

Subsidiary Legislation made under ss. 620, 621 and 627.

**Financial Services (Restricted Promotions)
Regulations 2023**

LN.2023/261

Commencement **7.9.2023**

ARRANGEMENT OF REGULATIONS

Regulation

1. Title.
2. Commencement.
3. Restriction on the promotion of speculative illiquid securities to retail clients.
4. Exemptions from the restriction on the promotion of speculative illiquid securities.

SCHEDULE

**EXEMPTIONS FROM THE RESTRICTION ON THE PROMOTION OF SPECULATIVE
ILLIQUID SECURITIES**

2019-26

Financial Services

2023/261

**Financial Services (Restricted Promotions) Regulations
2023**

In exercise of the powers conferred on the Minister by section 620, 621 and 627 of the Financial Services Act 2019, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Financial Services (Restricted Promotions) Regulations 2023.

Commencement.

2. These Regulations come into operation on the day of publication.

Restriction on the promotion of speculative illiquid securities to retail clients.

3.(1) A regulated firm must not communicate or approve a financial promotion in relation to a speculative illiquid security where that financial promotion is addressed to or disseminated in such a way that it is likely to be received by a retail client.

(2) In these Regulations a “speculative illiquid security” is a debenture or preference share which—

- (a) has a denomination or minimum investment of less than £100,000 (or an equivalent amount); and
- (b) has been issued, or is to be issued, in circumstances where the issuer or a member of the issuer’s group uses, will use or purports to use some or all of the proceeds of the issue directly or indirectly for one or more of the following—
 - (i) the provision of loans or finance to any person other than a member of the issuer’s group;
 - (ii) buying or acquiring specified investments (whether they are to be held directly or indirectly);
 - (iii) buying or acquiring investments other than specified investments (whether they are to be held directly or indirectly);
 - (iv) buying real property or an interest in real property (whether it is to be held directly or indirectly); or
 - (v) paying for or funding the construction of real property.

Exemptions from the restriction on the promotion of speculative illiquid securities.

- 4.(1) The restriction in regulation 3 does not apply if the financial promotion—
- (a) falls within an exemption in the first column in the table in the Schedule;
 - (b) is made to or directed at only those recipients whom the firm has taken reasonable steps to establish are persons in the relevant entry in the second column of the table; and
 - (c) where the relevant entry in the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is undertaken before the financial promotion is made to or directed at the recipient.
- (2) A firm may rely on more than one exemption in relation to the same financial promotion.

2019-26

Financial Services

2023/261

**Financial Services (Restricted Promotions) Regulations
2023**

SCHEDULE

Regulation 4

**EXEMPTIONS FROM THE RESTRICTION ON THE PROMOTION OF
SPECULATIVE ILLIQUID SECURITIES**

Exemption	Promotion to:	Speculative illiquid security which is:
Certified high net worth investor*	The investor or a person legally empowered to make investment decisions on the investor's behalf.	Any speculative illiquid security the firm considers is likely to be suitable for that individual, based on a preliminary assessment** of the client's profile and objectives.
Certified sophisticated investor*	The investor, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm's client.	Any speculative illiquid security.
Self-certified sophisticated investor*	The investor including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm's client.	Any speculative illiquid security the firm considers is likely to be suitable for that individual, based on a preliminary assessment** of the client's profile and objectives.
Excluded communications***	Any person.	Any speculative illiquid security, where the financial promotion is an excluded communication.

*Certified high net worth investor, certified sophisticated investor and self-certified sophisticated investor have the respective meanings given in regulation 3A(1)(a) to (c) of the

Financial Services (Experienced Investor Funds) Regulations 2020 which are to be applied with appropriate modification.

** A preliminary assessment of suitability must be undertaken before the financial promotion of the speculative illiquid security is made to or directed at clients who are certified high net worth investors or self-certified sophisticated investors.

*** An “excluded communication” is–

- (a) a financial promotion that would benefit from an exemption if it were communicated by an unauthorised person, or which originates outside Gibraltar and is not capable of having an effect in Gibraltar;
- (b) a financial promotion from outside Gibraltar that would be exempt if the office from which the financial promotion is communicated were a separate unauthorised person;
- (c) a personal quotation or illustration form;
- (d) a "one-off" financial promotion that is not a cold call where–
 - (i) the financial promotion is communicated only to one recipient or only to one group of recipients in the expectation that they would engage in any investment activity jointly;
 - (ii) the identity of the product or service to which the financial promotion relates has been determined having regard to the particular circumstances of the recipient; and
 - (iii) the financial promotion is not part of an organised marketing campaign.