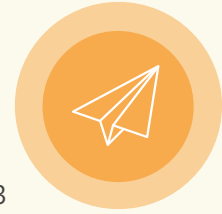


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# Financial Promotion Exemptions For High-Net-Worth Individuals And Sophisticated Investors



HM Treasury - [Consultation Response](#), which was published on 7<sup>th</sup> November 2023

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## Introduction

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (“**FPO**”) allows unauthorised businesses to communicate Financial Promotions<sup>1</sup> in the UK to certain types of natural or legal persons without requiring the Financial Promotion to be approved or made by an authorised firm (“**Excluded Communication**”).

The FPO defines the necessary conditions that need to be met for a communication to be an Excluded Communication. This includes the definitions of:

- high-net-worth individual;
- sophisticated investor; and
- self-certified sophisticated investor.

The FPO also specifies the content of the attestations that are required to be signed by such persons.

The application of large parts of the FCA’s Financial Promotion rules in COBS turns on whether the financial promotion amounts to an Exempt Communications.

## Timeline

**The Government is changing the definition of high-net-worth individual, sophisticated investors or self-certified sophisticated investors and it is their intention to bring the changes into force on 31 January 2024.**

In practice, what this means is that if an individual has signed the current, soon to be old, HNWI or Self-Certified Sophisticated Investor Statement pre-January 31<sup>st</sup>, then you will be able to rely on this in the course of continuing to distribute financial promotions to this individual until 12 months after the date at which they signed the Statement. E.g. An investor completes the **current** HNWI Statement on January 30<sup>th</sup>, they would be able to receive Financial Promotions from you with regard to that opportunity without having to complete the **new** HNWI Statement until 30<sup>th</sup> January 2024 – at which point to continue receiving financial promotions from you with regard to that opportunity they will need to sign the new HNWI Statement. New financial promotions made from 31<sup>st</sup> January 2024, even if made to

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<sup>1</sup> A financial promotion is defined in Section 21 of the Financial Services and Markets Act 2000 (FSMA) as 'an invitation or inducement to engage in investment activity, communicated by a person in the course of business'

individuals already promoted to under the current exemptions, will need to be made in accordance with the updated exemptions.

## Changes

### Financial Thresholds for High-Net-Worth Individuals

Current	New
One of the criteria that a High-Net-Worth Individual could satisfy to gain exemption from the FPO was having an annual gross income of £100k or greater.	This threshold will be increased to £170k.
The other criteria that a HNWI could satisfy to gain exemption from the FPO was having net assets <sup>2</sup> of £250k or greater.	This threshold will be increased to £430k.

**HMT Rationale:** Stakeholder feedback and consideration of the impact on angel investment led to a decision to raise thresholds in line with inflation since 2001. The chosen thresholds strike a balance between risk mitigation and supporting SMEs.

### Criteria for Self-Certified Sophisticated Investors

Current	New
One of the criterion that a Self-Certified Sophisticated Investor could satisfy to gain exemption from the FPO is having to have made more than one investment in an unlisted company in the previous two years.	Removal in its entirety of the criterion of having to have made more than one investment in an unlisted company in the previous two years.
The other criteria that a Self-Certified Sophisticated Investor could satisfy to gain exemption from the FPO was having been a director of a company with an annual turnover of at least £1m.	This annual turnover requirement will increase to £1.6 million.

**HMT Rationale:** The removal of the investment criterion aligns with the changing landscape of online investing. The turnover increase aims to maintain a high bar for sophistication. Consideration of stakeholder suggestions for new criteria was weighed against the identified risks.

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<sup>2</sup> Net assets does not include: you 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.

### Application to Collective Investment Schemes

Current	New
The HNWI and Self-Certified Sophisticated Investor exemptions to the FPO that are outlined above in this memo also applied to the Promotion of Collective Investment Schemes (Exemptions) Order 2001.	These updates to the FPO that are outlined above in this memo will also apply to the Promotion of Collective Investment Schemes (Exemptions) Order 2001.

**HMT Rationale:** Ensures consistency across different orders, aligning exemptions and regulatory standards.

### Business Responsibility in Communications

Current	New
There is no FPO requirement to display any details of the Persons who is relying on the exemption in the distribution of a financial promotion.	Persons relying on the exemptions (those distributing the Financial Promotion) will be obliged to provide details in communications that take advantage of this exemption, including address, contact information, and registration details.

**HMT Rationale:** Mandating business details to be included in material distributed when relying on an exemption will facilitate due diligence, aid regulatory oversight, and reduce the likelihood of inappropriate marketing.

### Updates to Exemption Titles and Investor Statements

Current	New
The FPO refers to the "Certified High-Net-Worth Individual" exemption.	The FPO will now only refer to this as the "High-Net-Worth Individual" exemption, removing "Certified" from the title.
The HNWI and Self-Certified Sophisticated Investor Statements are poorly formatted, contain unnecessarily complex language and require minimal investor engagement.	The update of these Statements include a more natural format, easier to understand language and require the investor to engage with the statement by listing their income or net assets to the nearest £10k or £100k respectively.

**HMT Rationale:** The title change reflects the evolution of the certification process, while updates to statements aim to increase investor engagement, simplify language, and emphasize regulatory implications.

## Recommended actions

In our opinion, the following actions should be taken immediately:

- **Watch the FCA:** It will be important to keep watch for any FCA announcement on whether they plan to amend any of their rules (I.e. Change their own definitions).
- **Investor survey:** To the extent that you have not been collecting data on an investor's actual net worth or gross salary, you may wish to retrospectively collect this information alongside the precise leg that a sophisticated investor is relying on meet the test.
- **Marketing strategy - Impact:** After 31<sup>st</sup> January 2023 you will be unable to make a financial promotion to an individual if that individual has not completed the updated HNWI or Sophisticated Investor Statement.
- **Marketing strategy - Changes:** You may need to reevaluate your marketing strategy if your investor base is currently significantly reliant on those who are only just qualifying as a HNWI. As a result of this change, at least 640k<sup>3</sup> individuals who will no longer meet the definition of a HNWI in the UK purely as a result of the change in the income requirement, significantly reducing the market size.

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<sup>3</sup> There are approximately 32.98m people in the UK currently in employment (<https://researchbriefings.files.parliament.uk/documents/CBP-9366/CBP-9366.pdf>). Pre-tax gross salary percentiles suggest that there around 2% of the people in employment in the UK have a salary of between 100k and 170k (<https://www.gov.uk/government/statistics/percentile-points-from-1-to-99-for-total-income-before-and-after-tax>). 2% of 32.98m people equates to approximately 660k individuals currently in employment who will no longer meet the definition of a HNW investor solely based on the income test. This is not accounting for the number of individuals who would no longer qualify as a HNWI as a result of the updated net assets test, or those who will no longer qualify as a Self-Certified Sophisticated Investor as a result of the change in those requirements.