

## Chapter 8

# Financial promotion and related activities

## 8.24 Advising on investments

- 8.24.-1** **G** The definition of the *regulated activity of advising on investments (except P2P agreements)* differs depending on the *person* giving the advice.
- 8.24.1** **G** Under article 53(1) of the *Regulated Activities Order*, for anyone except a *person* in ■ PERG 8.24.1AG, *advising on investments (except P2P agreements)* covers advice which:
- (1) is given to a *person* in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
  - (2) is advice on the merits of his (whether as principal or agent):
    - (a) *buying, selling*, subscribing for, exchanging, redeeming, holding or underwriting a particular investment which is a security, a structured deposit or a relevant investment; or
    - (b) exercising or not exercising any right conferred by such an *investment to buy, sell*, subscribe for, exchange or redeem such an *investment*.
- 8.24.1A** **G**
- (1) However if a *person* is authorised for the purposes of the *Act* to carry on any *regulated activity* other than (or in addition to):
    - advising on investments (except P2P agreements)*; or
    - the *regulated activity of agreeing to carry on a regulated activity* in relation to (a);
 that *person* only *advises on investments (except P2P agreements)* if it is providing a *personal recommendation*.
  - (2) A *person* described in (1) is referred to in the *Regulated Activities Order* as appropriately authorised.
  - (3) ■ PERG 8.30B describes *personal recommendations*.
  - (4) The result is that for a *person* in (1), the definition of the *regulated activity of advising on investments (except P2P agreements)* only covers a subset of the advisory activities that apply to other *persons* giving advice.
  - (5) In the *FCA's* view a *person* is only appropriately authorised for the purposes of (1) if it is a *firm* whose *permission* includes *regulated activities* other than (or in addition to) the ones listed in (1)(a) and (b).

- 8.24.1B** G
- (1) A *firm* that is not appropriately authorised (see ■ PERG 8.24.1AG for what this means) will need *permission* for *advising on investments* (except *P2P agreements*) whether it wants:
    - (a) to give non-personalised advice (see (4)); or
    - (b) to give any other kind of advice coming within the *regulated activity of advising on investments* (except *P2P agreements*).
  - (2) If a *firm* in (1) only wants to give non-personalised advice, it may apply for an appropriate *limitation*.
  - (3) For a *firm* that is appropriately authorised:
    - (a) it may give non-personalised advice without the need to have *advising on investments* (except *P2P agreements*) in its *permission*;
    - (b) giving non-personalised advice will (for it) be an *unregulated activity*; and
    - (c) if it wishes to provide *personal recommendations*, its *permission* should include *advising on investments* (except *P2P agreements*).
  - (4) In this paragraph non-personalised advice means advice that:
    - (a) is covered by ■ PERG 8.24.1G; but
    - (b) is not a *personal recommendation*.

- 8.24.1C** G
- (1) ■ PERG 8.30B (Personal recommendations) is only relevant to a *firm* that is appropriately authorised.
  - (2) The rest of the material in this chapter about *advising on investments* (except *P2P agreements*) is still relevant to a *firm* that is appropriately authorised because, as explained in ■ PERG 8.30B.6G, that material is also relevant to the definition of *personal recommendation*.
  - (3) See ■ PERG 8.24.1AG for what appropriately authorised means.

- 8.24.1D** G For:
- (a) a *firm* that is not appropriately authorised (see ■ PERG 8.24.1AG for what appropriately authorised means); and
  - (b) an *unauthorised person*;
- all the material in this chapter about *advising on investments* (except *P2P agreements*) is relevant, except for ■ PERG 8.30B (Personal recommendations).
- (2) The definition of *advising on investments* (except *P2P agreements*) that applies to a *person* in (1) is the one in ■ PERG 8.24.1G. It is not relevant to such a *person* whether or not the advice is a *personal recommendation*.

- 8.24.2** **G** For advice to be covered by ■ PERG 8.24.1 G:
- (1) it must relate to an *investment* which is a *security, structured deposit* or a *relevant investment*;
  - (2) that *investment* must be a particular *investment*;
  - (3) it must be given to *persons* in their capacity as investors or potential investors;
  - (4) it must be advice (that is, not just information); and
  - (5) it must relate to the merits of investors or potential investors (or their agents) *buying, selling, subscribing for or underwriting* (or exercising rights to acquire, dispose of or underwrite) the *investment*.
- 8.24.3** **G** Each of the requirements referred to in ■ PERG 8.24.2G is considered in greater detail in ■ PERG 8.25 to ■ PERG 8.29.
- PERG 8.30 and ■ PERG 8.30A have further material about the definition of *advising on investments (except P2P agreements)* found in ■ PERG 8.24.1G.
- PERG 8.30B explains what a *personal recommendation* is.
- 8.24.4** **G** ■ PERG 8.24 to ■ PERG 8.30B only cover *advising on investments (except P2P agreements)*. They do not cover the following *regulated activities*, which also cover giving advice:
- (1) providing *basic advice* on a *stakeholder product* under article 52A of the *Regulated Activities Order*;
  - (2) *advising on P2P agreements*;
  - (3) *advising on regulated mortgage contracts*;
  - (4) *advising on a home reversion plan*;
  - (5) *advising on a home purchase plan*;
  - (6) *advising on a regulated sale and rent back agreement*;
  - (7) *advising on regulated credit agreements for the acquisition of land*;
  - (8) *advising on conversion or transfer of pension benefits*;
  - (9) *advising on syndicate participation at Lloyd's*; or
  - (10) *debt counselling*.
- 8.24.5** **G** ■ PERG 5.8 (The regulated activities: advising on contracts of insurance) explains how the material in ■ PERG 8.24 to ■ PERG 8.30A applies in the specific context of *contracts of insurance*.