

PERIMETER GUIDANCE INSTRUMENT 2024

Powers exercised

- A. The Financial Conduct Authority (“FCA”) makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”).

Commencement

- B. This instrument comes into force on 31 January 2024.

Amendments to material outside the Handbook

- C. The Perimeter Guidance manual (PERG) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Perimeter Guidance Instrument 2024.

By order of the Board
25 January 2024

Annex

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8 Financial promotion and related activities

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8.4 Invitation or inducement

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Enquiries about a person's status or intentions

8.4.27 G ...

Enquiries of this or a similar kind will not amount to inducements to *engage in investment activity* or to *engage in claims management activity* unless they involve persuasion or incitement to do so. The enquiry may be accompanied by a brief statement of the reason why it is being made. This may, for example, include a reference to the type of *investment* to which any subsequent *financial promotions* would relate. Such initial enquiries may be followed up with an inducement but this fact alone will not turn the initial enquiry into a *financial promotion*. For example, an enquiry about whether a *person* is certified for the purposes of article 48 (~~Certified high~~ High net worth individuals), article 50 (Sophisticated investors) or article 50A (self-certified sophisticated investors) may, where the answer is positive, be followed by a *financial promotion*. That *financial promotion* can then rely on article 48, 50 or 50A as the case may be.

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8.11 Types of exemption under the Financial Promotion Order

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8.11.6 G Some exemptions are based on the *communicator* believing on reasonable grounds that the recipient meets certain conditions. For example, articles 19(1)(a), 44, 47 and 49. What are reasonable grounds for these purposes will be a matter for the courts to decide. In the *FCA's* view, it would be reasonable for a *communicator* to rely on a statement made by a potential recipient that he satisfies relevant conditions. This is provided that there is no reason to doubt the accuracy of the statement. In case of doubt, further checks may be necessary. These could include:

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- (3) in the case of a *person* claiming to be a ~~certified~~ high net worth individual or a sophisticated or self-certified sophisticated investor, asking to see a copy of the current certificate.

8.12 Exemptions applying to all controlled activities

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Financial promotions to overseas recipients (article 12)

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- 8.12.6 G ... *Persons* to whom the *financial promotion* could lawfully have been made does not mean only those covered by article 12. For example, depending on the *controlled investment* which the *financial promotion* is about, they could include a ~~certified~~ high net worth individual or a sophisticated investor...

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8.14 Other financial promotions

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~~Certified high~~ High net worth individuals (article 48)

- 8.14.21 G This exemption disapples the restriction in section 21 of the *Act* from *non-real time financial promotions* or *solicited real time financial promotions* which are made to a *person* who the communicator believes on reasonable grounds to be a ~~certified~~ high net worth individual and which relate to certain *investments*. These *investments* must be either:

...

- (3) ~~units~~ units in *collective investment schemes* investing wholly or predominantly in *shares* in or *debentures* of an unlisted *company*.

There is an additional requirement that the recipient must have no contingent liability so that the maximum ~~he~~ they may lose is the amount ~~he invests~~ they invest. The term ‘unlisted company’ is defined in article 3 of the *Financial Promotion Order*. This exemption is expected to be of help to unlisted *companies* seeking venture capital.

- 8.14.22 G A ~~certified~~ high net worth individual is an individual who has completed and signed a statement in the form prescribed in Part I (~~Statement for certified high net worth individuals~~ High net worth individual investor statement) of Schedule 5 to the *Financial Promotion Order* and whose completion of that statement indicates that they satisfy the conditions set out in the statement to be classified as a high net worth individual. This requires the individual to certify that ~~he has~~ they have earned at least ~~£100,000~~ £170,000 (not including any one-off pension withdrawals) or have held net assets to the value of ~~more than £250,000 throughout~~ £430,000 or more in

the financial year before the date of the certificate and to specify certain supporting information. Where the *financial promotion* is an outgoing electronic commerce communication, the earnings or net assets may be of an equivalent amount in another currency. For the exemption to apply, the certificate must have been completed and signed within twelve months of the date on which the communication is made. The validity of the statement is not affected by a defect in its wording or form provided the defect does not alter its meaning or involve failure to place certain paragraphs in bold.

- 8.14.23 G In addition, the *financial promotion* must be accompanied by:
- (1) a warning in the terms prescribed in article 48(5) and which satisfies certain conditions regarding its form as set out in article 48(6) – this warning must either be given in legible form at the time the communication is made or given orally at that time and a copy in legible form sent to the recipient within two business days; ~~and~~
 - (1A) certain information specified in article 48(5A) and which satisfies certain conditions regarding its form as set out in article 48(6) – this information must either be given in legible form at the time the communication is made or, where this is not reasonably practicable, sent in legible form to the recipient within two business days; and
 - (2) certain indications as set out in article 48(7).
- 8.14.24 G A *person* seeking to make a *financial promotion* to another *person* may wish to make enquiries of that *person* to establish whether ~~he is~~ they are certified. Unless another exemption applies or the *financial promotion* is approved by an *authorised person*, such enquiries will not be possible if the enquiry communication is an inducement or invitation to *engage in investment activity*. In the *FCA's* view, a communication which is merely an enquiry seeking to establish that a *person* holds a current certificate will not itself be an inducement or invitation. Once it has been established that the *person* qualifies as a ~~certified~~ high net worth individual *financial promotions* about the *controlled investments* in *PERG* 8.14.21G may then be sent to ~~him~~ them under article 48. *PERG* 8.4.27G offers further *guidance* on this.

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Sophisticated investors (articles 50 and 50A)

- 8.14.26 G There are two exemptions that relate to sophisticated investors. The first
A (article 50 (Sophisticated investors)) applies to *persons* who are certified by an *authorised person* and to a broad range of ~~specified investments~~ investments. The second (article 50A (Self-certified sophisticated investors)) is similar to the exemption for ~~certified~~ high net worth individuals and applies where the investor has self-certified ~~himself~~ themselves and to a narrower range of ~~specified investments~~ investments. *PERG* 8.14.27G to *PERG* 8.14.28DG describe these exemptions in greater detail.

- 8.14.27 G To be a sophisticated investor for the purposes of article 50, the recipient of a *financial promotion* must have a current certificate from an *authorised person* stating that ~~he has~~ they have enough knowledge to be able to understand the risks associated with the description of investment to which the *financial promotion* relates. The *FCA* considers that a ‘description of investment’ relates to a category of *investments* with similar characteristics. Examples are given below.
- ...
- ...
- 8.14.28 G A The second exemption in article 50A disapples the restriction in section 21 of the *Act* from any *financial promotions* which are made to a *person* who the communicator believes on reasonable grounds to be a self-certified sophisticated investor and which relate to one or more of the ~~specified investments~~ investments in *PERG* 8.14.21G(1) to (3) (~~Certified high~~ High net worth individuals (article 48)).
- 8.14.28B G A self-certified sophisticated investor is an individual who has completed and signed a statement in the form prescribed in Part II (Statement for certified sophisticated investor Self-certified sophisticated investor statement) of Schedule 5 to the *Financial Promotion Order* and whose completion of that statement indicates that they satisfy the conditions set out in the statement to be classified as a self-certified sophisticated investor. This requires the individual to certify that one or more of the following statements apply to ~~him~~ them and to specify certain supporting information:
- (1) ~~he is~~ they are a member of a network or syndicate of business angels and ~~has~~ have been so for at least the last six months prior to the date on which the certificate was signed; or
 - (2) ~~he has made more than one investment in an unlisted company in the two years prior to that date; or~~ [deleted]
 - (3) ~~he is working, or has~~ they have worked in the two years prior to that date, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises; or
 - (4) ~~he is currently, or has~~ they have been in the two years prior to that date, a director of a *company* with an annual turnover of at least ~~£1~~ £1.6 million.
- 8.14.28C G For the exemption to apply, the certificate must have been completed and signed within twelve months of the date on which the communication is made. The validity of the statement is not affected by a defect in its wording or form provided the defect does not alter its meaning or involve failure to place certain paragraphs in bold.
- 8.14.28 G D In addition, the *financial promotion* must be accompanied by:

- (1) a warning in the terms prescribed in article 50A(5) and which satisfies certain conditions regarding its form as set out in article 50A(6) – this warning must either be given in legible form at the time the communication is made or given orally at that time and a copy in legible form sent to the recipient within two business days; ~~and~~
- (1A) certain information specified in article 50A(5A) and which satisfies certain conditions regarding its form as set out in article 50A(6) – this information must either be given in legible form at the time the communication is made or, where this is not reasonably practicable, sent in legible form to the recipient within two business days; and
- (2) certain indications as set out in article 50A(7).

Associations of high net worth or sophisticated investors (article 51)

- 8.14.29 G (1) This exemption allows a *non-real time* or *solicited real time financial promotion* to be made to an association with a particular membership. Membership of this association must be reasonably believed to be wholly or predominantly made up of ~~certified~~ high net worth individuals, high net worth companies or unincorporated associations or trusts, or certified or self-certified sophisticated investors. The *financial promotion* must not relate to an *investment* under the terms of which a *person* can incur additional liability of more than ~~his~~ their original investment. In each case, whether the membership of an association is predominantly made up of ~~certified~~ high net worth individuals, high net worth companies or unincorporated associations or trusts, or certified or self-certified sophisticated investors will be a question of fact. The exemption may be expected to be likely to apply, for example, to *financial promotions* to business angel networks.
- (2) The exemption extends to *financial promotions* made to *persons* who are members of an association with a particular membership and not simply to *financial promotions* made to the operator or secretariat of the association. It would appear that this includes members who are not themselves ~~certified~~ high net worth individuals, high net worth companies or unincorporated associations or trusts, or certified or self-certified sophisticated investors.

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8.36 Illustrative tables

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Application of exemptions to forms of financial promotion

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8.36.6 G Table Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
...				
48	Certified high High net worth individuals (8.14.21G)		*	*
...				