

## Chapter 8

# Financial promotion and related activities

## 8.31 Exclusions for advising on investments

- 8.31.1** G The *Regulated Activities Order* contains a number of exclusions which prevent certain activities from being a *regulated activity*.
- 8.31.2** G With regard to article 53(1), the main exclusion relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54: Advice given in newspapers etc). The exclusion applies if the principal purpose of any of these is not to give advice covered in article 53(1) or to lead or enable *persons* to acquire or dispose of *securities* or *contractually based investments*. This exclusion does not apply when the definition of *advising on investments* (except *P2P agreements*) is based on giving a *personal recommendation* (see ■ PERG 8.24.1AG for when this is the case). All this is explained in greater detail, together with the provisions on the granting of certificates, in ■ PERG 7.
- 8.31.3** G It is also possible for advice to be excluded if it is given by a *person* in the course of carrying on a profession or business (other than a *regulated activity*). This is if it is reasonably to be regarded as necessary for him to give the advice to provide his professional or other services and he is not separately paid for giving the advice (article 67: Activities carried on in the course of a profession or non-investment business). This could arise in the context of advice given by *persons* such as:
- (1) a solicitor, accountant or tax adviser; or
  - (2) a debt counsellor; or
  - (3) an employment agency.
- 8.31.3A** G The exclusion in article 67 will not apply to a *person* who is *advising on investments* when he does so as a *MiFID investment firm* or a *third country investment firm* (see ■ PERG 2.5.4 G to ■ 2.5.5 G (Investment services and activities)).
- 8.31.4** G For example, it may be necessary for a *person* referred to in ■ PERG 8.31.3G (1) or ■ PERG 8.31.3G (2) to advise a client to sell all his assets for tax, legal or debt reduction reasons. However, it may not be necessary for him to recommend selling some *investments* and not others. Whether or not this is the case will depend on the circumstances in which the advice is given.

8.31.5

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Certain of the exclusions in the *Regulated Activities Order* that apply to the *regulated activity of advising on investments* are not available where the advice either relates to a *contract of insurance* or amounts to *insurance distribution* or *reinsurance distribution*. This results from the requirements of the *IDD* and is explained in more detail in ■ PERG 5 (Guidance on insurance distribution activities).