
Professional exemption

Solicitors, counsel and professional accountants giving investment advice, advising on corporate finance or undertaking asset management

Does a solicitor need to have a licence for Type 4 (advising on securities) and/or Type 5 (advising on futures contracts) regulated activity if he gives investment advice to clients?

Posted on 17.03.2003

11.1 To the extent that a solicitor, in the course of his legal practice, gives investment advice on securities or futures contracts which is subordinate to the range of legal services that he provides to his clients, the giving of such advice would normally be considered as wholly incidental to the legal practice. The solicitor would not be required to be so licensed.

An example is where a solicitor, while engaged to provide legal advice on estate duty matters, advises his client to hold or dispose of certain securities. In the circumstances, the giving of investment advice is ancillary to the carrying on of his legal profession. Accordingly, the wholly incidental exemption would apply.

The same principle applies to counsel and professional accountants.

If a solicitor advises his clients concerning compliance with the Listing Rules or the Takeovers Code, is he required to have a licence for Type 6 (advising on corporate finance) regulated activity? In particular, does a law firm acting as legal adviser on a potential listing need to have a licence for Type 6 regulated activity?

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11.2 Giving advice on compliance with the Listing Rules or Takeovers Code clearly falls within the ambit of Type 6 regulated activity. A solicitor in private practice would in general provide a variety of legal services to clients. If advising on the Listing Rules or the Takeovers Code forms only part of the legal services he normally provides to his clients, we take the view that the solicitor could rely on the “wholly incidental” licensing exemption.

A law firm which acts as the legal adviser on a proposed listing would normally undertake a range of other legal services such as drafting and advising on relevant contractual documentation, circulars, announcements, providing general strategic advice from a legal perspective, and so on. In most cases, advising on the Listing Rules requirements is only part of the legal services provided to the listing candidate. As such, it is unlikely that the law firm would be

required to be licensed for Type 6 regulated activity in order to do so.

The same principle applies to counsel or professional accountants.

Is a professional accountant required to have a licence for Type 9 (asset management) regulated activity if he undertakes to review the components of an investment portfolio for his client?

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11.3 Review of an investment portfolio and making investment recommendations thereon clearly falls within the ambit of Type 9 regulated activity. However, if the portfolio management services only constitute an ancillary part of the accountant's professional services provided to the client, which may include accounting, trust administration, taxation matters and so on, it is possible that the accountant could rely on the wholly incidental exemption.

An example is where a professional accountant, in the course of providing tax advice, recommends to hold or dispose of certain securities in his client's portfolio of investments. In such circumstances, the portfolio management services would be ancillary to the carrying on of his practice as a professional

accountant. Accordingly, the wholly incidental exemption would apply.

The same principle applies to solicitors and counsel.