

11 April 2019

Dear CEO

**Firms' Approvals of Financial Promotions: the FCA's Expectations**

The purpose of this letter is to remind firms involved in the approval of financial promotions for unauthorised persons of their obligations when doing so.

On 9 January 2019<sup>1</sup> we published a letter addressed to the CEOs of all our regulated firms to remind them of their responsibilities relating to the use of financial promotions. In this letter, we reminded firms that, before they approve a financial promotion for communication by an unauthorised person, they must confirm that it complies with our rules on financial promotions. This includes ensuring that the financial promotions which they approve are fair, clear and not misleading. An example of this arrangement would be an FCA authorised firm approving the financial promotions of mini-bonds, a type of retail investment product which can be issued by firms that we do not regulate.

We are writing again to all firms engaged in approving financial promotions of retail investments to underline how seriously we treat this issue. We are doing this because, despite our letter of 9 January, we have identified a number of examples where it appears the due diligence carried out on a financial promotion may have fallen well short of the standard we expect. Retail investment products can expose consumers to a range of differing risks and returns and, particularly where those risks are not adequately explained, this can cause significant harm to investors and undermine the effective functioning of the sector as a whole. Accordingly, it is important the financial promotions of these products reflect an appropriate level of due diligence into the risks they bear.

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<sup>1</sup> <https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-promotions-regulated-unregulated-business.pdf>

Even when investment products are not regulated or are issued by companies that are not FCA-authorized, should your firm provide a 's21 approval' of their promotion, you can expect us to require your firm to demonstrate that it has carried out such due diligence to ensure that the promotion is fair, clear and not misleading. Our Handbook (COBS 4.2.4G) provides firms with guidance on the issues it should consider, for example, that a firm should ensure that a financial promotion that quotes a yield figure gives a balanced impression of both the short and long term prospects for the investment. Given that a number of retail investments promise high returns and/or feature complex terms and structures, they present an inherent challenge to being promoted in a manner that is fair, clear and not misleading.

Direct offer financial promotion of mini-bonds and other unlisted securities to retail clients is generally restricted to high net worth investors, sophisticated investors or "restricted investors" (who have certified that they are not investing more than 10% of their net assets in non-readily realisable securities).<sup>2</sup> It is the responsibility of the firm that communicates or approves the direct offer financial promotion to ensure that this restriction and the rules on appropriateness of the investment<sup>3</sup> are complied with.

We would also like to remind firms that:

- before a firm approves a financial promotion for communication by an unauthorised person, it must confirm that the promotion complies with the financial promotion rules (COBS 4.10.2R(1));
- if at any time they become aware that the financial promotion no longer complies with the rules, it must withdraw its approval (COBS 4.10.2R(2));
- a firm that communicates or approves a financial promotion must have put in place adequate systems and controls, or policies and procedures, to comply with these rules (COBS 4.10.1G); and
- they must ensure that information presented is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits (COBS 4.5.2R(2), COBS 4.5A.3EU).

Where we observe non-compliance with our requirements by firms which approved promotions we will take action. We have a range of measures we can take which can result in the amendment or removal of financial promotions, the suspension or cancellation of planned issuance of these products to investors, formal limitations

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<sup>2</sup> COBS 4.7.7R

<sup>3</sup> COBS 4.7.7R(3) and COBS 10 and 10A

being placed on the activities of the firms which approved non-compliant promotion and us bringing civil or criminal proceedings.<sup>4</sup>

Furthermore, should we identify concerns with the due diligence performed, you can expect us to examine what governance and oversight failures may have contributed to this and to assess who is responsible. You can also expect us to assess what steps your firm has taken to review financial promotions it has previously approved, and to what extent your firm has self-identified and reported to us issues with such promotions or indeed with promotions it has declined to approve.

Yours faithfully,

Andrew Bailey

Chief Executive Officer

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<sup>4</sup> Pursuant to our Principle 11