

## Chapter 8

# Financial promotion and related activities

## 8.22 The Internet

- 8.22.1** **G** The Internet is a unique medium for *communicating financial promotions* as it provides easy access to a very wide audience. At the same time, it provides very little control over who is able to access the *financial promotion*.
- 8.22.2** **G** The test for whether the contents of a particular website may or may not involve a *financial promotion* is no different to any other medium. If a website or part of a website, operated or maintained in the course of business, invites or induces a *person* to *engage in investment activity* or to *engage in claims management activity*, it will be a *financial promotion*. The FCA takes the view that the *person* who caused the website to be created will be a *communicator*. So, any software engineers that may or may not have been involved in establishing the website, provided they have no interest in it other than being paid for its design, will not be *communicating financial promotions* contained in it. Similarly, an Internet services provider who merely manages a website for another *person* and who has no control over or responsibility for its contents will not be *communicating any financial promotion* in the site. An Internet service provider whose circumstances are such that he is *communicating financial promotions* for other *persons* may be able to use the exemption for mere conduits (see ■ PERG 8.12.18 G).
- 8.22.3** **G** The Internet also allows hypertext links, where two different sites in the Internet can be connected almost instantaneously by simply clicking on the link. The FCA's views on the position of hypertext links (which should be read with the remainder of ■ PERG 8, especially ■ PERG 8.4 (Invitation or inducement)) are as follows.
- (1) A hypertext link may or may not be a *financial promotion* in itself. This will depend on the nature of the hypertext link and the context in which it is placed. However, taken in isolation, a hypertext link which is purely the name or logo of the destination will not be a *financial promotion* in its own right. More sophisticated links, such as banners or changeable text, may be *financial promotions*. This will depend upon the facts in each case.
  - (2) The material on a host website which contains the hypertext link may in itself be a *financial promotion*. For example, it may contain text which seeks to encourage or incite *persons* to activate the link with a view to *engaging in investment activity* or *engaging in claims management activity*.
  - (3) Website material which represents a directory of website addresses or e-mail addresses will not be a *financial promotion* in its own right. That is unless the material also contains an inducement to contact a

named addressee with a view to *engaging in investment activity* or *engaging in claims management activity*.

- (4) The destination website (that is, the one that is reached through the hypertext link) may or may not be a *financial promotion*. This will depend upon the content of that website. Website operators are responsible for the contents of their website if it hosts or creates links to the websites of *unauthorised persons*. In most cases they will not be causing the *communication* of any *financial promotion* in those other websites and so will not be responsible for those websites complying with section 21. In some cases, however, the operator ('O') of a website which hosts a link to another website, may be causing the *communication* of a *financial promotion* on that other website. This will only arise when O has made arrangements with the operator of the other website under which O is to procure users of his site to access the link provided with a view to their *engaging in investment activity*.
- (5) An exemption may require certain indications to be made in a *financial promotion* on a website. In these cases, the requirement may be satisfied by putting information on separate pages which can be accessed through a link on the page, or one of the pages, which contains the *financial promotion*.