

Chapter 8

Financial promotion and related activities

8.29 Advice must relate to the merits
(of buying or selling a particular
investment)

- 8.29.1** **G** Advice must relate to the *buying*, holding or *selling* of an *investment* – in other words, the pros or cons of doing so.
- 8.29.2** **G** An explanation of the implications of, for example, exercising certain rights or the happening of certain events (such as death) need not involve advice on the merits of exercising those rights or on what to do following the event.
- 8.29.3** **G** Neither does advice on the merits of using a particular stockbroker or investment manager in his capacity as such amount to advice for the purpose of article 53(1). This is because it is not advice on the merits of *buying* or *selling* an *investment* and it is not advice on the merits of exchanging, redeeming or holding one.
- 8.29.4** **G** Advice in the form of rating issuers of *debt securities* as to the likelihood that they will be able to meet their repayment obligations need not, of itself, involve any advice on the merits of *buying*, *selling* or holding on to that issuer's stock.
- 8.29.5** **G** Without an explicit or implicit recommendation on the merits of *buying*, exchanging, redeeming, holding or *selling* an *investment*, advice will not be covered by article 53(1) if it is advice on:
- (1) the likely meaning of uncertain provisions in an investment agreement; or
 - (2) how to complete an application form; or
 - (3) the value of *investments* for which there is no ready market; or
 - (4) the effect of contractual terms and their commercial consequences; or
 - (5) how to structure a transaction to comply with regulatory, competition and taxation requirements; or
 - (6) terms which are commonly accepted in the market.

8.29.6 **G** Advice as to what might happen to the price or value of an *investment* if certain events were to take place, however, may be covered by article 53(1) in some circumstances.

8.29.7 **G** Typical recommendations and whether they will be regulated as *advising on investments (except P2P agreements)* under article 53(1) of the *Regulated Activities Order*. This table belongs to ■ PERG 8.29.1 G to ■ PERG 8.29.6 G.

Recommendation	Regulated under article 53(1) or not?
I recommend that you take out the ABC <i>investment</i> .	Yes. This is advice which steers the <i>client</i> in the direction of a particular <i>investment</i> which the <i>client</i> could buy.
I recommend that you do not take out the ABC <i>investment</i> .	Yes. This is advice which steers the <i>client</i> away from a particular <i>investment</i> which the <i>client</i> could have bought.
I recommend that you take out either the ABC <i>investment</i> or the DEF <i>investment</i> .	Yes. This is advice which steers the <i>client</i> in the direction of more than one particular <i>investment</i> which the <i>client</i> could buy.
I recommend that you sell your ABC <i>investment</i> .	Yes. This is advice which steers the <i>client</i> in the direction of a particular <i>investment</i> which the <i>client</i> could sell.
I recommend that you do not sell your ABC <i>investment</i> .	Yes. This is advice which steers the <i>client</i> away from a particular <i>investment</i> which the <i>client</i> could have sold.
I recommend that you transfer ownership of your ABC <i>investment</i> to your spouse.	Advising the <i>client</i> to gift an <i>investment</i> to another person will not be advice because it does not involve advice on buying, selling, subscribing for or underwriting an investment.
I recommend that you increase the regular payments you are making to your GHI fund*.	Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.
I recommend that you decrease the regular payments you are making to your GHI fund*.	Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund but advises against the <i>client</i> buying as many as he intended.
I recommend that you keep making the same regular payments to your GHI fund*.	Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.
I recommend that you stop making the regular payments you are making to the GHI fund*.	Yes. This is advice which steers the <i>client</i> away from buying <i>units</i> in a particular fund which the <i>client</i> could have bought.
I recommend that you pay a lump sum into your GHI fund*.	Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.

Recommendation	Regulated under article 53(1) or not?
I recommend that you do not pay a lump sum into your GHI fund*.	Yes. This is advice which steers the <i>client</i> away from buying <i>units</i> in a particular fund which the <i>client</i> could have bought.
I recommend that you move part of your investment in the JKL <i>investment</i> from fund X into fund Y*.	Yes. This is advice which steers the <i>client</i> in the direction of selling <i>units</i> in a particular fund and buying <i>units</i> in another specific fund. Where the two funds are sub-funds of the same main fund it is still advice. The terms 'bought' and 'sold' are given a wide meaning and include any acquisition or disposal for valuable consideration.
I recommend that you move all of your investment in JKL <i>investment</i> from fund X into fund Y*.	Yes, for the same reason.
I recommend that you keep your investment in fund X*.	Yes. This is advice because it is advice to hold on to an <i>investment</i> and advice not to <i>sell</i> it.
I recommend that you move your MNO <i>investment</i> from platform X and re-register it on platform Y.	This is unlikely to be advice because normally it will not involve buying and selling the <i>investment</i> held on the platform.
A <i>client</i> decides of his own accord to increase, decrease or temporarily suspend his regular payments or the payments are increased automatically into an <i>investment</i> without advice being given.	No. No advice is being given.
The <i>firm</i> is providing discretionary management services under a mandate and makes changes to a <i>client's investment</i> without providing advice.	No. No advice is being given.
Dividends are re-invested into an <i>investment</i> without advice being given.	No. No advice is being given.
* The same answer would apply where the fund is a <i>life policy</i> as rights under a <i>contract of insurance</i> are regulated <i>investments</i> under the <i>Act</i> . The position under a <i>personal pension scheme</i> is similar, as explained in more detail in PERG 12.3.	