

Chapter 8

Financial promotion and related activities



8.17 Financial promotions concerning agreements for qualifying credit

8.17.1 G Section 21 applies to *financial promotions* concerning agreements for *qualifying credit* and relevant consumer credit. ■ PERG 8.17.1A G to ■ PERG 8.17.18 G has *guidance* about the treatment of *financial promotions* concerning agreements for *qualifying credit*. PERG 8.17-AG has *guidance* about *financial promotions* concerning relevant consumer credit.

Introduction

8.17.1A G Section 21 also applies to *financial promotions* concerning *home reversion plans*, *home purchase plans* and *regulated sale and rent back agreements*. *Guidance* on these activities and related *financial promotions* is given in ■ PERG 14 (Guidance on home reversion, home purchase and regulated sale and rent back activities).

Controlled investment: agreement for qualifying credit

8.17.2 G Rights under an agreement for *qualifying credit* are a *controlled investment*. *Qualifying credit* is defined in paragraph 10 of Schedule 1 to the *Financial Promotion Order* (Controlled activities) as credit provided pursuant to an agreement under which:

- (1) the lender is a *person* who carries on the *regulated activity* of *entering into a regulated mortgage contract* (whether or not he is an *authorised or exempt person* under the Act); and
- (2) the obligation of the borrower to repay is secured (in whole or in part) on land.

8.17.3 G An agreement for *qualifying credit* includes the following types of loan in addition to those that would be a *regulated mortgage contract*, but in each case only if the lender carries on the *regulated activity* of *entering into regulated mortgage contracts*:

- (1) [deleted]
- (2) secured loans for buy-to-let or other purely investment purposes;
- (3) loans secured on land situated outside the *United Kingdom*;

- (4) loans that include some unsecured credit such as a flexible mortgage that includes an unsecured credit card; and
- (5) commercial mortgages.

Controlled activities

8.17.4 G There are four controlled activities involving qualifying credit:

- (1) *providing qualifying credit*;
- (2) *arranging qualifying credit*;
- (3) advising on qualifying credit; and
- (4) agreeing to carry on any of (1) to (3).

8.17.5 G *Providing qualifying credit is a controlled activity under paragraph 10 of Schedule 1 to the Financial Promotion Order. In the FCA's view, 'providing' means, in this context, providing as lender; an intermediary does not 'provide' qualifying credit.*

8.17.6 G *Arranging qualifying credit is a controlled activity under paragraph 10A of Schedule 1 to the Financial Promotion Order; that is, making arrangements:*

- (1) for another *person* to enter as borrower into an agreement for *qualifying credit*; or
- (2) for a borrower under a *regulated mortgage contract* entered into on or after 31 October 2004 or a borrower under a *legacy CCA mortgage contract* to vary the terms of that contract in such a way as to vary that person's obligations under that contract.

This means that invitations and inducements relating to the services of mortgage arrangers will potentially be within the scope of section 21 of the Act.

8.17.7 G Advising on qualifying credit is a *controlled activity* under paragraph 10B of Schedule 1 to the *Financial Promotion Order*; that is, advising a *person* if the advice is:

- (1) given to the *person* in his capacity as a borrower or potential borrower; and
- (2) advice on the merits of that person's doing any of the following:
 - (a) entering into an agreement for *qualifying credit*; or
 - (b) varying the terms of a *regulated mortgage contract* entered into by that person's on or after 31 October 2004 or the terms of a *legacy CCA mortgage contract* entered into by that person in such a way as to vary that person's obligations under that contract.

This means that invitations and inducements relating to the services of mortgage advisers will potentially be within the scope of Section 21 of the Act.

8.17.8 G Agreeing to carry on each of these three *controlled activities* is also a *controlled activity* under paragraph 11 of Schedule 1 to the *Financial Promotion Order*.

Application of exemptions to financial promotions about agreements for qualifying credit

8.17.9 G The exemptions in Part IV of the *Financial Promotion Order* (Exempt communications: all controlled activities) will apply to *financial promotions about qualifying credit*. Some of the exemptions in Part VI of the *Financial Promotion Order* (Exempt communications: certain controlled activities) will also apply. Those of particular note are referred to in ■ PERG 8.17.10 G to ■ PERG 8.17.12 G.

8.17.10 G Article 46 (Qualifying credit to bodies corporate) exempts any *financial promotion* about providing *qualifying credit* (or relevant consumer credit or consumer hire) if it is:

- (1) made to or directed at *bodies corporate* only; or
- (2) accompanied by an indication that the *qualifying credit* to which it relates is only available to *bodies corporate*.

8.17.11 G [deleted]

8.17.12 G Article 28B (Real time communications: introductions) exempts a *real time financial promotion* that relates to one or more of the *controlled activities about regulated mortgage contracts*, as well as *home reversion plans*, *home purchase plans*, *regulated sale and rent back agreements*, certain *consumer hire agreements* and relevant credit agreements. The exemption is subject to the following conditions being satisfied:

- (1) the *financial promotion* must be made for the purpose of, or with a view to, introducing the recipient to a *person* ('N') who is:
 - (a) an *authorised person* who carries on the *controlled activity* to which the communication relates; or
 - (b) an *appointed representative*, where the *controlled activity* is also a *regulated activity* in respect of which the *appointed representative* is exempt or in relation to which sections 20 (1) and (1A) and 23 (1A) of the *Act* do not apply by virtue of section 39(1D) of the *Act* (see ■ SUP 12.2.2AG (3)); or
 - (c) an overseas person who carries on the *controlled activity* to which the communication relates; for this purpose, an 'overseas person' is a *person* who carries on any of the *controlled activities about home finance transactions* or of providing relevant consumer credit or consumer hire but does not do so, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*; and

- (2) the *person* ('M') communicating the *financial promotion*:
- (a) must not receive any money paid by the recipient in connection with any transaction that the recipient enters into with or through N as a result of the introduction, other than money payable to M on M's own account; and
 - (b) before making the introduction, must disclose to the borrower the following information where it applies to M:
 - (i) whether M is a member of the same *group* as N;
 - (ii) details of any payment which M will receive from N, by way of fee or commission, for introducing the recipient to N; and
 - (iii) an indication of any other reward or advantage arising out of M's introducing to N.

8.17.13 G Introducers can check whether a *person* is an *authorised person* or an *appointed representative* by visiting the *FCA's register* at www.fca.org.uk/firms/financial-services-register. If an *authorised person* has *permission* to carry on a *regulated activity* (which can be checked on the *FCA's register*) it is reasonable, in the *FCA's view*, to conclude that the *authorised person* carries on that activity (but not a *controlled activity* which is not a *regulated activity*). The *FCA* would normally expect introducers to request and receive confirmation of other facts necessary to satisfy the condition in ■ PERG 8.17.12G (1), prior to proceeding with an introduction.

8.17.14 G In the *FCA's view*, money payable to an introducer on his own account includes money legitimately due to him for services rendered to the borrower, whether in connection with the introduction or otherwise. It also includes sums payable in connection with transfer of property to an introducer (for example, a housebuilder) by a borrower. For example, article 28B allows a housebuilder to receive the purchase price on a property that he sells to a borrower, whom he previously introduced to an *authorised person* or *appointed representative* to help him finance the purchase in return for a fee payable by the borrower, and still take the benefit of the exclusion. This is because the sums that the housebuilder receives in connection with the introduction and the sale of his property to the borrower are both 'payable to him on his own account'. The housebuilder could also receive a commission from the *person* introduced to.

8.17.15 G In the *FCA's view*, the provision of details of fees or commission referred to in ■ PERG 8.17.12G (2)(b)(ii) does not require an introducer to provide an actual sum to the borrower, where it is not possible to calculate the full amount due prior to the introduction. This may arise in cases where the fee or commission is a percentage of the eventual loan taken out and the amount of the required loan is not known at the time of the introduction. In these cases, it would be sufficient for the introducer to disclose the method of calculation of the fee or commission, for example the percentage of the eventual loan to be made by N.

8.17.16 G In the *FCA's view*, the information condition in ■ PERG 8.17.12G (2)(b)(iii) requires the introducer to indicate to the borrower any other advantages accruing to him as a result of ongoing arrangements with N relating to the introduction of borrowers. This may include, for example, indirect benefits

such as office space, travel expenses, subscription fees. This and other relevant information may, where appropriate, be provided on a standard form basis to the borrower. The FCA would normally expect an introducer to keep a written record of disclosures made to the borrower under article 33A of the *Regulated Activities Order* including those cases where disclosure is made on an oral basis only.

8.17.17 **G**

8.17.18 **G**

Interaction with providing relevant consumer credit

8.17.19 **G**

Rights under a relevant credit agreement are also a *controlled investment*. A relevant credit agreement is a *credit agreement* other than a *regulated mortgage contract* or a *regulated home purchase plan*. Entering into a relevant credit agreement as lender, or exercising or having the rights to exercise the rights of the lender under such an agreement, is a *controlled activity* under paragraph 10BA of Schedule 1 to the *Financial Promotion Order*, except where the agreement is for the provision of *qualifying credit*. Further guidance on providing relevant consumer credit is given in ■ PERG 8.17-A.

8.17.20 **G**

■ CONC 3 contains *rules* about *financial promotions* relating to *credit-related regulated activity*. ■ CONC 3 does not apply, however, to the *communication, or approval for communication, of a financial promotion* to the extent it concerns *qualifying credit*. ■ MCOB 3A applies to the *communication or approval of a financial promotion of qualifying credit*. This means that a *financial promotion about credit* will not usually be subject to both ■ MCOB 3A and ■ CONC 3 unless it is about secured and unsecured lending. *Guidance* on the potential application of ■ MCOB 3A and ■ CONC 3 to particular types of *financial promotion of credit* is given in the table in ■ PERG 8.17.21 G. *Firms* must also comply with *Principle 7* (a *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading).

8.17.21 **G**

Guide to potential application of ■ MCOB 3A and ■ CONC 3 to *financial promotion of credit*. This table belongs to ■ PERG 8.17.20 G.

	Subject of promotion	MCOB 3A may apply	CONC 3 may apply
(1)	<i>regulated mortgage contracts</i>	Yes	No
(2)	credit agreements secured on land where the lender also enters into <i>regulated mortgage contracts</i> as lender	Yes	No
(3)	credit agreements not secured on land, whether or not the lender also enters into <i>regulated mortgage contracts</i> as lender	No	Yes
(4)	credit agreements secured on land where the lender does not enter into	No	Yes

	Subject of promotion	MCOB 3A may apply	CONC 3 may apply
	<i>regulated mortgage contracts as lender</i>		
(5)	credit agreements partly secured on land that include some unsecured credit and where the lender enters into <i>regulated mortgage contracts as lender</i>	Yes	No
(6)	credit agreements with features as in (1), (2) or (5) promoted in combination with other unsecured credit agreements	Yes	Yes