

Financial promotion exemptions for high net worth individuals and sophisticated investors

Consultation response

Financial promotion
exemptions for high net
worth individuals and
sophisticated investors
Consultation response



© Crown copyright 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN: 978-1-916693-55-5 PU: 3368

Contents

Chapter 1	Introduction	5
Chapter 2	Summary of consultation responses	9
Chapter 3	The changes to the exemptions	17
Chapter 4	Next steps	31

Chapter 1

Introduction

- 1.1 This document details the government's response to the consultation on the financial promotion exemptions for high net worth individuals and sophisticated investors. It provides a summary of the consultation responses received by HM Treasury, as well as providing a government response to the feedback on each policy proposal included in the consultation.

Background

- 1.2 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.
- 1.3 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 promotions 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.
- 1.4 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 financial promotions under the exemptions are not subject to the safeguards outlined in paragraph 1.3.

- 1.5 Through its consultation, HM Treasury has considered three specific exemptions. These relate to:
- Certified high net worth individuals (Article 48 of the FPO)
 - Sophisticated investors (Article 50)
 - Self-certified sophisticated investors (Article 50A)
- 1.6 These exemptions (hereafter referred to as ‘the exemptions’) were introduced in 2001 and then expanded and updated in 2005. They are designed to enable small and medium sized enterprises (SMEs) to raise finance from high net worth individuals and sophisticated private investors, or ‘business angels’, without the cost of having to comply with the financial promotions regime.
- 1.7 Since the exemptions were last substantively updated in 2005, there have been significant economic, social and technological changes to the context in which the exemptions operate. These are set out in more detail in Chapter 3 of ‘Financial promotion exemptions for high net worth individuals and sophisticated investors: A consultation’.¹
- 1.8 In addition, the government is aware of concerns about misuse of the exemptions, including some businesses seeking to use the exemptions to market products inappropriately to ordinary retail investors. This issue was recognised in the Treasury Select Committee’s report on the failure of London Capital and Finance, and led to a recommendation for the government to “re-evaluate the Financial Promotion Order exemptions to determine their appropriateness and consider what changes need to be made to protect consumers”.²
- 1.9 In light of this changing context and the recommendation from the Treasury Select Committee, HM Treasury reviewed the three financial promotions exemptions listed in paragraph 1.5 and developed policy proposals for reform. On 15 December 2021, HM Treasury published a consultation document seeking views and evidence in response to the proposals, including from those who use the exemptions. The consultation closed on 9 March 2022.
- 1.10 The consultation received thirty-two responses from a cross-section of stakeholders. HM Treasury has considered these responses carefully. This document sets out a summary of the

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040979/Financial_Promotion_Exemptions_Con.pdf

² This recommendation can be found in paragraph 180 of the Treasury Select Committee report, found at:
https://publications.parliament.uk/pa/cm5802/cmselect/cmtreasy/149/14909.htm#_idTextAnchor067.

responses to the consultation and the government's approach to reforming the exemptions.

- 1.11 HM Treasury would like to thank all respondents for taking the time to respond to the consultation and for sharing their views.

Related government and FCA initiatives

- 1.12 The review of these exemptions forms part of wider work undertaken by the government and the FCA to review the regulation of financial promotions.

Financial promotions regulatory gateway

- 1.13 The government is introducing new measures to improve the quality of financial promotions made by unauthorised firms and approved by authorised firms, through the introduction of a financial promotions 'gateway'.
- 1.14 This regulatory gateway, which was legislated for in the Financial Services and Markets Act 2023, will require any authorised firm wishing to approve financial promotions of an unauthorised firm to first obtain permission from the FCA, unless an exemption applies. In cases where exemptions in the FPO are being used to make financial promotions, the gateway does not apply given the absence of the need for approval of the financial promotion.
- 1.15 The gateway aims to improve the quality of financial promotions communicated by unauthorised firms, by allowing only those authorised firms that the FCA assesses as suitable and with sufficient expertise in the product or service to which the promotion relates to approve the promotions of unauthorised firms. It will also give the FCA greater oversight of the approval of financial promotions.
- 1.16 The government has set out in secondary legislation the commencement process for introducing the gateway, and certain exemptions from the gateway. Ahead of the gateway being introduced, the FCA published a policy statement on 12 September 2023 setting out further details on how they plan to implement the gateway.³
- 1.17 The FCA opened applications to the gateway on 6 November. The requirement to have gone through the gateway before approving financial promotions made by unauthorised firms will then apply from 7 February 2024. Where an authorised firm has applied to the FCA for permission to approve promotions before 7 February 2024, a transitional regime will enable the firm to continue approving financial promotions until its application has been determined by the regulator.

³ <https://www.fca.org.uk/publications/consultation-papers/cp22-27-introducing-gateway-firms-approve-financial-promotions>

The FCA's updated rules for high-risk investments

- 1.18 The FCA have introduced strengthened rules for firms communicating or approving financial promotions for high-risk investments, as outlined in a policy statement published in August 2022.⁴ That publication set out changes to strengthen the consumer journey for high-risk investments, rationalise the classification of high-risk investments within their rules and strengthen the role of firms approving and communicating financial promotions for investment business. Some of the new rules took effect from 1 December 2022, while all others took effect from 1 February 2023.
- 1.19 As explained in paragraph 1.4, these regulatory protections do not apply in cases where exemptions to the FPO are being used to make financial promotions.

⁴ <https://www.fca.org.uk/publications/policy-statements/ps22-10-strengthening-our-financial-promotion-rules-high-risk-investments-firms-approving-financial-promotions>

Chapter 2

Summary of consultation responses

- 2.1 This chapter provides a review of the consultation responses that were submitted to HM Treasury.
- 2.2 Thirty-two responses were submitted. The responses came from a variety of stakeholders, including trade bodies, angel networks, legal firms, investors, investment platforms, investment managers, a research institution, a consumer body, and a charity.

Case for Change

Question 1 Do you agree that the exemptions should be retained?

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

Objectives for reform:

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

- 2.3 There was agreement across the majority of responses that the exemptions should be retained and that the objectives for reform were appropriate. A few responses stated that the exemptions should be removed entirely, while a minority of other responses agreed the exemptions should be retained but did not agree with all of the objectives.
- 2.4 A few responses provided suggestions for other objectives that the government could consider. These included:
- An objective related to stopping firms and individuals from using the exemptions inappropriately or fraudulently; and

- An investor education objective to help individuals understand risks.

Proposal one – Increasing the financial thresholds for high net worth individuals

Question 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.

Question 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?

Question 5 Do you agree that the assets in scope of the net asset calculation should remain the same?

- 2.5 In the consultation, responses to the proposal to increase the financial thresholds for high net worth individuals varied to a large extent. Sixteen responses agreed with the proposal, while eleven responses disagreed.
- 2.6 The government set out its view in the consultation that at a minimum, the financial thresholds should be increased in line with inflation, to which a majority of consultation responses agreed.
- 2.7 Responses that disagreed with raising the thresholds expressed concern with how increased thresholds could negatively impact the angel investment market. These respondents raised concerns that increasing the thresholds could reduce the potential for broadening angel network participation, including among less represented groups such as women and ethnic minorities. They also raised concerns that lower angel investor participation in the future could reduce SME investment, particularly for younger start-ups.
- 2.8 A few respondents suggested the thresholds should be set higher than an inflation-linked increase to capture the top 1% of the population and to align with other comparable international jurisdictions. They also cited concerns that the thresholds may not necessarily correlate with experience or ability to bear financial loss, and that pensioners could be counting their pension in the net assets calculation in order to qualify for the exemption.
- 2.9 A large majority of responses agreed with the government's view that the assets in scope of the net asset calculation should remain the same. A few disagreeing responses suggested that pensions and home equity should be included in the calculation.

Proposal two - Amending the criteria for self-certified sophistication

Question 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?

Question 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?

Question 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?

- 2.10 As with the first proposal, responses to the proposal to amend the criteria for self-certified sophistication split into two opposing sets of perspectives.
- 2.11 Two thirds of responses agreed that the criterion of having made more than one investment in an unlisted company in the previous two years was no longer a reliable way of demonstrating sophistication and should be removed, while one third disagreed. Many of the respondents that agreed supported the government's rationale that due to technological changes in the investment market, it was now much easier for ordinary retail investors to invest in unlisted companies and to participate without advice. Responses that disagreed with the proposition in question six suggested that such experience was still relevant and demonstrated sophistication. Consistent with proposal one, disagreement with this proposal often came from respondents who facilitate the investment process, some of whom suggested this proposal would reduce the pool of investors using this exemption.
- 2.12 Question seven asked for other tests that could be incorporated into the definition of a self-certified sophisticated investor. Some responses suggested that relevant prior education could be introduced as a criterion, or that a new recognised educational course could be set up to test the capabilities of investors. Some respondents suggested investors could provide evidence of regular investment activity. Other responses suggested expanding the range of applicable financial assets that would qualify to include other investments such as unregulated collective investment schemes, or increasing the number of investments in unlisted companies in order to be eligible.
- 2.13 Responses to question eight were split evenly between agreeing and disagreeing that the criterion of having been a director of a

company with an annual turnover of at least £1 million should be raised by an inflation-linked amount. Respondents that disagreed did so for two reasons; some suggested the criterion should be removed entirely, while others said that £1 million was already a sufficiently high financial threshold.

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

Question 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?

Question 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?

Question 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?

Question 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?

Question 13 Do you agree that firms should be required to provide details about themselves in any communications made using the exemptions?

- 2.14 While a number of stakeholders were in favour of placing a greater degree of responsibility on businesses to ensure individuals meet the criteria to be deemed high net worth or sophisticated, overall, a large majority of respondents strongly disagreed with the proposal.
- 2.15 The responses from stakeholders, particularly from those who are involved in the investment process using the exemptions, highlighted significant practical issues. These included that the proposal would impose a significant barrier on investors’ usual practice of reviewing investment opportunities, particularly if investors wanted to review a significant number of investment proposals at a time. Investors who use the exemptions also raised concerns about how this proposal would affect the investment process, while many industry respondents suggested that this requirement could be costly or difficult to administer and could lead to reduced appetite among investors to use these exemptions.

- 2.16 Those respondents who agreed with the proposal set out in question nine considered that placing more responsibility on firms could benefit investors, through increasing the likelihood that they would make investment choices that reflected their personal circumstances. They considered that, given the loss of protections under the exemptions, businesses should be under the obligation to ensure individuals do meet the criteria to be deemed high net worth or sophisticated.
- 2.17 In relation to question ten, those responses that agreed with placing a greater responsibility on businesses in response to question nine considered that the emphasis of the “reasonable belief” should be shifted, so that the person communicating the financial promotion must have a reasonable belief that an individual meets the criterion, as opposed to the current requirement to “believe on reasonable grounds” that the individual they are communicating to has signed the relevant investor statement confirming they are high net worth or sophisticated.
- 2.18 Question eleven asked if there were better alternatives to proposal three. Many responses suggested improving the investor statements and highlighting the loss of protections, while other responses, who were in favour of proposal three, commented that there was no better alternative. A few responses suggested that a new investor certification process could be developed as an alternative to proposal three.
- 2.19 While few respondents offered a response to question twelve, a small number of responses provided information related to their current processes for onboarding investors. Two trade bodies for regulated firms, who agreed with the proposal to establish a reasonable belief that the individual meets the criteria, commented that their members carry out appropriateness tests in line with the FCA’s Conduct of Business Sourcebook (COBS) and that members do verify the assets of prospective investors.
- 2.20 A few other respondents, who opposed the proposal, commented that they do take some measures to ensure that investors are only exposed to investment opportunities once they are satisfied that this is appropriate. Angel networks discussed how they engage with prospective investors, including through in-person meetings and interviews, so that the nature of this type of investing is understood. Lastly, a trade body discussed that members currently establish eligibility for the exemptions from existing information held by the firm, public sources, subscription services, and information received from the individual, whether formally by written request or through discussions.
- 2.21 All respondents who answered question thirteen agreed that firms should be required to provide details about themselves in any communications made using the exemptions.

Proposal four - Updating the high net worth and self-certified sophisticated investor statements

Question 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?

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

Question 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?

Question 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.

- 2.22 The approach set out by the government to update the high net worth and self-certified sophisticated investor statements received strong support. Nearly all responses agreed that the investor statements 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.
- 2.23 While a large majority of responses agreed with the government's proposed approach to the investor statements, a few responses disagreed. In particular, some respondents had concerns that 'introducers' could still persuade prospective investors to sign the certificates in circumstances where they may not meet the criteria.
- 2.24 In relation to question sixteen, many responses provided suggestions for improvements to the investor statements to ensure greater investor engagement. These included adding additional risk warnings and positive frictions, to encourage investors to engage meaningfully.
- 2.25 There were few responses to question seventeen. Of the small number of respondents that did comment, responses included that investors would not want to disclose precise income information and that a better approach to requesting levels of income would be to ask prospective investors to select an income range.

Additional questions

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

Question 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.

Question 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?

- 2.26 Regarding other ideas that would deliver on the three objectives for reform, a consumer body suggested that the use of the term 'sophisticated' in the naming of the self-certified sophisticated investor exemption leads some investors to wrongly consider that the exemption applies to them. They suggested a more descriptive alternative, such as 'highly experienced investor' would create different incentives.
- 2.27 One response asked the government to review the criteria for elective professional client status under the UK MiFID regime.
- 2.28 One response commented that consideration could be given to broadening the scope of investments which may be promoted within the scope of the exemptions, beyond unlisted companies.
- 2.29 Question twenty asked for views from stakeholders that represent vulnerable groups regarding the information presented in the consultation. Stakeholders commented that it was possible that vulnerable individuals could meet the criteria of being high net worth, in particular where there has been a change in financial circumstances, such as having received an inheritance.
- 2.30 Question twenty-one asked what effect the proposed changes would have on firms or individuals who rely on the overseas persons exemption (OPE). A trade body commented that the proposal to place a greater degree of responsibility on firms to ensure individuals meet the criteria to be deemed high net worth or sophisticated would make it more difficult for persons based overseas to promote unlisted investments to individuals in the UK. This is because it would make the test for a "legitimate approach" more onerous.

Chapter 3

The changes to the exemptions

- 3.1 This chapter sets out the changes the government is making to the exemptions.
- 3.2 In response to the feedback received on the case for change and the objectives for reform, the government recognises the concerns that have been raised related to the inappropriate use of the exemptions. The reforms that the government is taking forward are designed to address these risks. The changes being introduced are intended to reduce the risk that investors incorrectly self-certify and to increase understanding of the regulatory protections investors are giving up when receiving promotions subject to these exemptions. The changes will also update the thresholds to be eligible for the exemptions.
- 3.3 Overall, having considered the feedback received, the government's view is that the three objectives for reform set out in the consultation are appropriate, and that the changes being taken forward are the most effective route to meeting these objectives.
- 3.4 The changes can be summarised as:
- Increasing the financial thresholds to be eligible for the high net worth individual exemption to:
 - Income of at least £170,000 in the last financial year; or
 - Net assets of at least £430,000 throughout the last financial year.
 - Amending the criteria to be eligible for the self-certified sophisticated investor exemption by:
 - Removing the criterion of having made more than one investment in an unlisted company in the previous two years; and
 - Increasing the company turnover required to satisfy the 'company director' criterion to £1.6m (i.e. directors of companies with at least £1.6m

turnover will remain eligible for the self-certified sophisticated investor exemption).

- Requiring businesses to provide details of themselves in any communications made using the exemptions;
- Updating the title of the certified high net worth individual exemption by removing 'certified';
- Updating the high net worth individual and self-certified sophisticated investor statements;
- Applying these changes to the equivalent exemptions for promotion of collective investment schemes.

3.5 The following sections of this chapter explain the government's rationale for these decisions in further detail, including how these have been informed by consultation feedback.

Increasing the financial thresholds for the high net worth individual exemption

3.6 Currently, the financial thresholds to qualify for the high net worth individual threshold are to have received £100,000 of income in the previous financial year, or to have held net assets of £250,000 (excluding an investor's primary residence or pension) throughout the previous financial year. As set out in the consultation, these thresholds have not been updated since 2001, while inflation has eroded their value. In addition, following pension reforms ("pensions freedoms"), investors can more easily withdraw from their Defined Contribution pension pots and invest outside of a pension wrapper, meaning some investors are more likely to meet the thresholds than they would have been in 2001.

3.7 As outlined in chapter two, consultation responses indicated majority approval for raising the thresholds. Raising the thresholds in line with inflation was the most preferred option. Responses indicated that the further the thresholds were raised, the greater the corresponding negative impact on angel network participation and the ability for SMEs to raise capital, particularly for younger start-ups.

3.8 Some suggested that the high net worth thresholds should be set to capture only the top 1% of income (£183,000 per annum in 2020/2021⁵) and wealth (£1.25m⁶), to reflect the percentage that

⁵ <https://www.gov.uk/government/statistics/percentile-points-from-1-to-99-for-total-income-before-and-after-tax>

⁶ 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 £1.25m figure is taken by adding financial wealth (£779,000); physical wealth (£267,000); additional property wealth (£203,000). The figure for additional

the thresholds represented when the exemptions were introduced in 2001. They cited higher thresholds in other countries, concern that the thresholds may not correlate with experience or ability to bear financial loss, and concern that pensioners could be counting their pension in the net assets calculation in order to qualify for the exemption.

- 3.9 In the consultation, the government proposed – at a minimum – raising the thresholds in line with inflation since 2001. Reflecting inflation as of 2023, this would require a 70% increase to the current thresholds, with the new thresholds being set at £170,000 for income and £430,000 for assets.
- 3.10 Having considered the responses received from all stakeholders, and recognising the important role of angel investment in the economy, the government does not believe there is sufficient evidence to increase the thresholds by more than in line with inflation. The government has therefore decided to set the thresholds at £170,000 for income and £430,000 for assets. The government considers that the changes to the thresholds, alongside the strengthening of the investor statements, address in a proportionate way the concerns identified with the exemptions while supporting SMEs' continued ability to raise finance.
- 3.11 The government does recognise that pension freedoms have changed the context in which the exemptions operate. As described later in this chapter, the government is making changes to the investor statements to do more to discourage investors who are not otherwise high net worth or sophisticated from considering their pension pots for the purposes of the relevant exemption criteria.

Amending the criteria for the self-certified sophisticated investor exemption

- 3.12 One of the four 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.
- 3.13 As set out in the consultation, the rise of online investing means 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.
- 3.14 Having considered the responses to the consultation, the government maintains its view that this criterion is no longer a suitable indicator of investor sophistication and has decided to

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.

remove it from the self-certified sophisticated investor eligibility criteria.

- 3.15 Another of the criteria to be a self-certified sophisticated investor is that an individual has been a director of a company with an annual turnover of at least £1 million in the last two years. In a similar manner to the high net worth individual thresholds, this value has been devalued significantly by inflation since it was introduced in 2005.
- 3.16 As set out in the previous chapter, some respondents considered that the £1 million threshold is sufficient to demonstrate sophistication, whereas others recommended removing the company director criterion entirely, considering that no clear link can be drawn between this criterion and investor sophistication regardless of where the turnover level is set.
- 3.17 The government has decided to increase the annual turnover threshold, in line with inflation since 2005, to £1.6 million. The government considers that being a director of a company with £1.6 million annual revenue is a sufficiently high bar to demonstrate business success and sophistication, and that this will exclude less experienced directors.
- 3.18 The government has also considered the suggestions made for new criteria that could be incorporated into the definition of a self-certified sophisticated investor. The government has considered the suggestions made but has concluded that introducing new criteria would make it more difficult to sufficiently mitigate the risks identified in the consultation document.

Requiring businesses to provide details of themselves in any communications made using the exemptions

- 3.19 The government has decided to implement the proposal requiring businesses to provide details about themselves in any communications made using the exemptions. This includes company address, contact information, and the company's registration details (i.e. the company's Companies House number, or international equivalent). This aims to help prospective investors undertake basic due diligence on the persons marketing investments. It could also assist the FCA in investigating potential non-compliance with the exemptions.

Updating the title of the certified high net worth individual exemption

- 3.20 Following updates made to the FPO in 2005, investors no longer have to be certified by a third party to use the certified high net worth individual exemption.

- 3.21 This description is therefore outdated and so the government has decided to amend the name of the exemption to the 'high net worth individual' exemption, removing 'certified' from the title.
- 3.22 The government has also considered the suggestion that the title of the self-certified sophisticated investor exemption should be amended. While the government recognises the rationale for this suggestion, the government is making changes to tighten the self-certified sophisticated investor exemption, including by removing the criterion related to investment in unlisted companies, and is improving the investor statements. These changes are designed to reduce the risk that those without sufficient experience or expertise certify themselves as sophisticated. The government does not therefore intend to rename the self-certified sophisticated investor exemption.

Updating the high net worth individual and self-certified sophisticated investor statements

- 3.23 As set out in the consultation, some investors do not understand or engage with the information that is presented to them when engaging with financial promotions, including the statement that potential 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.
- 3.24 Respondents to the consultation agreed that the investor statements should be updated to achieve greater engagement from investors and higher awareness of the regulatory protections they are losing in receiving financial promotions under the exemptions.
- 3.25 The investor statements will make three substantive changes to increase investor engagement by:
- **Updating the format.** The conditions to be considered a high net worth or sophisticated investor are currently contained at the bottom of the statement following a large block of text. The government will make this information more prominent by reordering the sections of the statements to bring the conditions to the top. It will be made clearer to investors that financial promotions made under these exemptions may not follow FCA rules nor be accompanied by any protections, such as from the Financial Ombudsman Service or the Financial Services Compensation Scheme.
 - **Simplifying language.** The government has sought to simplify the language in the investor statements by, for

example, removing references to other pieces of financial services legislation and providing a more consumer-friendly explanation of which assets are not in scope of the net asset calculation. The reformatted and simplified statements should hold the attention of investors more effectively, making clearer the implications of giving up the protections afforded by the financial promotions regime.

- **Requiring greater investor engagement.** In the updated statements, the prospective investor will be required to select which specific criterion they meet in order to be classified as high net worth or sophisticated, and to set out how they meet the relevant criterion. For example, in the case of the high net worth individual exemption, an investor will be asked to declare their income and/or the value of their net assets to the nearest £10,000/£100,000 respectively, in order to demonstrate how they meet the requirements. It is expected this change will require investors to engage more actively with the content in the investor statement before signing it, and reduce the likelihood that investors who are not high net worth or sophisticated complete the statements. It will remain the investor's responsibility to certify themselves correctly.

- 3.26 These changes have in part been informed by behavioural testing undertaken by the FCA on how to influence consumer behaviour to ensure effective investment decisions.⁷
- 3.27 The government acknowledges the feedback from stakeholders that represent vulnerable groups. The government's decision to tighten the eligibility criteria for the high net worth individual and self-certified sophisticated investor exemption, and to strengthen the investor statements, should reduce the opportunity for vulnerable individuals to be inappropriately marketed investments under the exemptions. However, there will remain an onus on businesses to act responsibly when seeking to promote investments using these exemptions.
- 3.28 Templates for the new investor statements for high net worth individuals and self-certified sophisticated investors are displayed in Figures 3.A and 3.B below.

Collective investment schemes

- 3.29 As set out in the consultation, there are exemptions in the Promotion of Collective Investment Schemes (Exemptions) Order 2001 (PCIS) relating to high net worth individuals and sophisticated investors that mirror those in the FPO. The

⁷ <https://www.fca.org.uk/publication/research/decision-points-self-certification.pdf>

government will apply the reforms to the FPO exemptions to the exemptions in the PCIS.

- 3.30 In doing so, the government is amending the certified high net worth individual (article 21) and self-certified sophisticated investor (article 23A) exemptions – including the investor statements – to reflect the reforms described above. Templates for these PCIS exemptions are displayed in Figures 3.C and 3.D below.
- 3.31 The only differences in text between the PCIS and FPO investor statements will be the references to the relevant legislation in the first sentence of each statement.

Figure 3.A

HIGH NET WORTH INDIVIDUAL INVESTOR STATEMENT
<p>If you meet condition A or B below, you may choose to be classified as a high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.</p> <p>In the last financial year, did you have:</p> <p>A) An annual income of £170,000 or more? Income does <u>NOT</u> include any one-off pension withdrawals.</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, please specify your income (as defined above) to the nearest £10,000 in the last financial year [£_____]</p> <p>AND/OR</p> <p>B) Net assets of £430,000 or more? Net assets do <u>NOT</u> include: your home (primary residence), any loan secured on it or any equity released from it; your pension (or any pension withdrawals) or any rights under insurance contracts. Net assets are total assets minus any debts you owe.</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, please specify your net assets (as defined above) to the nearest £100,000 in the last financial year [£_____]</p> <p>OR</p> <p>C) None of these apply to me.</p> <p><input type="checkbox"/> Yes</p>
<p>I declare that I have answered yes to A and/or B, and wish to be treated as a high net worth individual.</p> <p>I understand that this means:</p> <p>a) I can receive financial promotions where the contents may not comply with rules made by the Financial Conduct Authority (FCA);</p> <p>b) I can expect no protection from the FCA, the Financial Ombudsman Service or the Financial Services Compensation Scheme.</p> <p>I am aware that it is open to me to seek advice from someone who specialises in advising on investments.</p> <p>I accept that I could lose all of the money I invest.</p> <p>Signature _____ Date _____</p>

Figure 3.B

SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT
<p>If you meet condition A, B or C below, you may choose to be classified as a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.</p> <p>Have you:</p> <p>A) Worked in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises, in the last two years?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the business/organisation? [_____]</p> <p>B) Been the director of a company with an annual turnover of at least £1.6 million, in the last two years?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the company, and its Companies House number (or international equivalent)? [_____]</p> <p>C) Been a member of a network or syndicate of business angels for more than six months, and are still a member?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is the name of the network or syndicate? [_____]</p> <p>OR</p> <p>D) None of these apply to me.</p> <p><input type="checkbox"/> Yes</p>
<p>I declare that I have answered yes to A and/or B and/or C, and wish to be treated as a self-certified sophisticated investor.</p> <p>I understand that this means:</p> <p>a) I can receive financial promotions where the contents may not comply with rules made by the Financial Conduct Authority (FCA);</p> <p>b) I can expect no protection from the FCA, the Financial Ombudsman Service, or the Financial Services Compensation Scheme.</p> <p>I am aware that it is open to me to seek advice from someone who specialises in advising on investments.</p> <p>I accept that I could lose all of the money I invest.</p> <p>Signature _____ Date _____</p>

Figure 3.C

HIGH NET WORTH INDIVIDUAL INVESTOR STATEMENT
<p>If you meet condition A or B below, you may choose to be classified as a high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.</p> <p>In the last financial year, did you have:</p> <p>A) An annual income of £170,000 or more? Income does <u>NOT</u> include any one-off pension withdrawals.</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, please specify your income (as defined above) to the nearest £10,000 in the last financial year [£_____]</p> <p>AND/OR</p> <p>B) Net assets of £430,000 or more? Net assets do <u>NOT</u> include: your home (primary residence), any loan secured on it or any equity released from it; your pension (or any pension withdrawals) or any rights under insurance contracts. Net assets are total assets minus any debts you owe.</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, please specify your net assets (as defined above) to the nearest £100,000 in the last financial year [£_____]</p> <p>OR</p> <p>C) None of these apply to me.</p> <p><input type="checkbox"/> Yes</p>
<p>I declare that I have answered yes to A and/or B, and wish to be treated as a high net worth individual.</p> <p>I understand that this means:</p> <p>a) I can receive financial promotions where the contents may not comply with rules made by the Financial Conduct Authority (FCA);</p> <p>b) I can expect no protection from the FCA, the Financial Ombudsman Service, or the Financial Services Compensation Scheme.</p> <p>I am aware that it is open to me to seek advice from someone who specialises in advising on investments.</p> <p>I accept that I could lose all of the money I invest.</p> <p>Signature _____ Date _____</p>

Figure 3.D

SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT
<p>If you meet condition A, B or C below, you may choose to be classified as a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.</p> <p>Have you:</p> <p>A) Worked in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises, in the last two years?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the business/organisation? [_____]</p> <p>B) Been the director of a company with an annual turnover of at least £1.6 million, in the last two years?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is/was the name of the company, and its Companies House number (or international equivalent)? [_____]</p> <p>C) Been a member of a network or syndicate of business angels for more than six months, and are still a member?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is the name of the network or syndicate? [_____]</p> <p>OR</p> <p>D) None of these apply to me.</p> <p><input type="checkbox"/> Yes</p>
<p>I declare that I have answered yes to A and/or B and/or C, and wish to be treated as a self-certified sophisticated investor.</p> <p>I understand that this means:</p> <p>a) I can receive financial promotions where the contents may not comply with rules made by the Financial Conduct Authority (FCA);</p> <p>b) I can expect no protection from the FCA, the Financial Ombudsman Service, or the Financial Services Compensation Scheme.</p> <p>I am aware that it is open to me to seek advice from someone who specialises in advising on investments.</p> <p>I accept that I could lose all of the money I invest.</p> <p>Signature _____ Date _____</p>

Other policy proposals the government considered but is not proceeding with

- 3.32 As set out in the consultation, businesses that communicate promotions under the 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.
- 3.33 Owing to concerns that some investors could be classified as being high net worth or sophisticated when they do not meet the criteria, the government consulted on placing a greater degree of responsibility on businesses to ensure individuals meet the criteria. The government also consulted on whether the emphasis of the “reasonable belief” should be shifted so that the person communicating the financial promotion must have a reasonable belief that an individual meets the exemption criteria.
- 3.34 As set out in the previous chapter, a large majority of respondents strongly disagreed with the proposal. The evidence from stakeholders highlighted significant practical issues, namely that this would impose a significant barrier on investors’ usual practice of reviewing investment opportunities, particularly if wanting to review a significant number of investment proposals. Respondents considered that the proposal did not take account of how investors in this marketplace engage with financial promotions and that the proposal would have too detrimental an impact on prospective investors’ ability to review financial promotions, with a consequent impact on SMEs’ ability to raise finance.
- 3.35 However, some respondents felt that the current approach of self-certification does not adequately address the risks to retail investors, and were in favour of placing a greater degree of responsibility on businesses to ensure individuals meet the criteria to be deemed high net worth or sophisticated. They considered that, given the loss of protections when certifying under the exemptions, it would not be disproportionate or unnecessarily intrusive to require businesses to have a reasonable belief that the prospective investor meets the criteria.
- 3.36 Having considered the feedback received, and in particular the impact that this proposal could have on the operation of the exemptions, the government has decided not to pursue this proposal.
- 3.37 The government considers that the changes being made to raise the financial thresholds, tighten the eligibility criteria for the self-certified sophisticated investor exemption, and strengthen the investor statements will both reduce the risk of consumer detriment and preserve the ability of SMEs to raise finance under the exemptions.

- 3.38 Although it will remain a matter for the courts as to what “reasonable belief” means in the context of the investor statements, the Government’s intention is that it would be enough for an individual to demonstrate that they have taken sufficient steps to form a reasonable belief that a completed and signed statement exists and that completion of that statement indicates that the potential investor satisfies the conditions set out in the statement.
- 3.39 Given that the government is not proceeding with the proposal to place a greater degree of responsibility on firms to ensure individuals meet the criteria to be deemed high net worth or sophisticated, the changes being made to the exemptions are not expected to have a significant impact on firms who use the OPE to carry on regulated activities in the UK.
- 3.40 In response to the separate suggestion that the government should review the criteria for elective professional client status under the UK MiFID regime, that regime is outside of the scope of this consultation, although the suggestion reflects some of the feedback provided to the government’s Wholesale Markets Review consultation. The government will continue to consider this point.
- 3.41 It was also suggested by one respondent that consideration could be given to broadening the scope of eligible investments for the purposes of the exemptions, beyond unlisted companies. These exemptions are designed to support SMEs to raise finance from high net worth individuals and sophisticated investors, without the cost of having to comply with the financial promotions regime. The government has no plans to expand the scope of eligible investments beyond unlisted companies at this time.

Interaction with the FCA’s exemptions for high net worth individuals and self-certified sophisticated investors

- 3.42 As set out in the consultation, the FCA’s Handbook contains marketing restrictions which limit the extent to which firms can promote investments to retail investors which the FCA has classified as high-risk.
- 3.43 The FCA’s marketing restrictions also contain exemptions which enable promotion to high net worth individuals and sophisticated investors where relevant conditions are met.
- 3.44 The FCA’s exemptions apply to what the FCA define as “restricted mass market investments” and “non-mass market investments”. Investments in unlisted companies are generally within the scope of “restricted mass market investments”.
- 3.45 The FCA has tended to replicate relevant conditions from the FPO exemptions in their own exemptions for high net worth individuals

and self-certified sophisticated investors. This has the effect of simplifying requirements across different investments and seeks to mitigate the risk that authorised firms are incentivised to make promotions using the FPO exemptions.

- 3.46 Following the implementation of the reforms set out in this document, the government notes that the FCA may decide to consult on updating their exemptions to reflect some or all of the changes being made to the FPO exemptions.
- 3.47 The government also notes that there was some misunderstanding in responses to the consultation about where the FPO exemptions and the exemptions in the FCA regime apply. This was evident in some of the responses to the consultation where the two regimes were not distinguished from one another.
- 3.48 The FPO exemptions remove a promotion entirely from the FCA's rules on financial promotions, and can only be used to make financial promotions in relation to unlisted companies. In contrast, the exemptions in the FCA regime apply across a wider range of financial promotions, including in relation to unlisted companies. Where the exemptions in the FCA regime are used, some financial promotions rules within the FCA's Handbook (including the requirement for promotions to be clear, fair and not misleading) still apply.

Chapter 4

Next steps

- 4.1 The changes set out in chapter three will be implemented through secondary legislation. The government laid the Statutory Instrument (SI) making these changes on 6 November 2023. Subject to parliamentary time and process, it is the government's intention to bring the changes into force on 31 January 2024. The SI also includes separate amendments to the scope of the exemptions from the financial promotions gateway, as explained in the Explanatory Memorandum to the SI.
- 4.2 The government considers that providing this clear implementation date will provide businesses with sufficient notice to familiarise themselves with the changes, and ensure that consumers benefit from the reforms as soon as possible.
- 4.3 The government considers that no transitional regime is required in relation to these reforms.
- 4.4 Article 14 of the FPO enables subsequent follow-up financial promotions relating to the same matter within 12 months of the recipient receiving the first communication, where relevant requirements are met. In accordance with this provision, where a business has made a financial promotion to an individual before 31 January 2024, in compliance with these exemptions, that business will continue to be able to engage with the relevant individual in relation to the financial promotion made and will not be required to request an updated investor statement.
- 4.5 New financial promotions made from 31 January 2024, even if made to individuals already promoted to under the current exemptions, will need to be made in accordance with the updated exemptions.

HM Treasury contacts

This document can be downloaded from 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