

Chapter 8

Financial promotion and related activities

**8.27 Advice to be given to persons in
their capacity as investors (on the
merits of their investing as
principal or agent)**

- 8.27.1** **G** For the purposes of article 53(1), advice must be given to or directed at someone who either holds *investments* or is a prospective investor (or their agent). Where the *investment* is a risk-only *contract of insurance* such as house contents insurance, the *policyholder* or prospective *policyholder* is regarded as an investor.
- 8.27.2** **G** Article 53(1) does not apply where the advice is given to *persons* who receive it as:
- (1) an adviser who may use it to inform advice given by him to *persons* for whom he does not act as agent; or
 - (2) a journalist or broadcaster; or
 - (3) an employer (for example, on setting up a pension scheme).
- 8.27.3** **G** Article 53(1) does not apply to advice given to a *person* (such as an independent financial adviser) who is acting as an agent for an investor if it does not relate to a transaction into which the *person* is to enter as agent for the investor.
- 8.27.4** **G** Article 53(1) does apply where the recipient is someone who invests on behalf of other *persons* (whether as a principal or agent), such as:
- (1) a trustee or nominee; or
 - (2) a discretionary fund manager; or
 - (3) an attorney or anyone else who enters into investment transactions as agent for investors;
- where he receives the advice in that capacity.
- 8.27.5** **G** Advice will still be covered by article 53(1) even though it may not be given to or directed at a particular investor (for example, advice given in a periodical publication or on a website). The expression 'investor' has a broad meaning and will include institutional or professional investors.