

HM Treasury – Financial Market Infrastructure
1 Horse Guards Road
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By email: FinProms@hmtreasury.gov.uk

27 July 2021

Dear Sir or Madam

Financial Promotions Order: Onshoring issue

The City of London Law Society ("**CLLS**") represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

This letter has been prepared by the CLLS Regulatory Law Committee (the "**Committee**"). The Committee not only responds to consultations but also proactively raises concerns where it becomes aware of issues which it considers to be of importance in a regulatory context.

As HM Treasury is aware, following onshoring changes made to The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "**FPO**"), the definition of 'relevant market' no longer includes the London Stock Exchange and other UK markets such as Aquis. As a result, the exemptions from the financial promotion restriction available:

- to communications by relevant markets (Article 37, FPO);
- to non-real time communications or solicited real time communications required or permitted by market rules in respect of bearer instruments (Article 41);
- to communications required or permitted by rules of relevant markets (Article 67, FPO);
- in connection with admission to trading (Article 68, FPO); and
- in relation to securities already admitted to trading on a relevant market (Article 69, FPO);

do not cover financial promotions relating to relevant UK markets or investments traded (or to be traded) on such markets.

Accordingly, it is very likely that companies (and possibly the regulated markets themselves) may (unless another exemption applies) inadvertently have made or be making unauthorised financial promotions, with potential consequences under section 25 and section 30 of the Financial Services and Markets Act 2000.

The Committee understands that the omission was inadvertent and accordingly there was no consultation or policy intention or decision to remove the UK regulated markets from the definition of 'relevant market' for the purpose of those exemptions.

We acknowledge the FCA's [publication](#) entitled "Information for firms who use certain exemptions to the Financial Promotions Order (21 July 2021), and the publication of a [draft statutory instrument](#) entitled The Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021 (19 July 2021). We also note however that the draft Statutory instrument is not intended to come into force until 13 October 2021, some 9 months after the Transition Period ended.

Whilst we appreciate HM Treasury's view, set out in the De Minimis Assessment published with the draft Instrument, that only 100 firms may be impacted, we believe the exemptions may be being more widely used. Article 69, in particular, is relied on where another exemption does not apply and is used in respect of, for example, press briefings/releases, investor presentation slides and, perhaps most importantly, publications on corporate websites (again where another exemption, such as the one for annual reports or shareholder circulars, does not apply).

Accordingly, given:

- a) the lack of policy intention to remove the exemptions in the Financial Promotions Order in respect of UK relevant markets;
- b) the (inevitable, given an absence of intention) lack of consultation on such a substantive change; and
- c) the potential consequences that flow from financial promotions made, since 1 January 2021, by companies placing reliance on the exemptions in Articles 37, 41, 67, 68 or 69 of the FPO as applicable to relevant markets, but in connection with the London Stock Exchange or other markets situated in the UK and instruments listed thereon;

we are strongly of the view that HM Treasury should also consider specifying in the statutory instrument, pursuant to section 21(5) of FSMA, that the financial promotion restriction does not apply to communications, made between 31 December 2020 and 13 October 2021 (or if different, the date on which the draft order will take effect), made in connection with UK relevant markets, the admission of investments to UK relevant markets or in respect of relevant investments already admitted to UK relevant markets (as defined in Part A1 of Schedule 3 of the proposed Regulations), in the circumstances otherwise contemplated in Articles 37, 41, 67, 68 and 69 of the FPO.

If you would find it helpful to discuss any of these comments then we would be happy to do so. Please contact Karen Anderson by telephone on +44 (0) 20 7466 2404 or by email at Karen.Anderson@hsf.com in the first instance.

Yours faithfully



Karen Anderson
Chair, CLLS Regulatory Law Committee

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