

Chapter 8

Financial promotion and related activities

8.33 Introducing

8.33.1 **G** As with advice, there are various exclusions in the *Regulated Activities Order* which take certain arrangements out of the scope of article 25. Two of these are likely to be particularly relevant to *persons* who are mainly concerned with making or helping others to make communications.

8.33.2 **G** Article 29 of the *Regulated Activities Order* states that certain arrangements are not covered by article 25. These are arrangements made by an *unauthorised person* ('A'). The arrangements must be made for or with a view to a transaction which is or is to be entered into by another *person* (the client) with or through an *authorised person*. It must also be the case that:

- (1) the transaction is or will be entered into on advice given to the client by an *authorised person*; or
- (2) it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from A on the merits of his entering into the transaction (or, if the client has sought such advice, A has declined to give it but has recommended that the client seek such advice from an *authorised person*).

For article 29 to apply, it is also necessary that, in return for making the arrangements, A does not receive from any *person* other than the client financial reward or other advantage, for which he does not account to the client, arising out of his making the arrangements (■ PERG 8.12.11 G gives *guidance* on when a *person* will be regarded as having received reward from someone other than his client).

8.33.3 **G** This exclusion may apply, for example, where a website operator, without offering any advice, sets up links to the sites of investment firms but does not receive any form of payment from any of the firms for doing so.

8.33.4 **G** Of potentially greater significance is the exclusion in article 33 of the *Regulated Activities Order* which excludes arrangements where:

- (1) they are arrangements under which *persons* will be introduced to another *person*;
- (2) the *person* to whom introductions are to be made is:
 - (a) an *authorised person*; or
 - (b) an *exempt person* acting in the course of business comprising a *regulated activity* in relation to which he is exempt; or

(c) a *person* who is not unlawfully carrying on *regulated activities* in the *United Kingdom* and whose ordinary business involves him in engaging in certain activities; and

(3) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to *investments* generally or in relation to any class of *investments* to which the arrangements relate.

8.33.5 **G** In the *FCA's* view, article 33 will apply, for example, where *persons* are finding potential customers for independent financial advisers, advisory stockbrokers or independent investment managers. In this case, the introducer is allowed to receive a payment for making introductions. However, it will not apply where the introductions are made either to a *person* whose advice or management services would not be independent (for example, a product provider such as a life office or a manager of unit trust schemes or contractual schemes) or for the purposes of execution-only dealing.

8.33.6 **G** The exclusions in articles 29 and 33 of the *Regulated Activities Order* are not available where the *investment* is a *contract of insurance* (unless, as regards article 33, the relevant arrangements meet the requirements of article 33B). However, certain other exclusions do apply. This results from implementation of the requirements of the *IDD* and is explained in more detail in ■ PERG 5.6 (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

8.33.7 **G** The exclusion in article 29 will not apply to a *person* who is carrying on an *arranging* activity 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)).