

Chapter 5

Guidance on insurance distribution activities

5.6 The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance

5.6.1 **G** Article 25 of the *Regulated Activities Order* (Arranging deals in investments) describes two types of *regulated activities* concerned with arranging deals in respect of *contracts of insurance*. These are:

- (1) *arranging (bringing about) deals in investments* (article 25(1) (Arranging deals in investments)); and
- (2) *making arrangements with a view to transactions in investments* (article 25(2) (Arranging deals in investments)).

Article 25(1): arranging (bringing about) deals in investments

5.6.2 **G** The activity in article 25(1) is carried on only if the arrangements bring about, or would bring about, the transaction to which the arrangement relates. This is because of the exclusion in article 26 of the *Regulated Activities Order* (Arrangements not causing a deal). Article 26 excludes from article 25(1) arrangements which do not bring about or would not bring about the transaction to which the arrangements relate. In the *FCA's* view, a *person* would bring about a *contract of insurance* if his involvement in the chain of events leading to the *contract of insurance* were important enough that, without it, there would be no policy. Examples of this type of activity would include negotiating the terms of the *contract of insurance* on behalf of the customer with the *insurance undertaking* and vice versa, or assisting in the completion of a proposal form and sending it to the *insurance undertaking*. Other examples include where an *insurance undertaking* enters into a *contract of insurance* as *principal* or an intermediary enters into a *contract of insurance* as agent.

Article 25(2): making arrangements with a view to transactions in investments

5.6.3 **G** The activity within article 25(2) contrasts with article 25(1) in that it is not limited by the requirement that the arrangements would bring about the transaction to which they relate.

5.6.4 **G** Article 25(2) may, for instance, include activities of *persons* who help potential *policyholders* fill in or check application forms in the context of ongoing arrangements between these *persons* and *insurance undertakings*. A further example of this activity would be a *person* introducing customers to

an intermediary either for advice or to help arrange an insurance *policy*. The introduction might be oral or written. By contrast, the *FCA* considers that a mere passive display of literature advertising insurance (for example, leaving leaflets advertising insurance in a dentist's or vet's waiting room and doing no more) would not amount to the article 25(2) activity.

Exclusions for provision of information: article 33B and 72C

5.6.4A **G** Articles 33B and 72C of the *Regulated Activities Order* provide exclusions relating to the provision of information from the *regulated activity of arranging*.

Exclusion: article 33B (Provision of information – contracts of insurance)

5.6.4B **G** In broad terms, article 33B of the *Regulated Activities Order* excludes from article 25 (*arranging*) activities that consist of:

- (1) the provision of information about a potential policyholder to:
 - (a) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or
 - (b) an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or
 - (c) an *IDD reinsurance intermediary*; or
- (2) the provision of information to a potential policyholder about:
 - (a) a *contract of insurance*; or
 - (b) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or *IDD reinsurance intermediary*,

where the provider of the information does not take any step other than the provision of information to assist in the conclusion of a *contract of insurance*.

5.6.4C **G** The exclusion in ■ PERG 5.6.4BG will be of assistance to persons who would otherwise be carrying on the *regulated activity of arranging*. This exclusion is intended to give effect to article 2.2 of the *IDD* (the text of which is reproduced in ■ PERG 5.16.2G(2)) which refers to the 'mere' provision of this information without taking any additional steps not being considered to constitute *insurance distribution*. In the *FCA's* view, the effect of this, and the reference in article 2.2(c) of the *IDD* to 'data and information on potential policyholders', is that the exclusion in ■ PERG 5.6.4BG covers those situations where a *person* provides existing information they hold on potential policyholders (for example their name and contact details) but does not extend to information they obtain from other means such as pre-purchase questioning.

5.6.4D **G** A *person* seeking to rely on article 33B cannot provide information other than the information specified in that article. That person also cannot take a step other than the provision of the specified information where such a step would assist in the conclusion of a *contract of insurance*. For example, a *person* who forwards a proposal form to an *insurance undertaking* would not be able to benefit from the exclusion. Similarly, where a *person* does

more than provide information (for example, by helping a potential policyholder fill in an application form) they would be unable to rely on this exclusion.

5.6.4E G This exclusion does not cover the activity of advising a customer under article 53(1) of the *Regulated Activities Order* (Advising on investments (other than P2P agreements)) (see ■ PERG 5.8 and ■ PERG 8.24).

Exclusion: article 72C (Provision of information on an incidental basis)

5.6.5 G Article 72C of the *Regulated Activities Order* provides another potential exclusion in relation to article 25, however, only for *persons* whose principal business is other than *insurance distribution activities*. In contrast to article 33B, article 72C also provides an exclusion for *regulated activities* other than *arranging*.

5.6.6 G In broad terms, article 72C of the *Regulated Activities Order* excludes from the activities of *arranging* and *assisting in the administration and performance of a contract of insurance* activities that:

- (1) consist of the provision of information to the *policyholder* or potential *policyholder*;
- (2) are carried on by a *person* carrying on any profession or business which does not otherwise consist of *regulated activities*; and
- (3) amount to the provision of information that may reasonably be regarded as being incidental to that profession or business.

5.6.7 G In the *FCA's* view, 'incidental' in this context means that the activity must arise out of, be complementary to or otherwise be sufficiently closely connected with the profession or business. In other words, there must be an inherent link between the activity and the firm's main business. For example, introducing dental insurance may be incidental to a dentist's activities; introducing pet insurance would not be incidental to his activities. In addition, to be considered 'incidental', in the *FCA's* view, the activity must not amount to the carrying on of a business in its own right.

5.6.8 G This exclusion applies to a *person* whose profession or business does not otherwise consist of *regulated activities*. In the *FCA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. So, the exclusion may be of relevance to *exempt professional firms*. It might also, for example, be relied on by doctors, vets and dentists as well as many businesses in the non-financial sector, even if they have *permission* to carry on *regulated activities* or are *appointed representatives*. This is assuming that their activities for which they are seeking to use the exclusion in article 72C are limited to providing information in a way which is incidental to their

main profession or business. In contrast to article 33B, this exclusion only extends to information given to the *policyholder* or potential *policyholder* and not to the *insurance undertaking*. Unlike article 33B, article 72C does not specify what information may be provided within the scope of the exclusion. An intermediary who forwards a proposal form to an *insurance undertaking* would not be able to take the benefit of the exclusion. Similarly, where a *person* does more than provide information (for example, by helping a potential *policyholder* fill in an application form), they cannot take the benefit of this exclusion. Nor does it cover the activity of advising a customer under article 53 of the *Regulated Activities Order* (Advising on investments).

5.6.9 G The exclusion may be of assistance to introducers who would otherwise be carrying on the *regulated activity* of *making arrangements with a view to transactions in investments*. Introducers may also find the *guidance* at ■ PERG 5.9.2 G (The regulated activities: agreeing to carry on a regulated activity) and ■ PERG 5.6.4BG to ■ PERG 5.6.4EG helpful. ■ PERG 5.6.17 G (Exclusion from article 25(2) for introducing) has *guidance* to assist *persons* to determine whether their introducing activities amount to *making arrangements with a view to transactions in investments*.

Exclusion from article 25(2): arrangements enabling parties to communicate

5.6.10 G Article 27 of the *Regulated Activities Order* (Enabling parties to communicate) contains an exclusion that applies to arrangements which might otherwise bring within article 25(2) those who merely provide the means by which one party to a transaction (or potential transaction) is able to communicate with other parties. Simply providing the means by which parties to a transaction (or potential transaction) are able to communicate with each other is excluded from article 25(2) only. This will ensure that *persons* such as internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to fall within article 25(2)).

5.6.11 G In the *FCA's* view, the crucial element of the exclusion in article 27 is the inclusion of the word 'merely'. When a publisher, broadcaster or internet website operator goes beyond what is necessary for him to provide its service of publishing, broadcasting or otherwise facilitating the issue of promotions, it may well bring itself within the scope of article 25(2). Further detailed *guidance* relating to the scope of the exclusion in article 27 is contained in ■ PERG 2.8.6G (2) (Arranging deals in investments and arranging a home finance transaction) and ■ PERG 8.32.6 G to ■ PERG 8.32.11 G (Arranging deals in investments).

Exclusion from article 25(2): transactions to which the arranger is a party

5.6.12 G Article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party) excludes from the *regulated activities* in article 25(1) and 25(2) arrangements made for or with a view to *contracts of insurance* when:

- (1) the *person* (P) making the arrangements is the only *policyholder*; or
- (2) P, as a result of the transaction, would become the only *policyholder*.

5.6.13 **G** Market makers in traded endowment policies may be able to rely on this exclusion to avoid the need to be authorised. They must ensure, however, that where they are carrying on the *regulated activity* of *dealing in investments as principal* (article 14) they are also able to rely on the exclusions in articles 15 or 16 (see the *guidance* in ■ PERG 2.8.4 G (Dealing in investments as principal)).

5.6.14 **G** *Insurance undertakings* do not fall within the terms of this exclusion and so will be *arranging contracts of insurance*, in addition to effecting and *carrying out contracts of insurance*.

5.6.15 **G** In some cases, a *person* may make arrangements to enter into a *contract of insurance as policyholder* on its own behalf and also arrange that another *person* become a *policyholder* under the same *contract of insurance*. If so, the *person* should be aware that the effect of the narrower exclusion in article 28 as part of implementation of the *IDD* is that they may be *arranging* on behalf of the other *policyholder*. This may be relevant, for example, to a *company* which arranges insurance for itself (not *arranging*) as well as other *companies* in a *group* or loan syndicate (potentially *arranging*).

5.6.16 **G** The restriction in the scope of article 28 raises an issue where there is a trust with co-trustees, where each trustee will be a *policyholder* with equal rights and obligations. If the activities of one of the trustees include *arranging* in respect of *contracts of insurance*, that trustee could be viewed as *arranging* on behalf of his co-trustees who will also be *policyholders*. Similar issues also arise in respect of trustees *assisting in the administration and performance of a contract of insurance*. The *FCA* is of the view, however, that trustees should not be regarded as carrying on *regulated activities* where they are acting as joint *policyholders* in *arranging* or *assisting in the administration and performance of a contract of insurance*. In this respect, trustees differ from *policyholders* under a group policy, where each *person* covered under the group policy may make claims on the policy in relation to his own risks. In that situation, a *policyholder* who is providing services to other *policyholders* of *arranging* or *assisting in the administration and performance of a contract of insurance* will be carrying on a *regulated activity*.

Exclusion from article 25(2) for introducing.....

5.6.17 **G** Article 33 of the *Regulated Activities Order* (Introducing) excludes arrangements which would otherwise fall under article 25(2) where:

- (1) they are arrangements under which *persons* will be introduced to another *person*;
- (2) the *person* to whom introductions are to be made is:
 - (a) an *authorised person*; or
 - (b) an *exempt person* acting in the course of business comprising a *regulated activity* in relation to which they are exempt; or

(c) a *person* who is not unlawfully carrying on *regulated activities* in the *United Kingdom* and whose ordinary business involves the *person* in engaging in certain activities;

(3) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to *investments* generally or in relation to any class of *investments* to which the arrangements relate; and

(4) the arrangements do not relate to transactions relating to *contracts of insurance*.

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The effect of ■ PERG 5.6.17G (4) is that some *persons* who, in making introductions, are *making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order*, cannot use the introducing exclusion. This is usually the case if the arrangements for making introductions relate to *contracts of insurance* (■ PERG 5.6.19 G has further *guidance* on when arrangements for introductions may be regarded as relating to *contracts of insurance*). However, this does not mean that all introducers whose introductions relate directly or indirectly to *contracts of insurance* will necessarily require *authorisation* if they cannot use the exclusions in articles 33B or 72C of the *Regulated Activities Order* for merely passing information. For a *person* to need *authorisation*, they must first be carrying on the business of *making arrangements with a view to transactions in investments*. In the *FCA's* view, the following points will be relevant in determining whether this is the case.

(1) Article 25(2) applies to ongoing arrangements made with a view to transactions taking place from time to time as a result of *persons* having taken part in the arrangements. So, they will not apply to one-off introductions or introductions that are not part of an ongoing pre-existing arrangement between introducer and introducee. An introducer who merely suggests to a *person* that he seeks advice or assistance from an *authorised person* or an *exempt person* with whom the introducer has no pre-existing agreement that anticipates introductions will be made, will not be making arrangements at all. He will simply be offering general advice or information.

(2) The purpose of the arrangements must be for the *person* who is introduced to, in general terms, enter into a transaction to *buy or sell securities or relevant investments*. So, arrangements for introducing *persons* for advice only will not be caught (for example, introductions to a financial planner or to the publisher of an investment newsletter). In other cases, it may be likely that transactions will be entered into following the provision of advice. Provided the introducer is completely indifferent as to whether or not a *contract of insurance* may ultimately be bought (or sold) as a result of the advice given to the *person* he has introduced, the introducer will not be *making arrangements with a view to transactions in investments*. This is likely to be the case where the introducer does not receive any pecuniary reward that is linked to the volume of business done as a result of his introductions.

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Where a *person* is *making arrangements with a view to transactions in investments* by way of making introductions, and he is not completely

indifferent to whether or not transactions may result, it may still be the case that the exclusion in article 33 will apply. In the *FCA's* view, this is where:

- (1) the introduction is for independent advice on *investments* generally; and
- (2) the introducer is indifferent as to whether or not a *contract of insurance* may ultimately be bought (or sold) rather than any other type of *investment*.

This is because the arrangements for making introductions do not specifically relate to a *contract of insurance* or to any other type of *investment* but to *investments* generally. Whether or not a *person* is making arrangements for introductions for the purpose of the provision of independent advice on *investments* generally will depend on the facts in any particular case. But, in the *FCA's* view, it is very unlikely that article 33 could apply where introductions are made to a *person* for the purposes of that *person* giving advice on and then *arranging* general insurance.

5.6.20 G The table in ■ PERG 5.6.21 G has examples of the application of article 33 to arrangements for making introductions.

5.6.21 G Application of article 33 to arrangements for making introductions. This table belongs to ■ PERG 5.6.20 G.

	Type of introduction	Applicability of exclusion
1	Introductions are purely for the purpose of the provision of independent advice – Introducer is completely indifferent to whether or not transactions take place after advice has been given.	Exclusion not relevant as introducer is not <i>arranging</i> under article 25(2).
2	Introduction is one-off or otherwise not part of pre-existing on-going arrangements that envisage such introduction being made.	Exclusion not relevant as introducer is not <i>arranging</i> under article 25(2).
3	Introducer is not indifferent to whether or not transactions take place after advice has been given, but is indifferent to whether or not the transactions may involve a <i>contract of insurance</i> .	Exclusion will be available provided the introduction was made with a view to the provision of independent advice on <i>investments</i> generally.
4	Introducer is not indifferent to whether or not transactions take place after advice has been given (for example, because he expects to receive a percentage of the commission), and introductions specifically relate to <i>contracts of insurance</i> .	Exclusion is not available. If introducer is an <i>unauthorised person</i> , he will need <i>authorisation</i> or exemption as an <i>appointed representative</i> . If introducer is an <i>authorised person</i> (such as an IFA introducing to a general insurance broker), he will need to vary his <i>Part IV</i>

Type of introduction	Applicability of exclusion
	<i>permission</i> accordingly. If introducer is an <i>appointed representative</i> , he will need to ensure that his agreement covers making such arrangements.

Exclusion from article 25(2): arrangements for the provision of finance

5.6.22 **G** An *unauthorised person* who makes arrangements with a view to a *person* who participates in the arrangements *buying or selling contracts of insurance* may be excluded from article 25(2) by article 32 of the *Regulated Activities Order* (Provision of finance). This is provided the sole purpose of the arrangements is the provision of finance to enable the *person* to *buy the contract of insurance*. Premium finance companies may be able to rely on this exclusion provided the arrangements they put in place, taken as a whole, have as their sole purpose the provision of finance to fund premiums.

Other exclusions

5.6.23 **G** The *Regulated Activities Order* contains some other exclusions which have the effect of narrowing or limiting the application of *regulated activities* within article 25 by preventing certain activities from amounting to *regulated activities*. These are referred to in ■ PERG 5.11.8 G (Exclusions applying to more than one regulated activity).