

## Chapter 8

# Financial promotion and related activities



Examples of what is and is not a personal recommendation and advice

- Notes: (1) The purpose of this annex is to give examples in general terms of what is and is not *advising on investments (except P2P agreements)*. The examples are relevant both to someone who is not appropriately authorised and someone who is. See paragraph (5) for what appropriately authorised means.
- (2) If the answer in the column in the table of examples headed 'Is this regulated advice for someone other than a firm with an appropriate authorisation?' is that there is no regulated advice, then the example does not involve *advising on investments (except P2P agreements)* by anyone, whether or not they are appropriately authorised. Where this is the case, the column headed 'Is there a personal recommendation?' is marked 'No' because in those circumstances there is no *personal recommendation* either.
- (3) If the answer in the column in the table of examples headed 'Is this regulated advice for someone other than a firm with an appropriate authorisation?' is that there is regulated advice:
- (a) the example involves *advising on investments (except P2P agreements)* for someone who is not appropriately authorised; and
  - (b) the example only involves *advising on investments (except P2P agreements)* for someone who is appropriately authorised if the column headed 'Is there a personal recommendation?' says that there is a *personal recommendation*.
- (4) Therefore:
- (a) column (2) of the table (Is there a personal recommendation?) is not relevant to someone who is not appropriately authorised; and
  - (b) all columns of the table are relevant to someone who is appropriately authorised.
- (5) PERG 8.24.1AG explains what appropriately authorised means.
- (6) The examples should be read together with PERG 8.24 to PERG 8.30B.
- (7) Except where stated otherwise, the examples all involve *firms* and so they are most relevant to a *firm* wanting to know whether it is *advising on investments (except P2P agreements)*.
- (8) The examples assume that the *person* in the example is not doing anything else relevant that is not described in the scenario set out in column (1) of the table.
- (9) The tables do not consider whether the examples involve *financial promotions*.

(A) Website with generic information without filtering

(1) Example	header Is there a personal recommendation?	header Is this regulated advice for someone other than a firm with an appropriate authorisation?
Firm A has a website through which it provides a range of information about the world of	No	Not regulated advice because simply giving information without making any comment or

(A) Website with generic information without filtering		
(1) Example	header Is there a personal recommendation?	header Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>investments. This includes generic explanations of the different asset classes available and the likely risks that may attach to each, the benefits of diversification and the different types of investment strategies used in the market. The information does not have a bias towards a particular type of investment, strategy or asset allocation. There is no interactivity.</p> <p>The website provides lists of <i>investments</i> for purchase without additional comment (but has links to the relevant disclosure material for the individual products).</p>		<p>value judgment on its relevance to decisions which an investor may make does not involve advising on investments (see PERG 8.28.2G).</p>

(B) Website without filtering but which classifies the available products		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>In each example the categorisation by <i>Firm B</i> is not interactive. The investments are not displayed or filtered in accordance with information input by the customer. The ranking is set out in the way it would be in a hard copy document.</p> <p>(1) <i>Firm B</i> ranks the products it sells into risk categories. One set of categories could be Low Risk, Low-Medium Risk, Medium Risk, Medium-High Risk and High Risk. <i>Firm B</i> allocates each investment using its own opinion on the level of risk of each product (i.e. it is self-generated and not drawn directly from each product’s disclosure material). For example a list of funds’ riskiness based on the <i>firm’s</i> analysis and metrics.</p> <p>The website also has material elsewhere explaining investment risk and material to help customers self-determine the level of risk they are willing and able to take. Each risk category description includes notional customer attitudes, the types of investments that may</p>	<p>Not a <i>personal recommendation</i>.</p> <p>The recommendation is not presented as suitable for the customer or based on a consideration of their personal circumstances. The customer reads both sets of information (list of products and explanatory material) and makes any investment decision on that basis.</p>	<p>If the <i>firm</i> is not appropriately authorised this is likely to be regulated advice.</p> <p>Please see the reasons in PERG 8.30A.14G.</p> <p>Although that <i>guidance</i> refers to an Internet-based filtering process, this example (B1) is also based on value judgments about the relative merit of specific <i>investments</i> given to someone interested in buying or selling them.</p> <p>As explained in PERG 8.30A.14G(6) classifying products based on risk categories need not be regulated advice outside the sales context.</p>

(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(B) Website without filtering but which classifies the available products</p> <p>be found within funds/portfolios matching this risk level and also historic factual data on the volatility of such investments. Customers are prompted to read the risk category descriptions and to use this material to think about which category best fits their circumstances.</p> <p>(2) <i>Firm B</i> classifies the products it sells by reference to a number of factors:</p> <ul style="list-style-type: none"> <li>● Riskiness, as in example (B1).</li> <li>● High-level investment objectives, for example capital growth, income, or a balance of both.</li> <li>● Whether the <i>investments</i> are designed for long- or short-term investment.</li> </ul> <p>For example, each fund may have three boxes next to it on the website. One box has a riskiness rating. One is about the investment objectives. The other is about whether it is designed for long- or short-term investment.</p> <p>There is material elsewhere on the website to help customers self-determine what their investment objectives should be.</p> <p>Each customer that uses the website sees the same information. The groups and investment objectives do not change based on information that the customer has provided to the <i>firm</i>.</p>	<p>Not a <i>personal recommendation</i>, for the same reason as in example (B1).</p>	<p>If the <i>firm</i> is not appropriately authorised this is likely to be regulated advice, for the same reason as in example (B1).</p>
<p>(3) Same as example (B2), except that the products are manufactured and issued by the <i>firm</i> itself and the website is describing the specific investment objectives for those products.</p>	<p>No</p>	<p>May not be regulated advice, for the reasons in PERG 8.30A.12G.</p>
<p>(4) <i>Firm B</i> gives each fund it</p>	<p>Even if this involves regulated</p>	<p>If the <i>firm</i>:</p>

(B) Website without filtering but which classifies the available products		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>lists a star rating based on whether the fund is good value. The star rating is supplied by an external unconnected party and does not reflect past performance. The rating is not exclusive to <i>Firm B</i> and is widely used in the industry. This might be something like the Morningstar Analysts' Rating.</p>	<p>advice under column (3) of this example, it is not a <i>personal recommendation</i>, for the same reason as in example B1.</p>	<p>(a) is not providing its 'self-generated assessment of riskiness'; (b) is only providing the star rating supplied by a third party; and (c) is not endorsing the rating; the <i>firm</i> is, depending on the circumstances, unlikely to be giving regulated advice. It will only be giving information.</p>
<p>(5) <i>Firm B</i> gives each fund it lists a star rating based on whether it thinks that the fund is good value. <i>Firm B</i> uses skill and expertise in putting together the ranking by, for example, adjusting figures from the product providers to take into account the different ways that the product providers calculate growth and the different reporting periods and by taking into account management charges.</p>	<p>Not a <i>personal recommendation</i>, for the same reason as in example B1.</p>	<p>If the <i>firm</i> is not appropriately authorised this is likely to be regulated advice. The term 'good value' is itself implicit advice on the merits of buying.</p> <p>In addition, the reason in example (B1) applies to this example too. Good value is a strong example of a classification factor based on judgment and skill rather than simple objective facts.</p>

(C) Website with pop-up boxes		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>Same as example (A). In addition the website has pop-up boxes that come up when the customer picks an <i>investment</i> to buy. They prompt the customer to think about the customer's circumstances, such as health, financial circumstances and retirement date. The pop-up boxes have links to website material explaining the importance of those factors.</p> <p>(This example may be particularly relevant to firms who wish to offer pension related products without a <i>personal recommendation</i>).</p>	<p>No (The pop-up box only prompts the customer to think about various factors rather than advising the customer based on the customer's personal circumstances.)</p>	<p>Not likely to be regulated advice as long as the pop-up boxes contain objective information on what should be considered when making investment decisions. The reason is the same as for example (A).</p>

(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<b>(D) Website with filtering</b>		
<i>Firm D</i> decides to make its list of the investment products it sells easier to search. The website allows the customer to filter products based upon specified factors. Only products that meet the search criteria input by the customer are displayed.		
(1) The website enables the customer to filter the products by reference to objective factors of the type in section (A) of this table (e.g. 'UK Equity funds').	No	Not likely to be regulated advice as the filtering tool is based on objective factors.  The reason is explained in PERG 8.30A.10G.
(2) The filtering is based on riskiness as described in example (B1).	Not a <i>personal recommendation</i> , for the reasons in PERG 8.30B.28G.	If the <i>firm</i> is not appropriately authorised this is likely to be regulated advice, for the same reason as in example (B1).
(3) The filtering is based on a number of factors as described in example (B2).	Not a <i>personal recommendation</i> , for the reasons in example PERG 8.30B.28G.	If the <i>firm</i> is not appropriately authorised this is likely to be regulated advice, for the same reason as in example (B1).
(4) The filtered results are ranked by the <i>firm</i> manufacturing the investment in accordance with the investment objectives as described in example (B3).	The customer's inputs are filtered in a straightforward way and so the approach in PERG 8.30B.33G (multiple customer inputs means that there is a <i>personal recommendation</i> ) does not apply.	Likely not to be regulated advice, for the reasons in example (B3).
(5) The filtered results are ranked in accordance with the ratings of a third party as described in example (B4).	No	Likely not to be regulated advice, for the reasons in example (B4).
(6) The filtered results are ranked based on the <i>firm's</i> judgment about how good value they are, in the way described in example (B5).	No	Likely not to be regulated advice, for the reasons in example (B4).
(7) Materials including narrative on investment risk alongside a risk profiling tool are used to help educate a customer make a decision on their investment.	Not a <i>personal recommendation</i> , for the same reason as in example (D2).	If the <i>firm</i> is not appropriately authorised this is likely to be regulated advice, for the reasons in example (B5).
(8) Materials including narrative on investment risk alongside a risk profiling tool are used to help educate a customer make a decision on their investment.	No	Not likely to be regulated advice. The reason is the same as in example (A).
(8) A <i>firm</i> runs a <i>personal pension scheme</i> . It provides a filtering process of the type described in example (D4).  In addition, it provides an online calculation tool that allows its customers to calculate what	No	Likely not to be regulated advice.  The contribution calculator is not regulated advice taken on its own. It does not recommend that the customer buy any particular investment.

(D) Website with filtering		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>their regular contribution rates would need to be to meet a level of income that the customer wishes to have in retirement.</p> <p>The tool also allows the customer to calculate their spare income, as in example (F17).</p> <p>The <i>firm</i> makes available information, from a neutral third party source like the <i>MoneyHelper</i>, about suggested contribution rates.</p>		<p>It should also not involve regulated advice taken with the other customer tools in this example, for the following reasons taken together. The contribution calculator just helps the customer decide how much they want to invest and not whether they should invest. The contribution calculator provides additional information about the way that the <i>firm</i> has designed its funds to perform (see PERG 8.30A.12G).</p>

(E) Guided sales and limited advice		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(1) The filtering process is not based solely on the customer's risk appetite and preferences in relation to other factors. The filtering process is also based on facts relating to the customer's life and situation. For example, it might take into account:</p> <ul style="list-style-type: none"> <li>●the customer's current use of tax wrappers;</li> <li>●the customer's financial resources and commitments;</li> <li>●whether the customer is in a long-term relationship and the customer's marital status;</li> <li>●the customer's age;</li> <li>●the customer's plans for their family in the short- and long-term (e.g. a new car, work on the family home or school fees);</li> <li>●what other investments and assets the customer has; and</li> <li>●the customer's career and retirement plans.</li> </ul> <p>(2) <i>Firm E</i> provides advice on a limited straightforward issue at</p>	<p>This is likely to be a <i>personal recommendation</i>, for the reasons in PERG 8.30B.33G.</p> <p>This is a <i>personal recommendation</i>.</p>	<p>If the <i>firm</i> is not appropriately authorised this is likely to be regulated advice, as all the elements in PERG 8.24.2G are met. See PERG 8.30A.15G.</p> <p>If the <i>firm</i> is not appropriately authorised this is likely to be</p>



(E) Guided sales and limited advice		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
the request of the customer, such as which ISA product to invest in. The wider financial situation is not covered. The advice is limited to the specific issue in hand and the information collected on that basis. The treatment of suitability reflects that narrower customer objective.	This example is not about structured sales. Its purpose is to illustrate that the answer to example E1 is not based on the view that there is no <i>personal recommendation</i> unless the advice takes into account a wide range of factors. The point in example (E1) is that the range of the factors taken into account is relevant in the specific context of filtered sales, as explained in PERG 8.30B.29G.	regulated advice, as all the elements in PERG 8.24.2G are met.

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(1) Towards the end of the tax year, a <i>firm</i> sends a communication to all of its customers who hold <i>investments</i> in their ISA with the <i>firm</i> and who have not used their entire ISA allowance for the year.</p> <p>The <i>firm</i> informs each customer of the amount of unused allowance that they have remaining and when they must transact by to use this allowance. The communication also describes the general tax benefits of the ISA wrapper.</p>	No	<p>Not likely to be regulated advice.</p> <p>The first reason is that, as long as the information is presented neutrally, the information is factual (the amount of the unused ISA allowance and the tax benefits of ISAs).</p> <p>The same answer would apply whether the <i>firm</i> has a single ISA product or several. As long as the information is presented neutrally, the communication does not implicitly recommend that the customer buy an ISA from the <i>firm</i>. There may also be a second reason. If the customer can choose what <i>investments</i> go into the ISA wrapper, the <i>firm</i> will not be advising about a particular <i>investment</i>. Therefore the <i>firm</i> will be giving generic advice rather than regulated advice (see PERG 8.26 (The investment must be a particular investment)).</p>
(2) A <i>firm</i> sends a communication to all of its existing customers who hold a self-invested	No	Not likely to be regulated advice, as long as this information is presented neutrally.

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p><i>personal pension scheme</i> with the <i>firm</i> and who have not increased their monthly contributions over the previous five years.</p> <p>The communication alerts the customers to this fact and includes generic information about the benefits of pension investment and recommends that they contact an adviser to discuss their contribution rate.</p> <p>The <i>firm</i> does not highlight any particular product or pressure the customer into any course of action.</p>	<p>No</p>	<p>The information is factual or generic (the benefits of pensions generally).</p> <p>A factor that would normally point towards this being regulated advice for someone who is not appropriately authorised is that the communication is made in the context of a possible purchase of a particular <i>investment</i> (e.g. a new payment into the customer's existing pension fund). However, in this example:</p> <ul style="list-style-type: none"> <li>● The customer was not asking for advice. Instead the <i>firm</i> has contacted the customer on its own initiative.</li> <li>● The information is presented neutrally.</li> <li>● The <i>firm</i> tells the customer to get advice elsewhere and that the <i>firm</i> is not advising the customer.</li> <li>● The information is general and not detailed.</li> <li>● The information is about the benefits of pensions generally not the benefit of this particular <i>personal pension scheme</i>.</li> </ul> <p>This general context means that a reasonable customer would not think that this was an implicit recommendation.</p> <p>Not likely to be regulated advice, as long as this information is presented neutrally.</p> <p>The information does not identify any particular <i>investment</i> to be bought or sold.</p> <p>The risk of poor diversification is generic advice about investment strategy and is not linked to particular investments. It does not recommend anyone to buy or sell particular <i>investments</i>.</p>
<p>(3) A <i>firm</i> sends a general communication to its customer base suggesting that they review the products that they hold on a regular basis.</p> <p>This communication explains the general risks of poor diversification and of underperforming products in a way that is not linked to any particular product.</p> <p>The communication also explains certain criteria that customers can look out for e.g. how a fund has performed against its benchmark.</p>	<p>No</p>	<p>The information is factual or generic (the benefits of pensions generally).</p> <p>A factor that would normally point towards this being regulated advice for someone who is not appropriately authorised is that the communication is made in the context of a possible purchase of a particular <i>investment</i> (e.g. a new payment into the customer's existing pension fund). However, in this example:</p> <ul style="list-style-type: none"> <li>● The customer was not asking for advice. Instead the <i>firm</i> has contacted the customer on its own initiative.</li> <li>● The information is presented neutrally.</li> <li>● The <i>firm</i> tells the customer to get advice elsewhere and that the <i>firm</i> is not advising the customer.</li> <li>● The information is general and not detailed.</li> <li>● The information is about the benefits of pensions generally not the benefit of this particular <i>personal pension scheme</i>.</li> </ul> <p>This general context means that a reasonable customer would not think that this was an implicit recommendation.</p> <p>Not likely to be regulated advice, as long as this information is presented neutrally.</p> <p>The information does not identify any particular <i>investment</i> to be bought or sold.</p> <p>The risk of poor diversification is generic advice about investment strategy and is not linked to particular investments. It does not recommend anyone to buy or sell particular <i>investments</i>.</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>It suggests that if customers do have any concerns then they should speak to an adviser.</p> <p>(4) A <i>firm</i> has a number of its customers that it believes are invested in products that do not align with their needs.</p> <p>The <i>firm</i> contacts those customers to inform them that based on a review of the customers' holdings, the <i>firm</i> believes that the products that they hold may not be suitable for their needs. It explains that:</p> <ul style="list-style-type: none"> <li>●the products the customer holds are poorly diversified;</li> <li>●the portfolio of products has underperformed compared to the products' benchmarks; and</li> <li>●the portfolio of products is not suitable for what the <i>firm</i> understands the customer's investment purpose to be (e.g. a high proportion of cash funds in a pension wrapper).</li> </ul> <p>The <i>firm</i> invites the customers to contact an adviser with whom the customer may discuss alternative options.</p>	<p>If this does involve regulated advice under column (3) of this example it will also involve a <i>personal recommendation</i>.</p> <p>This is because the communication refers to the customer's individual portfolio and investment purposes. The fact that the communication may in fact be standardised across a large number of customers does not mean that it is not a <i>personal recommendation</i>.</p>	<p>If the <i>firm</i> does not identify either what part of the customer's portfolio should be sold or how the customer should reinvest the proceeds, the <i>firm</i> is giving advice but as that advice does not relate to particular <i>investments</i> it is not regulated advice.</p>
<p>(5) A <i>firm</i> sends a 'markets outlook and investment information' communication to its customers. This includes a summary of the <i>firm's</i> views of markets outlooks together with an appendix setting out high level 'house views' on specific investment products.</p>	<p>Publishing 'house views' would not, in itself, normally be regarded as a <i>personal recommendation</i>.</p>	<p>The markets outlook part of the communication is not likely to be regulated advice taken on its own.</p>
<p>This information is sent to customers on a general basis. It is not targeted on the basis that the customers hold specific products which are covered in the appendix.</p>	<p>The communication is not addressed to a <i>person</i> as such but rather to the <i>firm's</i> entire customer base. It is not therefore presented as suitable for a particular <i>person</i> and is not based on a consideration of the circumstances of a particular <i>person</i>.</p>	<p>If the <i>firm</i> is not appropriately authorised, the house view appendix is likely to be regulated advice, as it is about the merits of specific identified products. All the elements in PERG 8.24.2G are met.</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(6) A <i>firm</i> makes the communication in example (F5) available to a customer and later goes on to make a <i>personal recommendation</i> to that customer, basing that recommendation in part on the communication.</p>	<p>The <i>firm</i> has incorporated that communication into its <i>personal recommendation</i> so it forms part of that <i>personal recommendation</i>.</p>	<p>If the <i>firm</i> is not appropriately authorised, this will be regulated advice, as all the elements in PERG 8.24.2G are met.</p>
<p>(7) A <i>firm</i> advises on <i>personal pension schemes</i>. It has a list of 'Best Buy' funds for investors with different risk appetites in which its pension customers can invest. It takes a fund off that list because of persistent underperformance and then replaces the fund on its list with an alternative fund. It writes to each of its customers who have invested in that fund telling them that it has done this.</p>	<p>This is a <i>personal recommendation</i>, for the reason in PERG 8.30B.9G(2).</p>	<p>If the <i>firm</i> is not appropriately authorised, this is regulated advice for the reasons in example (B5).</p>
<p>(8) A <i>firm</i> regularly publishes a newsletter on its website which among other things contains its most recent 'Best Buy' list of funds, including details of which funds have come on and off the list. It sends the list to its customers, who may include customers who have invested in those funds.</p> <p>In contrast to example (F7), the <i>firm</i> does not send the newsletter under cover of an email or letter that links the revised 'Best Buy' list to the customer's circumstances.</p>	<p>This is not a <i>personal recommendation</i>. A recommendation included in a newsletter available to the general public does not become a <i>personal recommendation</i> just because some of the people who read it are existing customers affected by its recommendation. A customer reading it would not think that it addresses their personal circumstances.</p>	<p>If the <i>firm</i> is not appropriately authorised, this is regulated advice for the reasons in example (B5).</p>
<p>(9)(a) A <i>firm</i> (<i>firm F</i>) increases the annual management charge for a fund it manages. It informs investors in the fund that it has done so.</p> <p>A distributor (<i>firm G</i>) also sends a letter to its customers who hold this fund to inform them of the change.</p> <p>No other information is included in either communication.</p>	<p>No</p>	<p>Neither <i>firm F</i> nor <i>firm G</i> gives regulated advice by telling the customers of the change in management charges. They are giving information about the terms of the fund of the type described in PERG 8.28.3G.</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(b) <i>Firm G</i> decides to remove the fund from its 'Best Buy' list. It tells its customers it has done so in the letter informing them of the increase in the charge.</p>	<p>If this does involve regulated advice under column (3) of this example it is likely also to involve a <i>personal recommendation</i>.</p>	<p><i>Firm G</i> does not necessarily give regulated advice. Whether or not there is a suggestion that the customer should sell any part of their holding in the fund would depend on the wording of the letter and the basis on which the 'Best Buy' products are selected by the <i>firm</i>.</p>
<p>(10) A customer is speaking with a <i>firm</i>. The customer tells the <i>firm</i> that they have a number of small <i>personal pension scheme</i> pots with a range of providers that they would like to consolidate into a single <i>personal pension scheme</i> with the <i>firm</i>.</p> <p>The <i>firm</i> informs the customer that it is possible to consolidate pensions and that this can be done through the <i>firm</i> or another provider. The <i>firm</i> tells the customer that this might make it easier for the customer to consider their pension holistically. However the <i>firm</i> also tells the customer that they should take advice from a financial adviser beforehand as the adviser will be able to consider whether any existing pensions have valuable benefits that could be lost if transferred.</p>	<p>No</p>	<p>Consolidating <i>personal pension scheme</i> pots involves <i>buying</i> and <i>selling investments</i>.</p> <p>This is similar to example (F2) as the information is factual or generic (the benefits of consolidating pensions generally). It is different as the communication is made in the context of an individual discussion with a single customer.</p> <p>However although the context of the communication is not quite the same, the answer is the same as it is for the example in (F2) as long as it is clear to the customer that they are not getting advice about whether to consolidate.</p>
<p>(11) A customer contacts a <i>firm</i> to purchase a specific investment fund from the <i>firm</i> on an execution- only basis. Over the course of their discussions with the <i>firm</i>, the customer mentions that they are purchasing the product because they would like to receive an income from it. However the fund in question has been designed for growth and all income is re-invested.</p> <p>The <i>firm</i> informs the customer</p>	<p>No</p>	<p>This will normally not be regulated advice.</p> <p>As explained in PERG 8.28.3G, an explanation of the terms of an investment need not be regulated advice.</p> <p>The fact that the <i>firm</i> gives the</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>that the fund is an accumulation fund and does not provide any income. The <i>firm</i> further informs the customer that the customer can proceed with the transaction if the customer wishes or the <i>firm</i> can provide the customer with information about the income funds that the <i>firm</i> offers.</p> <p>(12) A customer over the age of 55 contacts a <i>firm</i> because they would like to take out an annuity with the <i>firm</i>. However they only have a very small <i>personal pension scheme</i> fund which will only generate an annuity income of a few pounds a month. In the <i>firm's</i> opinion this means that the transaction would not be a worthwhile thing to do.</p> <p>The <i>firm</i> tells the customer how much income an annuity bought with the customer's fund is likely to generate. The <i>firm</i> leaves it to the customer to decide whether or not to take out the annuity.</p>	<p>No</p>	<p>information pre-emptively should not change this.</p> <p>The <i>firm</i> does not identify any particular <i>investment</i> that the customer should buy. This aspect of what the <i>firm</i> says should not be regulated advice.</p> <p>The next question is whether the <i>firm</i> is giving the customer regulated advice not to buy the annuity.</p> <p>It is likely that this will not be regulated advice if the <i>firm</i> tells the customer that they should not buy the annuity but makes it clear that this is not because this particular annuity is unsuitable but because it is likely that it will not be worthwhile for the customer to buy any annuity issued by any issuer. It is not regulated advice because it is generic advice rather than advice about a specific <i>investment</i>, as described in PERG 8.29 (Advice must relate to the merits (of buying or selling a particular investment)).</p> <p>The <i>firm</i> will also not give regulated advice in these circumstances if it tells the customer that it will not sell an annuity to the customer. The <i>FCA</i> thinks that the definition of <i>advising on investments (except P2P agreements)</i> should not be interpreted in such a way that would require a <i>firm</i> to apply to include this <i>regulated activity</i> in its <i>permission</i> in order to turn down business it does not want to carry out. Refusing to do business with someone is not consistent with an advisory relationship with them.</p>



(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(13) The <i>firm</i> in example (F12) also gives the customer alternative options, such as taking the whole amount in cash. The <i>firm</i> explains the effect of each option and signposts sources of information on them. The <i>firm</i> includes taking advice as one of the options. The <i>firm</i> does not highlight any particular option or pressure the customer into any course of action.</p>	No	<p>The answer in example (F12) applies. Presenting the range of alternative options in a neutral way should not involve regulated advice.</p>
<p>(14) A customer with a short life expectancy (due to ill health) is seeking to buy from a <i>firm</i> a single life one-year guaranteed annuity with their <i>personal pension scheme</i> fund monies which is likely to provide very poor value for money.</p> <p>The <i>firm</i> tells the customer how much income their pension policy is likely to pay and that the customer may be able to take out a tax-free sum from the pension fund. The <i>firm</i> explains the other options and signposts sources of information on them, including an option to take advice. The <i>firm</i> explains the effect of each option. The <i>firm</i> leaves it to the customer to decide whether or not to take out the annuity. The <i>firm</i> does not highlight any particular option or pressure the customer into any course of action.</p>	The answers in examples (F12) and (F13) apply.	<p>If the <i>firm</i> is not appropriately authorised, it may give regulated advice if it recommends an alternative option.</p> <p>The answers in examples (F12) and (F13) apply.</p>
<p>(15) A customer has a <i>personal pension scheme</i> with a <i>firm</i>. The customer approaches the <i>firm</i> to draw out some money from that <i>personal pension scheme</i>. The <i>firm</i> wishes to draw the customer's attention to the tax consequences of what the customer wants to do. For example:</p>	No	<p>An explanation of the tax consequences of a proposed transaction need not be regulated advice, in the same way that, as explained in PERG 8.29.5G, advice on how to structure a transaction to comply with taxation requirements need not be.</p> <p>A <i>firm</i> does not necessarily give advice by bringing an obviously</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(a) The customer wants to cash in their pension fund in one go, facing a significant tax bill when a more tax-effective option is available.</p> <p>(b) The customer wants to withdraw some of their uncrystallised funds pension as a lump sum (UFPLS). Doing that reduces their 'Money Purchase Annual Allowance'. On the other hand a single lump sum payment will not reduce that allowance.</p> <p>(c) The customer wants to take a full lump sum from an 'old style' pension which does not allow for tax-free redemptions. The more tax-efficient option would be to transfer to a scheme that allows such redemptions.</p> <p>In each case, the <i>firm</i> explains the other options and signposts sources of information on them, including an option to take advice. The <i>firm</i> explains the effect of each option and leaves the customer to decide what to do. The <i>firm</i> does not highlight any particular option or pressure the customer into any course of action.</p>	<p>The <i>firm</i> may give a <i>personal recommendation</i> if it recommends an alternative option.</p>	<p>relevant fact to the attention of a customer who wants to buy an investment, even if that fact shows that the purchase would be a poor investment, as long as this information is presented neutrally and the <i>firm</i> also mentions any other relevant facts.</p> <p>This is the case even if the customer chooses to go ahead with one of the options described by the <i>firm</i> and the <i>firm</i> carries out the transaction with the customer.</p>
<p>(16) A customer has a <i>personal pension scheme</i> with a <i>firm</i>. The customer tells the <i>firm</i> that they wish to draw down part of that <i>personal pension scheme</i> as a lump sum and then set up the rest as income.</p> <p>The customer does not specify the amount that they wish to draw down. The customer's current <i>personal pension scheme</i> product also does not offer the facility to set up an income.</p>	<p>No</p>	<p>If the <i>firm</i> is not appropriately authorised, it may give regulated advice if it recommends an alternative option.</p> <p>This will generally not be regulated advice.</p> <p>As explained in PERG 8.29.5G, an explanation of the terms of an investment or of how to meet tax requirements need not be regulated advice.</p>



(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>The <i>firm</i> informs the customer that the customer is able to draw down up to 25% of their pension pot tax free. The <i>firm</i> further informs the customer that if they wish to set up a regular income they will need to transfer to a different <i>personal pension scheme</i> product which allows this. The <i>firm</i> tells the customer that this can either be done through the <i>firm</i> or with another provider. The <i>firm</i> does not highlight any particular product or pressure the customer into any course of action.</p>		
<p>(17) A <i>firm</i> offers an online affordability calculator that helps a customer determine what their surplus income is once all their outgoings are taken into consideration. The website suggests a list of possible outgoings but allows the customer to add figures for others.</p> <p>There is a link to material that gives guidance on what a prudent size of someone's surplus income could be, taking into account both outgoings and payments for <i>investments</i>. The website suggests that the consumer takes this into account when deciding whether the <i>investment</i> is affordable for them.</p> <p>The calculator has its own page on the website which can be linked to using a ribbon at the top of the page from which the <i>firm</i> sells its products.</p>	No	<p>This will generally not be regulated advice because:</p> <ul style="list-style-type: none"> <li>● the advice about a prudent level of surplus income is not regulated advice on its own;</li> <li>● the customer makes up their own mind what they can afford;</li> <li>● the information that the customer inputs is purely factual;</li> <li>● the calculator is straightforward as it just adds up the outgoings; and</li> <li>● the calculator is in effect a method of organising information that the customer already has.</li> </ul>
<p>(18) A <i>firm</i> operates a platform through which customers can</p>	Publishing a list of 'best products' or 'funds of the month'	If the <i>firm</i> is not appropriately authorised, the 'Best Buys' list is

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>purchase a range of funds from different providers.</p> <p>Its website includes a 'Best Buys' list of products which the <i>firm</i> believes to be of particularly high quality. The list appears on a side bar.</p> <p>This information appears in a consistent way to all users of the website.</p>	<p>would not, in itself, normally be regarded as a <i>personal recommendation</i>:</p> <ul style="list-style-type: none"> <li>● As with example (F5), the communication is not personalised.</li> <li>● As the information is provided on a public page of a website and appears in a consistent way to all users of the website, it can be seen as issued exclusively to the public.</li> </ul>	<p>likely to be regulated advice, for the same reason as in example (B5).</p>
<p>(19) A <i>firm</i> operates a platform through which customers can purchase a range of funds from different providers.</p> <p>The website includes a banner at the top which includes details of sponsored products and other offers where the <i>firm</i> has managed to negotiate a discount to product charges.</p> <p>This information appears in a consistent way to all users of the website.</p>	<p>No</p>	<p>Providing a list of products for which the <i>firm</i> has negotiated a discount is not, by itself, regulated advice, in the same way that an explanation of the terms of an <i>investment</i> is not (as explained in PERG 8.28.3G).</p>
<p>(20) <i>Firm F</i> is a <i>personal pension scheme</i> provider. It provides a number of products into which pensioners can invest pension monies on retirement.</p> <p>It has a product specially designed for investors who cannot or will not take advice on what to do with their pension monies. The sales literature specifically explains this.</p>	<p>No</p>	<p><i>Firm F</i> will generally not be giving regulated advice, for the same reason as in PERG 8.30A.12G.</p>
<p>A distributor (<i>Firm G</i>) sets out this information alongside these products on its platform.</p>		<p><i>Firm G</i> will generally not be giving regulated advice, for the reasons in PERG 8.30A.13G.</p>
<p>(21) A product provider (<i>Firm F</i>) designs its products for a particular target market, which may be the same for each product or different.</p> <p>The target market is defined by reference to high level characteristics such as investment duration, risk profile and investment objectives.</p>	<p>No</p>	<p><i>Firm F</i> will generally not be giving regulated advice, for similar reasons to the ones in examples (D4) and (F20).</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
A distributor ( <i>Firm G</i> ) sets out this information alongside these products on its platform.	No	<i>Firm G</i> will generally not be giving regulated advice, for the reasons in example (F20).
(22)(a) A <i>firm</i> runs a <i>personal pension scheme</i> . The <i>firm</i> has a range of lifestyling options for investors with different intentions at retirement. For example, those options could be ones designed for investors who want to buy an annuity, draw down income and take the sum in cash. The <i>firm</i> has a website through which a customer can invest in the scheme and choose which of these options they wish to be applied.	No	This will generally not be regulated advice, for the same reasons as in example (F21).  If the <i>firm</i> uses sales material of the kind described in paragraphs (b) or (c) of example (F23) there will generally not be regulated advice for the reasons described in those paragraphs.
(b) The <i>firm</i> currently runs the scheme based on a single life-style investment strategy, based on moving customer into cash over time in advance of an expected retirement date. The <i>firm</i> writes to investors in the scheme informing them of the new options in (a).	No	This example is different from the one in paragraph (a) of this example as the information is sent to customers who already hold investments in the scheme and the customers may be prompted to consider whether they should adjust their investment.  However this need not be regulated advice, for the reasons in paragraph (a) of this example. A description of investment objectives does not become regulated advice just because the description is given to customers for whom the information is particularly relevant.
(23) A <i>firm</i> runs a <i>personal pension scheme</i> . It has a number of funds within that scheme designed to run different levels of risk. A customer has been in one of the higher risk funds but is now coming up to retirement. This means that the customer may be in an unsuitable fund: a lower risk fund could be more appropriate in these circumstances.  In all the scenarios in this example (F23) the <i>firm</i> does not pressure the customer into any course of action.	No	This will generally not be regulated advice.

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(a) The <i>firm</i> reminds the customer that they need to keep their funds under review and points the customer to literature that explains what factors an investor should think about at different stages of their working life leading up to retirement. For example it might say:</p> <ul style="list-style-type: none"> <li>● During the first part of an investor’s working life an investor will generally look for capital growth and as a result invest in higher risk funds.</li> <li>● When moving towards retirement an investor generally looks for capital protection and as a result will generally invest in lower risk funds.</li> </ul>		<p>lated advice, for the first of the reasons in example (F1).</p>
<p>(b) The <i>firm</i> combines the information in (a) with information about the investment strategy of the different funds in its scheme and how they are designed to work through a typical lifecycle of a customer. This information is contained in standardised written information, either in hard copy or online.</p>	No	<p>This will generally not be regulated advice, because describing the investment objectives of a fund is not itself regulated advice (see PERG 8.30A.12G).</p>
<p>(c) The <i>firm</i> has case studies to help their investors decide the funds into which they are to invest and the amount of their contribution. The examples are based on age, salary, attitude to risk and intentions about what they will do with the pension fund on retirement.</p>	No	<p>This will generally not be regulated advice. It involves presentation of the information in (b) and the contribution calculator in example (D8) in a different format and so the same answer should apply.</p>
<p>(d) The <i>firm</i> gives the information in (a) to (c) to the customer on a one-to-one basis.</p>	See the answer to example (F24)	See the answer to example (F24)
<p>(e) The <i>firm</i> tells the customer that it thinks that their present fund is unsuitable given how near to retirement they are and that they should get out of it and go into another fund.</p>	This is a <i>personal recommendation</i> to sell.	<p>If the <i>firm</i> is not appropriately authorised, this is regulated advice to sell.</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(24) A <i>firm</i> sells <i>investments</i> using the processes described in examples (D2) to (D8) except that the filtering process takes place face-to-face or over the telephone and is carried out by the <i>firm's</i> representative asking questions.</p>	<p>Where examples (D2) to (D8) say that there is regulated advice under the definition in PERG 8.24.1G (definition of advice that does not refer to a <i>personal recommendation</i>) but no <i>personal recommendation</i>, there may be a <i>personal recommendation</i> in this example (F24).</p> <p>For the reasons in column (3) of this example, it is more likely that a customer will think that an <i>investment</i> identified by the process is being presented as suitable for them or based on a consideration of their circumstances.</p> <p>Also, an online filtering process of the type in PERG 8.30B.28G is different from the filtering process in this example as the customer can:</p> <ul style="list-style-type: none"> <li>•stop and start the online process at any time;</li> <li>•repeat it when and as often as they like; and</li> <li>•put in different figures or answers either to check the result of different scenarios or just out of curiosity.</li> </ul>	<p>The one-to-one format is more likely to lead a customer to think that they have received advice on the merits of investing in a particular <i>investment</i>, both because of the more personal nature of the interaction between the <i>firm</i> and customer and because what happens during the conversation cannot always be as tightly controlled as an online process.</p> <p>The factors in PERG 8.30A.8G are relevant to what impression the customer is given.</p>
<p>(25) A <i>firm</i> operates funds. It classifies its funds on the basis of riskiness as described in example (D4). A customer completes an online questionnaire on their attitude to risk. The <i>firm</i> follows this up with a telephone call to provide details of funds matching the customer's risk tolerance as established by the questionnaire.</p> <p>The only subject discussed during the telephone call is the terms and conditions of the fund. The customer can agree to buy the fund during the conversation although the formal subscription document will be sent by post later. The <i>firm</i> does not discuss the personal circumstances of the customer. The</p>	<p>No</p>	<p>In principle (as with example (D4)), if the scope of the conversation is narrowly restricted in the way described in the example, the <i>firm</i> should not be giving regulated advice as long as it is made clear to the customer that no advice is being given.</p> <p>However, the answer in example (F24) applies. The answer in a particular case depends on exactly what is said and the surrounding circumstances, as described in PERG 8.30A.8G.</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p><i>firm</i> does pressure the customer into any course of action.</p> <p>(26) A customer has a <i>personal pension scheme</i> with a <i>firm</i>. The customer takes tax-free cash from that <i>personal pension scheme</i> at 55 and enters into drawdown with the remainder of their pot in cash. The <i>firm</i> has provided them with additional material about options available but the money remains in cash. The <i>firm</i> prompts the customer to consider basic questions about what they want to do upon eventual retirement, and describes the different options the customer can take with their pension pot. The <i>firm</i> does not highlight any particular option, does not pressure the customer into any course of action and does not repeatedly contact the customer.</p>	No	<p>A <i>firm</i> that is not appropriately authorised is not likely to give regulated advice merely by prompting a customer to think about options, for the first reason in example (F1).</p> <p>Describing the different options need not be regulated advice, because describing the investment objectives of a fund is not itself regulated advice (see PERG 8.30A.12G).</p>
<p>(27) The <i>firm</i> in example (F26) tells the customer that it has selected the options presented to the customer by selecting those relevant to people with a similar age and risk profile as the customer.</p>	If there is regulated advice it is likely that the <i>firm</i> will be giving a <i>personal recommendation</i> .	<p>If the <i>firm</i> is not appropriately authorised, this may involve regulated advice.</p> <p>It may be reasonable for a customer to take the material as implicit advice that the identified products are suitable for them.</p>
<p>(28) An <i>unauthorised person</i> that is a professional services business (F) has a customer approaching retirement. The customer wants to decide whether to use their <i>personal pension scheme</i> fund to buy an annuity. F advises the customer whether or not this is a good idea. This advice is given about annuities generally and not a particular annuity.</p> <p>If F advises that buying an annuity is a good idea, it does not advise on what annuity to buy.</p> <p>If F advises that buying one would be a bad idea it does not advise on the alternative options and in particular does not</p>	No	<p>This is not likely to be regulated advice. It is generic advice of the type described in PERG 8.26.4G.</p>

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>recommend whether the customer should do nothing or should crystallise or realise their benefits in some other way.</p> <p>F does not itself sell <i>investments</i> and the customer will go to another adviser if they decide to buy an annuity or an alternative product.</p>		
<p>(29) A <i>firm</i> advises a customer whether to exercise an option under their <i>personal pension scheme</i> to take a lump sum or whether they should leave their <i>personal pension scheme</i> pot untouched for the moment.</p>	<p>This is a <i>personal recommendation</i>.</p>	<p>If the <i>firm</i> is not appropriately authorised, this is regulated advice (see Q16 and Q17 in PERG 12.3 (Rights under a <i>personal pension scheme</i>)).</p>
<p>(30) A <i>firm</i> makes available an online questionnaire to potential customers. It contains questions on their:</p> <ul style="list-style-type: none"> <li>•personal circumstances;</li> <li>•investment knowledge;</li> <li>•personal investment objectives;</li> <li>•trading experience; and</li> <li>•financial circumstances, with a view to establishing what level of losses they can bear.</li> </ul> <p>On the basis of the information provided, an algorithm creates a suggested model portfolio.</p>	<p>If the <i>firm</i> gives regulated advice under column (3) of this example, this is a <i>personal recommendation</i> (see PERG 8.30B.35G).</p>	<p>If the <i>firm</i> is not appropriately authorised, this is regulated advice (see PERG 8.30A.15G).</p> <p>If however the customer just receives a suggestion which lists different asset classes or industries, given in percentages, without naming any specific <i>investments</i>, the <i>firm</i> is giving unregulated generic advice.</p>
<p>(31) A <i>firm</i> offers <i>pathway investments</i> in accordance with the requirements in COBS 19.10.14R to 19.10.21R.</p> <p>The <i>firm</i> interacts with the customer online or in writing.</p> <p>At step 3 the <i>firm</i> offers the customer a <i>pathway investment</i> that it manufactures.</p>	<p>No</p>	<p>Essentially this process involves the <i>firm</i> filtering its investment products based on the investment objectives of the fund. This will generally not be regulated advice for the reasons in PERG 8.30A.12G.</p>
<p>(32) Same as (31) except the <i>firm</i> offers the customer a <i>pathway investment</i> manufactured by another <i>firm</i> and available for investment in the <i>retail client's</i> drawdown fund.</p>	<p>No</p>	<p>This process amounts to filtering as described in example F(31). Therefore, the <i>firm</i> will generally not be giving regulated advice, for the reasons in PERG 8.30A.13G.</p>



(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p>(33) Same as (31) except that a <i>firm</i> offers <i>pathway investments</i> that have been designed for <i>retail clients</i> in various age groups. The <i>firm</i> offers different <i>pathway investments</i> to <i>retail clients</i> who select the same <i>investment pathway</i> option, based on the age of each <i>retail client</i>.</p> <p>The <i>firm</i> informs the <i>retail client</i> that this is the <i>pathway investment</i> for the relevant <i>investment pathway</i> option and it has been designed for people in the relevant age range. The <i>firm</i> makes clear to the <i>retail client</i> that it is describing the <i>pathway investment's</i> design and investment objectives, and is not presenting the <i>pathway investment</i> as suitable for the <i>retail client</i>.</p>	<p>No, so long as the <i>firm</i> is merely describing the design and investment objectives of the investment and is not presenting the investment as suitable for the <i>retail client</i>.</p>	<p>This process involves the <i>firm</i> filtering its investment products based on the investment objectives and target age range of the fund. This will generally not be regulated advice for the reasons in PERG 8.30A.12G, so long as the <i>firm</i> is merely describing the design and investment objectives of the investment and is not presenting the investment as suitable for the <i>retail client</i>.</p>
<p>(34) A <i>firm</i> offers <i>pathway investments</i> in accordance with the requirements in COBS 19.10.14R to 19.10.21R.</p> <p>The <i>firm</i> interacts with the customer on the telephone or face to face.</p> <p>At step 3 the <i>firm</i> offers the customer a <i>pathway investment</i> that it manufactures.</p>	<p>See the answer to example F(24)</p>	<p>See the answer to example F(24)</p>
<p>(35) Same as (34) except that a <i>firm</i> offers the customer a <i>pathway investment</i> manufactured by another <i>firm</i> and available for investment in the <i>retail client's</i> drawdown fund.</p>	<p>See the answer to example F(24)</p>	<p>See the answer to example F(24)</p>
<p>(36) A <i>firm</i> gives a cash warning to a <i>retail client</i> in accordance with the requirements in COBS 19.10.38R and the <i>guidance</i> in COBS 19.10.39G, or in accordance with the requirements in COBS 19.12.31R and the <i>guidance</i> in COBS 19.12.32G.</p>	<p>No. This is not a recommendation to <i>buy, sell, subscribe for, exchange, redeem, hold or underwrite</i> a particular <i>investment</i>; or exercise or not exercise any right conferred by such an investment to <i>buy, sell, subscribe for, exchange or redeem</i> such an <i>investment</i>.</p>	<p>No. This is not advice on the merits of <i>buying, holding or selling</i> a particular <i>investment</i>.</p>