

## Chapter 8

# Financial promotion and related activities

## 8.23 Regulated activities

**8.23.1** **G** Under section 19 of the *Act* (The general prohibition) no *person* may, by way of business, carry on a *regulated activity* in the *United Kingdom* unless he is *authorised* or exempt. The meaning of *regulated activity* is set out in Part II of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the *Regulated Activities Order*) (as amended). Any *person* who breaches section 19 of the *Act* commits a criminal offence for which the maximum penalty is two years' imprisonment and an unlimited fine.

**8.23.2** **G** Anyone who is carrying on a *regulated activity* is likely to make *financial promotions* in the course of or for the purposes of carrying on that activity. It is beyond the scope of this *guidance* to cover *regulated activities* as such (for a general guide see ■ PERG 2). There are circumstances, however, where *persons* whose main aim is either:

- (1) to make *financial promotions* for their own purposes or on behalf of others; or
- (2) to help other *persons* to make *financial promotions*;

may find themselves conducting *regulated activities*. Such *persons* may typically include publishers or broadcasters, financial commentators, Internet service providers and website operators and telephone marketing companies.

**8.23.3** **G** The *regulated activities* which are likely to be conducted in the circumstances referred to in ■ PERG 8.23.2 G are:

- (1) giving advice on certain investments (articles 53 (Advising on investments), 53A (Advising on regulated mortgage contracts), 53B (Advising on regulated home reversion plans), 53C (Advising on regulated home purchase plans), 53D (Advising on regulated sale and rent back agreements) and 56 (Advice on syndicate participation at Lloyd's) of the *Regulated Activities Order*) - for example, where the *financial promotion* is the advice;
- (2) *making arrangements with a view to transactions in investments* (article 25(2) of the *Regulated Activities Order* (Arranging deals in investments));
- (2A) *making arrangements with a view to regulated mortgage contracts* (article 25A(2) of the *Regulated Activities Order* (Arranging regulated mortgage contracts));

- (2B) *making arrangements with a view to a home reversion plan* (article 25B(2) of the *Regulated Activities Order* (Arranging regulated home reversion plans));
- (2C) *making arrangements with a view to a home purchase plan* (article 25C(2) of the *Regulated Activities Order* (Arranging regulated home purchase plans));
- (2D) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2) of the *Regulated Activities Order* (Arranging regulated sale and rent back agreements)); and
- (3) agreeing to carry on either (1) or (2) (article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity)).

**8.23.4** **G** The *guidance* that follows is concerned with the *regulated activities* of *making arrangements with a view to transactions in investments* and *advising on investments (except P2P agreements)*. *Guidance on the regulated activities of making arrangements with a view to regulated mortgage contracts and advising on regulated mortgage contracts* is in **■ PERG 4** (*Guidance on regulated activities connected with mortgages*). *Guidance on the regulated activities of making arrangements with a view to a home reversion plan and advising on a home reversion plan, making arrangements with a view to a home purchase plan and advising on a home purchase plan, and making arrangements with a view to a regulated sale and rent back agreement and advising on a regulated sale and rent back agreement* is in **■ PERG 14** (*Guidance on home reversion, home purchase and sale and rent back activities*).

**8.23.5** **G** As explained in **■ PERG 1.2.3AG**, where the *guidance* that follows uses the defined term *advising on investments*, this term should be read as referring only to the *regulated activity* (in article 53(1) of the *Regulated Activities Order*) of *advising on investments (except P2P agreements)*. Related text should be construed accordingly.

**8.23.6** **G** *Guidance on the distinction between controlled claims management activity and regulated claims management activity* can be found at **■ PERG 8.7A.5G** to **■ PERG 8.7A.7G**.