

Chapter 8

Financial promotion and related activities

8.20 Additional restriction on the promotion of collective investment schemes

8.20.1 **G** Where *collective investment schemes* are concerned additional restrictions are placed on their promotion to ensure that only those which are regulated are promoted to the general public. This is achieved by a combination of sections 21 and 238 (Restrictions on promotion) of the Act as explained in ■ PERG 8.20.2 G. A *regulated collective investment scheme* is:

- (1) an *authorised unit trust scheme*; or
- (1A) an *authorised contractual scheme*; or
- (2) an *investment company with variable capital*; or
- (3) [deleted]
- (4) [deleted]
- (5) a *scheme* recognised under section 272 of the Act (Individually recognised overseas schemes).

8.20.2 **G** Section 21 precludes the promotion by *unauthorised persons* of *unregulated collective investment schemes* unless the *financial promotion* is approved by an *authorised person* or is exempt. Section 238 then precludes the promotion of an *unregulated collective investment scheme* by *authorised persons* except where:

- (1) there is an exemption in an order made by the Treasury under section 238(6); or
- (2) the *financial promotion* is permitted under *rules* made by the FCA under section 238(5) to exempt the promotion, otherwise than to the general public, of *schemes* of certain descriptions; or
- (3) the *scheme* is a single property scheme and its promotion is exempt under regulations made by the Treasury under section 239 of the Act (Single property schemes).

In addition, section 240 of the Act (Restriction on approval of promotion) precludes an *authorised person* from *approving a financial promotion* for the purpose of section 21 if he would not be able to *communicate* it himself under section 238.

8.20.3

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- (1) The Treasury has made an order under section 238(6). This is the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (as amended by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001 (SI 2001/2633), by articles 7 to 10 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (SI 2002/2157) and, by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion and Promotion of Collective Investment Schemes) (Miscellaneous Amendments) Order 2005 (SI 2005/270) ('the CIS Financial Promotion Order') and by regulation 10 of The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013).
- (2) The overall effect of the CIS Financial Promotion Order is to ensure that *authorised persons* are able to promote an *unregulated collective investment scheme* at least as widely as an *unauthorised person* is allowed to do under section 21 without needing the approval of an *authorised person*. In general terms, the order contains exemptions equivalent to those in the *Financial Promotion Order* which are relevant to units in an *unregulated collective investment scheme*. Guidance in ■ PERG 8 relating to exemptions in the *Financial Promotion Order* will apply equally to those exemptions where they appear in the CIS Financial Promotion Order. The main exception to this relates to the exemption for one-off *financial promotions* in article 15 of the CIS Financial Promotion Order. That article provides conditions which, if met, are conclusive proof that a *financial promotion* is one-off. However, these do not include the condition that the identity of the product or service must be determined having regard to the recipient's circumstances (see ■ PERG 8.21.8G (2) and ■ PERG 8.14.4G (2)).

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The FCA has made *rules* under section 238(5) which allow *authorised firms* to *communicate or approve a financial promotion* for an *unregulated collective investment scheme* in certain specified circumstances. These circumstances are set out in ■ COBS 4.12.4 R To date, the Treasury has not made an order exempting single property schemes under section 239.

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In addition, where the *collective investment scheme* is an *AIF*, the *marketing* of that *scheme* is subject to additional restrictions (see ■ PERG 8.37).