

January 12, 2015

The financial promotions restriction

"A person ('A') must not, in the course of business, communicate an invitation or inducement to engage in investment activity".

For these purposes:

- "Communicate" includes written and oral communications, and causing communications to be made;
- An "invitation" is something which:
 - Includes an element of persuasion, incitement or promotion; and
 - Directly invites a person to take a step that will result in his engaging in investment activity;
- An "inducement" is a significant step in the chain of activities that persuades or incites, or seeks to persuade or incite, a person to engage in investment activity;
- "Engage in investment activity" includes:
 - Buying, selling, subscribing for or underwriting investments whether as principal or agent;
 - Arranging for someone else to do any of these things;
 - Advising someone to do any of these things; or
 - Offering or agreeing to do any of these things;
- "Investment" includes shares, debentures and interests in funds or collective investment schemes.

The financial promotions restriction applies if ...

"A person... communicates an invitation or inducement to engage in investment activity" that is capable of having effect in the United Kingdom. This will be the case if a person writes to, e-mails, telephones, meets or speaks to a person who is in the United Kingdom. It will also be the case if the person establishes a website outside the United Kingdom, if the website can be accessed and read in / from the United Kingdom, unless an exemption is available.

The financial promotions restriction does not apply if ...

- A person is authorised by the UK's Prudential Regulation Authority or Financial Conduct Authority; or
- The communication has been approved by an authorised person; or
- The communication is made by an "Appointed Representative" of an authorised person, and certain legal tests are met; or
- The communication is made to one or more of the following categories of recipient, and certain legal tests are met:
 - An investment professional or a family office;
 - A certified high net worth individual;
 - A high net worth company or unincorporated association;

- The trustee of a high value trust;
- A sophisticated investor, or a self-certified sophisticated investor.

If the financial promotions restriction applies and it is breached ...

- The person who breached it is guilty of an offence, unless he can show that:
 - He believed on reasonable grounds that the content of the communication was prepared or approved by an authorised person; or
 - He took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- If the offence is committed and successfully prosecuted, fines and/or imprisonment may follow.
- If a person enters into a contract as a customer, as a result of the unlawful communication, that contract may be unenforceable against him. He may also be entitled to recover any money paid, or property transferred, by him under the terms of that contract, plus compensation for any losses he has suffered as a result of having parted with it.

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