforded by the financial promotions regime.

- 4.7 The government is therefore of the view that, while the exemptions should be retained, they should be updated to reflect current circumstances and to address the risk of the exemptions being misused. The following objectives will underpin changes to the exemptions:

- **Objective 1** - Ensure that thresholds for exempt investors are calibrated to reflect investors' experience or their ability to absorb losses.
- **Objective 2** – Reduce the risk that investors receiving financial promotions under the exemptions do not meet the relevant conditions.
- **Objective 3** – Ensure that where exemptions are used investors understand the regulatory protections they are losing and are able to take responsibility for their investment decisions.

1 Do you agree that the exemptions should be retained?

2 Do you agree with the objectives for reform? Are there other objectives the government should consider?

## Proposals for reform

- 4.8 The following sections outline five proposals which are designed to achieve the objectives set out in paragraph 4.7. The government is minded, at this stage, to move forward with all of these proposals. However, the proposals are independent of each other and, subject to the responses to this consultation, the government may decide not to proceed with one or more of them.

## Proposal 1 – Increasing the financial thresholds for high net worth individuals

- 4.9 High net worth individuals are defined as individuals who certify that they have earned at least £100,000 in the previous year or hold net assets of at least £250,000. When the exemptions were introduced the government calibrated these thresholds to provide an appropriate degree of consumer protection given the greater ability of these individuals to bear losses. For the reasons outlined in paragraphs 3.2-3.3, the government considers that these thresholds are now too low and should be updated.
- 4.10 At a minimum, the government is of the view that the thresholds should be increased in line with inflation. Between 2001 and 2021 inflation has meant that prices have risen by 54%<sup>45</sup>. Under this approach, the net income threshold to be considered high net worth would be updated to £150,000 and the net asset threshold to £385,000. This would ensure that the thresholds for high net worth individuals would reflect changes to investor purchasing power since 2001.
- 4.11 However, some of the other changes since 2001 which are explained in Chapter 3, including pensions freedoms and the increasing prominence of high risk investments, mean there is a case for increasing the thresholds further. One approach would be to mirror changes to income and wealth distribution and raise the thresholds so the exemption applies to the same proportion of the population as it did in the year 2001. In 2001, 1% of UK taxpayers earned more than £100,000 a year<sup>46</sup>. While relevant wealth distribution data is not available for that year, if the thresholds were calibrated today so they captured the top 1% of earners and asset owners, the thresholds would be £175,000 for income and £900,000 for net assets<sup>47</sup>. To note, this figure does not include pension wealth, which as discussed in paragraph 3.3 can now more easily be used for investment purposes.
- 4.12 While this approach would result in the income threshold rising broadly in line with inflation that has taken place between 2001 and 2020, it would lead to a much greater increase for the net assets threshold. While there are no direct comparators to the UK's exemptions for high net worth individuals and sophisticated investors (both in terms of scope and intended purpose), such an increase would bring the UK closer in line with other jurisdictions that have sought to define these types of investor exemptions for sophisticated and high net worth individuals (further detail is provided in Annex D). However, such an increase to the net asset threshold could have a

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<sup>45</sup> This figure is calculated using the Consumer Price Index (not including housing costs) between April 2001 (which the FPO statutory instrument was made in Parliament) and September 2021. The relevant ONS data can be found [here](#).

<sup>46</sup> This information is taken from HMRC data showing the percentile points of the income distribution, estimated from the Survey of Personal Incomes each year. This can be found [here](#).

<sup>47</sup> This estimation of the wealth distribution of the top percentile point in the UK is taken from ONS data, which can be found [here](#). The £900,000 figure is taken by adding the financial wealth (£600,000); physical wealth (£140,000); additional property wealth (£190,000). The figure for additional property wealth is calculated by taking 15.8% of total average property wealth (see ONS Wealth and Assets Survey data [here](#)). Primary residences do not count towards the calculation of net assets.

significant effect on the ability of firms to raise money using the high net worth individual exemption.

- 4.13 The government would appreciate evidence from stakeholders as to what an appropriate value would be for the net assets threshold, and one which appropriately balances the government's objective to continue supporting SMEs' ability to raise finance from business angels while addressing the issues that have been identified in Chapter 3.
- 4.14 The government does not propose changing the assets in scope of the net asset calculation, which currently excludes an investor's primary residence, or any loan secured on that residence; any rights under a qualifying contract of insurance; and any benefits in the form of pensions or otherwise.

- 3 Do you agree that the financial thresholds for high net worth individuals should be increased? At what value do you think the thresholds should be set? Please justify your answer.
- 4 If you are a business (or trade body who represents businesses) who use the exemptions when promoting investments to investors, can you provide information on the investor profile of the investors who are promoted to within the exemptions? How would increasing the high net worth investor thresholds affect your ability to make communications to these investors?
- 5 Do you agree that the assets in scope of the net asset calculation should remain the same?

## Proposal 2 - Amending the criteria for self-certified sophistication

- 4.15 One of the criteria to be classified as a self-certified sophisticated investor is to have made more than one investment in an unlisted company in the previous two years. As outlined in paragraph 3.5, the rise in online investing means that it is much easier for individuals to invest in unlisted companies than it was in 2005 when the self-certified sophisticated investor exemption was introduced. The government is therefore of the view that this is no longer an indicator of investor sophistication and this element should be removed from the self-certified sophisticated investor definition. The government is not currently proposing a replacement for this test but would welcome views from stakeholders on alternative tests that could be introduced to demonstrate appropriate levels of sophistication.
- 4.16 Another of the tests to be a self-certified sophisticated investor is that an individual has been in the last two years a director of a company with an annual turnover of at least £1 million. In a similar manner to the high net worth individual thresholds, this value has been devalued by inflation since it was introduced in 2005. The government therefore proposes updating the

threshold in line with inflation that has taken place between 2005 and 2021 to a value of £1.4 million<sup>48</sup>.

- 6 Do you agree that the unlisted company criteria of the self-certified sophisticated investor test is no longer a reliable way of demonstrating sophistication, and therefore should be removed?
- 7 Do you have suggestions for other tests that could be included to demonstrate sophistication, and could be incorporated into the definition of a self-certified sophisticated investor?
- 8 Do you agree that the fourth criteria of the self-certified sophisticated investor definition should be updated so that the company must have, or have had, a turnover of at least £1.4 million?

### Proposal 3: Placing a greater degree of responsibility on firms to ensure individuals meet the criteria to be deemed high net worth or sophisticated

- 4.17 As explained in paragraph 3.9, firms that make promotions under the high net worth individual and self-certified sophisticated investor exemptions should 'believe on reasonable grounds' that the individual they are communicating to has signed the high net worth individual or self-certified sophisticated investor statement. There is, however, no obligation on the firm to check that the individual actually meets the criteria. In light of evidence that some investors are being classified as high net worth or sophisticated when they do not meet the conditions, the government believes that there should be a greater responsibility placed on firms to check that the criteria are met.
- 4.18 The government does not propose returning to a model of third party certification, as was in place between 2001 and 2005, as that was found to be impracticable (see paragraph 2.11)<sup>49</sup>. Instead, the government proposes that under this proposal the emphasis of the 'reasonable belief' be shifted so firms communicating the financial promotion must have a reasonable belief that an individual meets the criteria, not simply that they have signed a relevant statement. It would be for the firm to determine how it comes to this conclusion, and to document this information accordingly. The investor would still be required to sign the investor statement, so there would be a responsibility on both the investor and firm to ensure the relevant conditions had been met.
- 4.19 The government also proposes that firms should be required to provide details about themselves in any communications made using the exemptions. This would include: the firm's address; contact details of the

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<sup>48</sup> This figure is calculated using the Consumer Price Index (not including housing costs) between June 2005 (which the updated FPO statutory instrument was made in Parliament that created the concept of a self-certified sophisticated investor) and September 2021. The relevant ONS data can be found [here](#).

<sup>49</sup> Although it does intend to retain the sophisticated investor exemption (Article 50 FPO) which involves third party certification.

firm and if appropriate, the firm's Companies House number (or international equivalent). This information would help consumers undertake basic due diligence on the persons marketing investments and assist the FCA in investigating potential non-compliance with the exemptions.

- 9 Do you agree that a greater responsibility should be placed on firms to ensure that prospective investors satisfy the thresholds for categorisation as high net worth individuals or self-certified sophisticated investors?
- 10 If so, do you agree that the emphasis of the "reasonable belief" be shifted so that the firm communicating the financial promotion must have a reasonable belief that an individual meets the criteria? Is there a better alternative?
- 11 Do you think there is a better alternative than placing greater responsibility on firms to ensure that prospective investors satisfy the thresholds for categorisation as high net worth individuals or self-certified sophisticated investors?
- 12 If you are a firm who uses the exemptions, how would you establish a reasonable belief that a particular individual satisfied the relevant net worth or sophistication criteria? How would this compare to what you do now? If you envisage problems in establishing whether a consumer meets these criteria please explain why?
- 13 Do you agree that firms should be required to provide details about themselves in any communications made using the exemptions?

## Proposal 4 – Updating the high net worth individual and self-certified sophisticated investor statements

- 4.20 As explained in paragraphs 3.10 and 3.11, some investors do not understand or engage with the information which is presented to them when engaging with financial promotions, including the statement investors are required to sign to be classified as high net worth or sophisticated. As a result, some investors may incorrectly certify themselves and/or not understand the regulatory protections they are giving up when receiving promotions subject to the exemptions.
- 4.21 The government proposes making three substantive changes to investor statements to remedy these problems<sup>50</sup>:
- **Updating the format.** In the current investor statements the conditions to be considered a high net worth or sophisticated investor are contained at the bottom of the statement following large block of text. The government think more can be done to make this information more prominent, for example, by breaking up the

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<sup>50</sup> The proposed changes have in part been informed by behavioural testing undertaken by the FCA on how to influence consumer behaviour to ensure effective investment decisions. The FCA will make public the full results of the testing early in the new year.

text or by reordering it, and making clearer that investors who don't meet the criteria shouldn't proceed any further.

- **Simplifying language.** Where possible, the government is proposing that the language in the investor statement is simplified, for example, with fewer references to other pieces of financial services legislation. It is hoped that this would more effectively hold the attention of investors, making the implications of losing protections afforded by the financial promotions regime clearer.
- **Requiring greater investor engagement.** In the current investor statements, investors only have to sign the bottom of the statement declaring they are high net worth or sophisticated, without specifying which of the relevant criteria they meet. The government is proposing that in the updated statement the investor would be required to select which specific criteria they meet in order to be classified as high net worth or sophisticated, and to set out how they meet these criteria. For example, in the case of the high net worth individual exemption, an investor could be required to fill in their income and/or the value of their net assets<sup>51</sup> to demonstrate how they meet the tests. (Note, the investor would not be required to prove this answer and it would still be their responsibility to certify themselves correctly. However, firms may request additional from consumers in order to establish a reasonable belief that the consumers meets the relevant criteria.) It is hoped this change will require investors to more actively engage with the content in the investor statement before signing it. This intervention was examined by the FCA in its behavioural testing and was found to be effective in improving the rates of accurate self-certification.

4.22 The government is also aware that since the self-certified exemptions were introduced in 2005 that many more investors will engage with investor statements as part of a digital journey. The government is therefore keen to understand whether there are any changes that we should consider that ensure the statements work effectively in that context.

14 Do you agree that the investor statement should be updated to achieve greater engagement from investors and awareness of the regulatory protections they are losing in receiving financial promotions under the exemptions?

15 Do you agree with the proposed changes to the investor statements?

16 Do you have any other suggestions for how the investor statement could be updated to ensure greater investor engagement, for example, to work more effectively as part of a digital journey?

17 If you are a firm that uses the exemptions, do you envisage any issues with the proposed changes, particularly to require individuals

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<sup>51</sup> See footnote 17 for the definition of net assets.

to set out how they meet the exemption criteria? Please justify your answer.

## Proposal 5 – Names of the exemptions

- 4.23 In light of the proposals to amend the exemptions described above, and the changes to the exemptions made in 2005, the government has considered whether the names of the certified high net worth individual and self-certified sophisticated investor exemptions are still appropriate.
- 4.24 In the case of the certified high net worth individual exemption, updates made to the FPO in 2005<sup>52</sup> mean that investors no longer have to be certified by a third party. Given this, the government proposes to amend the name of the exemption to the 'high net worth individual' exemption, removing certified from the title.

18 Do you agree that the title of the 'certified high net worth individual' exemption should be updated to 'high net worth individual'?

## Additional Questions

- 4.25 In addition to the questions regarding the proposals outlined above, the government would welcome the views of stakeholders on the following questions, which are more general.

19 Are there any other ideas that you feel would deliver on the three objectives of these proposals, outlined in paragraph 4.7?

20 The financial promotions regime plays an important role in protecting vulnerable consumers when investing. The government would welcome views from groups that represent vulnerable groups regarding any of the information presented in this consultation, and in particular on the proposals outlined in the preceding chapter.

21 If you are a firm or individual who relies on the OPE to provide or receive financial services from foreign jurisdictions, what effect would the proposed changes have?

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<sup>52</sup> See the Financial Services and Markets Act 2000 (Financial Promotion and Promotion of Collective Investment Schemes) (Miscellaneous Amendments) Order 2005/270.

# Annex A

## List of questions

The government has asked a number of questions throughout this consultation. The full list of question is summarised below:

1. Do you agree that the exemptions should be retained?
2. Do you agree with the objectives for reform? Are there other objectives the government should consider?
3. Do you agree that the financial thresholds for high net worth individuals should be increased? At what value do you think the thresholds should be set? Please justify your answer.
4. If you are a business (or trade body who represents businesses) who use the exemptions when promoting investments to investors, can you provide information on the investor profile of the investors who are promoted to within the exemptions? How would increasing the high net worth investor thresholds affect your ability to make communications to these investors?
5. Do you agree that the assets in scope of the net asset calculation should remain the same?
6. Do you agree that the unlisted company criteria of the self-certified sophisticated investor test is no longer a reliable way of demonstrating sophistication, and therefore should be removed?
7. Do you have suggestions for other tests that could be included to demonstrate sophistication, and could be incorporated into the definition of a self-certified sophisticated investor?
8. Do you agree that the fourth criteria of the self-certified sophisticated investor definition should be updated so that the company must have, or have had, a turnover of at least £1.4 million?
9. Do you agree that a greater responsibility should be placed on firms to ensure that prospective investors satisfy the thresholds for categorisation as high net worth individuals or self-certified sophisticated investors?
10. If so, do you agree that the emphasis of the “reasonable belief” be shifted so that the firm communicating the financial promotion must have a reasonable belief that an individual meets the criteria?
11. Do you think there is a better alternative than placing greater responsibility on firms to ensure that prospective investors satisfy the thresholds for categorisation as high net worth individuals or self-certified sophisticated
12. If you are a firm who uses the exemptions, how would you establish a reasonable belief that a particular individual satisfied the relevant net worth or sophistication criteria? How would this compare to what you do now? If

you envisage problems in establishing whether a consumer meets these criteria please explain why?

13. Do you agree that firms should be required to provide details about themselves in any communications made using the exemptions?
14. Do you agree that the investor statement should be updated to achieve greater engagement from investors and awareness of the regulatory protections they are losing in receiving financial promotions under the exemptions?
15. Do you agree with the proposed changes to the investor statements?
16. Do you have any other suggestions for how the investor statement could be updated to ensure greater investor engagement, for example, to work more effectively as part of a digital journey?
17. If you are a firm that uses the exemptions, do you envisage any issues with the proposed changes, particularly to require individuals to set out how they meet the exemption criteria? Please justify your answer.
18. Do you agree that the title of the 'certified high net worth individual' exemption should be updated to 'high net worth individual'?
19. Are there any other ideas that you feel would deliver on the three objectives of these proposals, outlined in paragraph 4.7.
20. The financial promotions regime plays an important role in protecting vulnerable consumers when investing. The government would welcome views from groups that represent vulnerable groups regarding any of the information presented in this consultation, and in particular on the proposals outlined in the preceding chapter.
21. If you are a firm or individual who relies on the OPE to provide or receive financial services from foreign jurisdictions, what effect would the proposed changes have?

# Annex B

## Glossary of Terms

| Term                                | Definition  |
|-------------------------------------|---|
| Certified High Net Worth Individual | An investor who has signed a statement within the past 12 months confirming they have an annual income of at least £100,000 or have net assets of at least £250,000 (excluding their primary residence, rights under a qualifying contract of insurance, or pensions). Article 48 of the FPO exempts promotions made to high net worth individuals from the financial promotions restriction. |
| Certified sophisticated investor    | An investor that holds a certificate signed within the past 12 months by an authorised person confirming that they are sufficiently knowledgeable to undertake an investment in that type of investment. Article 50 of the FPO exempts promotions made to certified sophisticated investors from the financial promotion restriction.   |
| Collective Investment Scheme        | A collective investment scheme (defined in section 235 of FMSA) - sometimes known as a 'pooled investment' - is a fund that usually has several people contribute to it. The fund manager of a collective investment scheme will invest investors' money into one or more types of asset, such as stocks, bonds or property.  |
| Financial Ombudsman Service (FOS)   | A free service to help resolve complaints between customers and financial services firms on a fair and reasonable basis, as an alternative to the courts.   |
| Financial promotion                 | An invitation or inducement to engage in an investment activity, communicated by a person in the course of business.  |
| Financial Promotion Order (FPO)     | A statutory instrument (secondary legislation) first introduced in 2001 and updated in 2005, which sets out the activities which fall within the scope of the financial promotion regime and exemptions from the financial promotion restriction.   |
| Financial Promotion restriction     | Restriction which provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity or claims management activity. This may include invitations or inducements to engage   |

|  |   |
|--|---|
|  | <p>in certain activities which are not regulated financial services for the purposes of the general prohibition unless:</p> <ul style="list-style-type: none"> <li>• the communication is made by an authorised person;</li> <li>• the content of the communication is approved by an authorised person; or</li> <li>• the financial promotion otherwise meets the conditions of an exemption within the FPO.</li> </ul>  |
| Financial Services and Markets Act 2000 (FSMA) | The key statute that regulates the financial services industry in the UK.   |
| Financial Services Compensation Scheme (FSCS)  | The UK's statutory compensation scheme for customers of authorised financial services firms. It can pay compensation to customers if a firm has failed and the FSCS has declared it to be 'in default'.   |
| Ordinary retail investor                       | A retail investor who is not high net worth or sophisticated.   |
| Regulated Activities Order (RAO)               | Legislation which outlines the kinds of activities and investment for which are considered 'regulated activities' for the purposes of FSMA.   |
| Regulated activity                             | An activity of a specified type relating to financial services businesses in the UK, regulated by the FCA or the PRA.   |
| Retail investor                                | Anyone who is not a professional investor. Professional investors are, generally, institutional investors and large businesses. Consumers and smaller businesses are retail investors.  |
| Self-certified sophisticated investor          | <p>Individuals who have signed a statement setting out that at least one of the following applies:</p> <ul style="list-style-type: none"> <li>• They are a member of a network or syndicate of business angels (and have been for at least six months prior);</li> <li>• They have made more than one investment in an unlisted company in the previous two years.</li> <li>• They are working or have worked in the previous two years in a professional capacity in the private equity sector or in the provisions of finance for SMEs.</li> <li>• They are currently or have been in the previous two years a director of a company with an annual turnover of at least £1 million.</li> </ul> <p>Article 50A of the FPO exempts promotions made to self-certified investors from the financial promotion restriction.</p> |

# Annex C

## Investor Statements

### Statement for certified high net worth individuals

The statement to be signed for the purposes of article 48(2) (definition of high net worth individual) must be in the following form and contain the following content—

I declare that I am a certified high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

I understand that this means:

- (a) I can receive financial promotions that may not have been approved by a person authorised by the Financial Services Authority;
- (b) the content of such financial promotions may not conform to rules issued by the Financial Services Authority;
- (c) by signing this statement I may lose significant rights;**
- (d) I may have no right to complain to either of the following—
  - (i) the Financial Services Authority; or
  - (ii) the Financial Ombudsman Scheme;
- (e) I may have no right to seek compensation from the Financial Services Compensation Scheme.

I am a certified high net worth individual because **at least one of the following applies—**

- (a) I had, during the financial year immediately preceding the date below, an annual income to the value of £100,000 or more;
- (b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more. Net assets for these purposes do not include—
  - (i) the property which is my primary residence or any loan secured on that residence;
  - (ii) any rights of mine under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or
  - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on investments.

Signature

Date

## Statement for self-certified sophisticated investors

The statement to be signed for the purposes of article 50A(1) (definition of self-certified sophisticated investor) must be in the following form and contain the following content—

I declare that I am a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act (Financial Promotion) Order 2005.

I understand that this means:

- (a) I can receive financial promotions that may not have been approved by a person authorised by the Financial Services Authority;
- (b) the content of such financial promotions may not conform to rules issued by the Financial Services Authority;
- (c) **by signing this statement I may lose significant rights;**
- (d) I may have no right to complain to either of the following—
  - (i) the Financial Services Authority; or
  - (ii) the Financial Ombudsman Scheme;
- (e) I may have no right to seek compensation from the Financial Services Compensation Scheme.

I am a self-certified sophisticated investor because **at least one of the following applies—**

- (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
- (b) I have made more than one investment in an unlisted company in the two years prior to the date below;
- (c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;
- (d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on investments.

Signature

Date

# Annex D

## International Comparators

Several other jurisdictions have sought to define a similar concept to the UK's 'high net worth individual'. As set out in the table below for the examples of the US, Australian, Canadian, Swiss and New Zealand regimes, these thresholds vary by both their level and the assets that are excluded from the calculation.

| Country                 | Annual Income <sup>53</sup>         | Net Assets  | Description   |
|-------------------------|-------------------------------------|---|---|
| USA <sup>54</sup>       | USD 0.2 million (GBP 0.15 million). | USD 1 million, (GBP 0.73 million). Pension wealth not included.         | Requirements to register securities with the Securities and Exchange Commission do not apply. Other securities regulation still applies.                                    |
| Australia <sup>55</sup> | AUD 0.25 million (GBP 0.14 million) | AUD 2.5 million (GBP 1.4 million). No exclusions from threshold.        | Requirement that the offer or sale of a security be accompanied by a prospectus or regulated disclosure document does not apply. Other securities regulation still applies. |
| Canada <sup>56</sup>    | CAD 0.2 million (GBP 0.12 million)  | CAD 5 million (GBP 2.9 million)   | Requirement that offer or sale of a security be accompanied by a prospectus does not apply. Other securities regulation still applies.                                      |
| Switzerland             | N/A                                 | CHF 2 million (GBP 1.6 million). Real estate + pension wealth excluded. | Certain client protections do not apply. Other securities regulation still applies.   |
| New Zealand             | N/A                                 | NZD 5 million (GBP 2.5 million).  | Requirement that the offer or sale of a financial products must be accompanied by a Product Disclosure Statement does not apply.  |

<sup>53</sup> Exchange rate data from Bank of England, Daily spot exchange rates against Sterling database, found [here](#). Values used are from 29<sup>th</sup> October 2021.

<sup>54</sup> SEC Regulation D

<sup>55</sup> Corporations Act 2001

<sup>56</sup> National Instrument 45 106

# Annex E

## Processing Personal Data

This notice sets out how HM Treasury will use your personal data for the purposes of a consultations campaign and explains your rights under the UK General Data Protection Regulation (GDPR) and the Data Protection Act (DPA).

### Your Data (Data Subject Categories)

The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

### Legal Basis of Processing

Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about themselves or third parties.

### Special Categories Data

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

### Legal Basis for Processing Special Category Data

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

### Purpose

The personal information is processed for the purpose of obtaining the opinions of the members of the public and representative of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

### Who We Share Your Responses With

Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process data for our purposes and in fulfilment with the contractual obligations they have with us.

### How Long We Will Hold Your Data (Retention)

Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

### Your Rights

You have the right to:

- request information about how your personal data are processed and to request a copy of that personal data
- request that any inaccuracies in your personal data are rectified without delay
- request that your personal data are erased if there is no longer a justification for them to be processed
- in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted
- to object to the processing of your personal data where it is processed for direct marketing purposes
- to data portability, which allows your data to be copied or transferred from one IT environment to another

## How to Submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit

G11 Orange

1 Horse Guards Road

London

SW1A 2HQ

[dsar@hmtreasury.gov.uk](mailto:dsar@hmtreasury.gov.uk)

## Complaints

**4.26** If you have any concerns about the use of your personal data, please contact us via this mailbox: [privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)

**4.27** If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contact at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

[casework@ico.org.uk](mailto:casework@ico.org.uk)

**4.28** Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

**4.29** The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

London

020 7270 5000

[public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)

## Contact Details

4.30 The contact details for HM Treasury's Data Protection Officer ('DPO') are:

The Data Protection Officer

Corporate Governance and Risk Assurance Team

Area 2/15

1 Horse Guards Road

London

SW1A 2HQ

London

[privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)

## HM Treasury contacts

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 5000

Email: [public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)