

Chapter 8

Financial promotion and related activities



8.1 Application and purpose

Application

- 8.1.1
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- This chapter applies to *persons* who need to know whether their communications are subject to or comply with the *Act*. It also helps them decide whether their activities in making or helping others to make *financial promotions* are *regulated activities*.
- 8.1.1A
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- This chapter also applies to *persons* who need to know whether they are *marketing* an *AIF*.

Purpose of guidance

- 8.1.2
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- The purpose of this *guidance* is three-fold:

(1) to outline the restriction on financial promotion under section 21 of the *Act* (Restrictions on financial promotion) and the main exemptions from this restriction; and

(2) to outline the main circumstances in which *persons* who are primarily involved in making or helping others to make *financial promotions* may be conducting *regulated activities* requiring *authorisation* or exemption themselves; this part of the *guidance* may also be of more general relevance to *persons* who may be concerned whether or not they are carrying on the *regulated activities* of *advising on investments* or *making arrangements with a view to transactions in investments*; and

(3) to provide *guidance* in relation to *marketing* an *AIF*.

8.1.3

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In particular, this *guidance* covers:

(1) invitations and inducements (see ■ PERG 8.4);

(2) meaning of 'in the course of business' (see ■ PERG 8.5);

(3) meaning of 'communicate' (see ■ PERG 8.6);

(4) meaning of 'engage in investment activity' (see ■ PERG 8.7);

(4A) meaning of 'engage in claims management activity' (see ■ PERG 8.7A);

(5) meaning of 'having an effect in the *United Kingdom*' (see ■ PERG 8.8);
- PERG 8/2

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- (6) circumstances where the restriction in section 21 does not apply (see ■ PERG 8.9);
- (7) types of *financial promotion*, including:
 - (a) meaning of '*real time financial promotion*' (see ■ PERG 8.10.2 G); and
 - (b) meaning of '*unsolicited real time financial promotion*' (see ■ PERG 8.10.8 G);
- (8) types of exemption under the *Financial Promotion Order*, including:
 - (a) exemption for certain one-off promotions (see ■ PERG 8.14.3 G);
 - (b) exemption for *financial promotions* not directed at the *United Kingdom* (see ■ PERG 8.12.2 G);
 - (c) exemptions for *financial promotions* by journalists and in broadcasts (see ■ PERG 8.12.23 G);
- (9) *financial promotions* concerning *deposits* and *contracts of insurance* other than *life policies* (see ■ PERG 8.13);
- (10) *financial promotions* concerning promotions by members of the professions (see ■ PERG 8.15);
- (11) [deleted]
- (12) *financial promotions* concerning the Lloyd's market (see ■ PERG 8.18);
- (13) additional restrictions on the promotion of:
 - (a) *life policies* (see ■ PERG 8.19);
 - (b) *collective investment schemes* (see ■ PERG 8.20);
- (14) *company* statements, announcements and briefings (see ■ PERG 8.21);
- (15) *financial promotions* made on the Internet (see ■ PERG 8.22);
- (16) *regulated activities*:
 - (a) *advising on investments* (see ■ PERG 8.24);
 - (b) *making arrangements with a view to transactions in investments* (see ■ PERG 8.32);
- (17) the business test for *regulated activities* (see ■ PERG 8.34); and
- (18) the *marketing* of an AIF (see ■ PERG 8.37).

8.1.4

G This *guidance* is issued under section 139A of the *Act*. It represents the *FCA's* views and does not bind the courts. For example, it would not bind the courts in an action for damages brought by a *private person* for breach of a *rule* (see section 138D of the *Act* (Actions for damages)), or in relation to the enforceability of a contract where there has been a breach of sections 19 (The general prohibition) or 21 (Restrictions on financial promotion) of the *Act* (see sections 26 to 30 of the *Act* (Enforceability of agreements)). Although the *guidance* does not bind the courts, it may be of persuasive effect for a court considering whether it would be just and equitable to

allow a contract to be enforced (see sections 28(3) and 30(4) of the *Act*). Anyone reading this *guidance* should refer to the *Act* and to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529) (the *Financial Promotion Order*) and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (as amended) (the *Regulated Activities Order*). These should be used to find out the precise scope and effect of any particular provision referred to in the *guidance* and any reader should consider seeking legal advice if doubt remains. If a *person* acts in line with the *guidance* in the circumstances mentioned by it, the *FCA* will proceed on the footing that the *person* has complied with the aspects of the requirement to which the *guidance* relates.