

Chapter 8

Financial promotion and related activities

8.11Types of exemption under the Financial Promotion Order

- 8.11.1
- G
- The various exemptions in the *Financial Promotion Order* are split into three categories:

 - (1) exemptions applicable to all *controlled activities* (Part IV of the Order);
 - (2) exemptions applicable only to *controlled activities* concerning *deposits* and *contracts of insurance* other than *life policies* (Part V of the Order); and
 - (3) exemptions applicable to any other types of *controlled activity* (Part VI of the Order).
- 8.11.2
- G
- Each individual exemption indicates the type of *financial promotion* (for example, non-real time) to which it relates. ■ PERG 8.36.6 G contains a table showing this breakdown. Each exemption also indicates whether it applies to any communication or only to those made to or directed at *persons*.
- 8.11.3
- G
- Article 11 of the *Financial Promotion Order* (Combination of different exemptions) allows for certain exemptions to be combined when no single exemption may apply. The overall effect of article 11 is that any relevant exemptions may be combined except where the conditions applicable to an exemption prevent this (see ■ PERG 8.11.4 G).
- 8.11.4
- G
- In a few instances, the requirements of a particular exemption may affect the practicality of its being combined with another. These are article 12 (Communications to overseas recipients) and article 52 (Common interest group of a company). Article 12, for example, requires that *financial promotions* must be made to or directed only at *overseas persons* and certain *persons* in the *United Kingdom*. This presents no difficulty with article 12 being combined with other exemptions in Parts IV or VI of the *Financial Promotion Order* where *financial promotions* are being made to *persons*. But, where a *financial promotion* is directed at the *persons* mentioned in article 12, it is difficult to see how the requirement that it must be directed only at those *persons* can be satisfied if it is also directed at other *persons* under another exemption. However, in the FCA's view, this does not prevent the same *financial promotion* being *communicated* under another exemption in another form or at any other time. For example, an electronic version of a *financial promotion* may be directed at *overseas persons* from a *person's* website in the *United Kingdom* using article 12. That *person* may then use another exemption to send paper copies of the same *financial promotion*.

8.11.5 **G** A number of exemptions require that a *financial promotion* must be accompanied by certain indications. Article 9 of the *Financial Promotion Order* states that indications must be presented in a way that can be easily understood and in such manner as is 'best calculated' to bring the matter to the recipient's attention. In the *FCA's* opinion, the expression 'best calculated' should be construed in a sensible manner. It does not, for instance, demand that the indication be presented in bold red capitals at the start of a document or advertisement. If the indication is given enough prominence, taking account of the medium through which it is *communicated*, to ensure that the recipient will be aware of it and able to consider it before deciding whether to *engage in investment activity* or to *engage in claims management activity*, the *FCA* would regard article 9 as being satisfied.

8.11.6 **G** Some exemptions are based on the *communicator* believing on reasonable grounds that the recipient meets certain conditions. For example, articles 19(1)(a), 44, 47 and 49. What are reasonable grounds for these purposes will be a matter for the courts to decide. In the *FCA's* view, it would be reasonable for a *communicator* to rely on a statement made by a potential recipient that he satisfies relevant conditions. This is provided that there is no reason to doubt the accuracy of the statement. In case of doubt, further checks may be necessary. These could include:

- (1) checking on the record kept by the *FCA* under section 347 of the *Act* (The record of authorised persons etc) that a *person* is *authorised*; or
- (2) checking with a *person's* employer that he is employed in a particular capacity; or
- (3) in the case of a *person* claiming to be a high net worth individual or a sophisticated or self-certified sophisticated investor, asking to see a copy of the current certificate.