

Full title	G-Regs Note
Relevant Legislation	Financial Services and Markets Act 2000: http://www.legislation.gov.uk/ukpga/2000/8/contents
General Prohibition	<p>Section 19 FSMA states that any firm or individual who carries out a regulated activity in the UK must be authorised or registered by FCA. Carrying on a regulated activity in breach of the general prohibition is a criminal offence.</p> <p><u>An Authorised person</u>: a person who has a Part 4A permission (permission given by the FCA or PRA under Part 4A FSMA) to carry on one or more regulated activities.</p>
Regulated activity:	<p>An activity is a regulated activity if it is an activity of a specified kind that is carried on by way of business and relates to a specified investment or property of any kind (Section 22 FSMA) - A specified activity or investment is one that has been specified as such in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (RAO);</p> <p><u>Relevant credit-related regulated activities</u>: Carrying on a credit broking activity is a regulated activity under article 36A RAO (Part II, Specified Activities); entering into a regulated credit agreement as lender is covered by article 60B(1) RAO.</p>
General restriction on Financial Promotions:	<p>Sect 21 FSMA (applies to all firms that advertise (i.e. promote) consumer credit products – 4B Sch. 1 FPO/ 8.17 –A.1(G) PERG¹): an authorised person must not, in the course of its business, communicate an invitation or inducement to engage in investment activity (that is, to make a financial promotion) unless:</p> <ul style="list-style-type: none"> - the person is authorised by the Prudential Regulation Authority (PRA) or the FCA; - the content of the communication is approved by a person who is authorised by the PRA or the FCA, - or; the financial promotion is exempt and falls within an exemption set out in the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 (SI 2005/1529) (FPO). <p><u>Engage in investment activity (Art. 21(8) FSMA</u>:</p> <ul style="list-style-type: none"> - to enter or offer to enter into an agreement the making or performance of which by either party constitutes a “controlled” (regulated) activity – or - exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment. <p>Controlled activities² are defined and listed in Art. 4/ Sch. 1 (Part 1) Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529) (FPO):</p> <p>Of relevance:</p> <ul style="list-style-type: none"> - Para. 4B³ – credit broking in respect of relevant credit agreements is a controlled activity (mirrors Art. 36A RAO); - Para 10(BA) /12A in 3.36.3(G) PERG – providing relevant consumer credit is a controlled activity. <p>Controlled investments are defined and listed in Art. 4/ Sch. 1 (part 2) FPO.</p> <p>Of relevance:</p> <ul style="list-style-type: none"> - Para 26D⁴ - Rights under a relevant credit agreement <p>Refer to PERG 8⁵ for guidance</p>

¹ Sect. 21 FSMA applies to financial promotions concerning consumer credit

² Sect. 21(9) FSMA - An activity is a controlled activity if—

(a) it is an activity of a specified kind or one which falls within a specified class of activity; **and**

(b) it relates to an investment of a specified kind, or to one which falls within a specified class of investment.

³ Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529) (FPO) Art. 17(6) [FSMA \(Reg. Activities\) Amendment No. 2\) Order 2013](#) – inserts para. 4B into FPO; Art. 4 [The Financial Services and Markets Act 2000 \(Miscellaneous Provisions\) Order 2015](#) amends para. 4B Sch. 1(Part 1); Art. 10(8) [FSMA \(Reg Activities\) \(Amendment\) Order 2014](#) – inserts para. 4B(1A) Sch. 1, Part 1 FPO

⁴ This was inserted into FPO by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (2013 No. 1881)

⁵ PERG 8 – Financial Promotion and related activities