

Chapter 8

Financial promotion and related activities

8.7 Engage in investment activity

- 8.7.1** **G** A communication must be an invitation or inducement to *engage in investment activity* (or to *engage in claims management activity* (see ■ PERG 8.7A)) for the restriction in section 21 to apply. Section 21(8) defines this phrase as:
- (1) entering or offering to enter into an agreement the making or performance of which by either party is a *controlled activity*; or
 - (2) exercising any rights conferred by a *controlled investment* to acquire, dispose of, underwrite or convert a *controlled investment*.
- 8.7.2** **G** *Controlled activity* and *controlled investment* are defined in Schedule 1 to the *Financial Promotion Order* and are listed in ■ PERG 8.36.3 G and ■ PERG 8.36.4 G. Broadly speaking, *controlled activities* and *controlled investments* are similar to *regulated activities* and *specified investments* under the *Regulated Activities Order*. However, with *controlled activities*, the exclusions set out in the *Regulated Activities Order* do not, in most cases, apply. It is important to note, however, that there are certain differences between *controlled activities* and *regulated activities* and between *controlled investments* and *specified investments*. This is most notable where the *financial promotion* is about:
- (1) certain credit agreements (see ■ PERG 8.17 (Financial promotions concerning agreements for qualifying credit));
 - (2) *funeral plan contracts* (see ■ PERG 8.16 (Financial promotions concerning funeral plans)); and
 - (3) *contracts of insurance* other than *life policies* (see ■ PERG 8.17A (Financial promotions concerning insurance distribution activities)).
- So, it is quite possible for a *person* to be carrying on a business in the *United Kingdom* for which he does not require *authorisation* because the business activity either is not connected with financial services or falls within one of the exclusions in the *Regulated Activities Order* but find that the restriction in section 21 applies to his communications. It should also be noted that *electronic money* is not a *controlled investment*. This means that the restriction in section 21 does not apply to the communication of an invitation or inducement that concerns *electronic money*. This is unless the communication is a *financial promotion* for some other reason. For guidance on *electronic money* see ■ PERG 3A.

8.7.3 **G** The overall effect is that a *financial promotion* must relate in some way to a *controlled investment* and may be summarised as the *communication*, in the course of business, of an invitation or inducement to:

- (1) acquire, dispose of or underwrite certain *investments* or exercise rights conferred by such an *investment* for such purpose or for the purpose of converting it; or
- (2) receive or undertake investment services such as *dealing in investments as principal or as agent, managing investments, advising on investments or safeguarding and administering investments*.

8.7.4 **G** So a *financial promotion* will not include an invitation or inducement to:

- (1) refrain from doing any of the things in ■ PERG 8.7.3 G; or
- (2) exercise rights conferred by an *investment* other than to acquire, dispose of, underwrite or convert an *investment*.

This means that most invitations or inducements to exercise voting rights will not be *financial promotions*.

8.7.5 **G** In the FCA's opinion, section 21 will apply to a communication (made in the course of business) if it contains an invitation or inducement to *engage in investment activity* which is addressed to a particular *person* or to *persons* generally. Where this is the case, it will not matter that the communication may be physically delivered to someone other than the *person* who is intended to engage in *investment* activity. ■ PERG 8.6.10 G gives more *guidance* on this.