

9 January 2019

Dear CEO

Clarity in Promotions about Regulated and Unregulated Business: the FCA's Expectations

The FCA regulates the communication and approval of financial promotions (that is, an invitation or inducement to engage in investment activity). Any form of communication (including through websites and social media) is capable of being a financial promotion.

It is unlawful for a person in the course of business to communicate a financial promotion unless (i) that person is an authorised person, (ii) the content of the communication is approved by an authorised person, or (iii) a relevant exemption applies (section 21 of the Financial Services and Markets Act 2000 (FSMA)).¹

All financial promotions must be fair, clear and not misleading². Part of meeting this standard includes ensuring that (where relevant) those to whom a financial promotion is addressed, or at whom it is directed, understand the extent of the relevant firm's business that is regulated.

Some of the firms that we regulate undertake both regulated and unregulated business. We have recently become aware of firms issuing financial promotions which suggest or imply that all of the activities which they undertake are regulated by us and/or the PRA when, in fact, they are not.

¹ Exemptions are contained in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. For more on our regulation of financial promotions see <https://www.fca.org.uk/firms/financial-promotions-adverts>.

² COBS 4.2.1R, ICOBS 2.2.2R, MCOB 3A.2.1R, BCOBS 2.2.1R, CONC 3.3.1R and Principle 7.

These financial promotions are unlikely to provide consumers with the clarity that our rules require and could leave consumers unable to understand whether the products or services which are promoted are regulated by us and/or the PRA.

We make clear in our Handbook that if a firm names the FCA and/or the PRA as its regulator in a financial promotion that refers to aspects of its business (e.g., products or services) which are not regulated by the FCA and/or the PRA, then the promotion should make clear those aspects which are not regulated.³

Firms are also reminded:

- of the rule in GEN 4.5.4R which states that “a firm must not indicate or imply that it is regulated or otherwise supervised by the FCA in respect of business for which it is not regulated by the FCA”;⁴ and
- that before they approve a financial promotion for communication by an unauthorised person, they must confirm that the promotion complies with our rules on financial promotions.⁵ This includes ensuring that the financial promotions which they approve are fair, clear and not misleading.

While we do not approve advertising and it is up to firms to ensure that financial promotions are compliant with our rules, we do monitor adverts across different media in the UK. Firms are also reminded that we have the power under section 137S of FSMA to direct a firm to withdraw an advert (or its approval of an advert), or to prevent it from being used in the first place. Further details of this power can be found on our website at www.fca.org.uk/firms/financial-promotions-adverts/powers-ban.

Yours faithfully,

Andrew Bailey
Chief Executive

³ COBS 4.2.4G(4), BCOBS 2.3.4G and CONC 3.3.6G.

⁴ A similar rule applies for firms which are also regulated by the PRA. See GEN 4.5.4AR.

⁵ COBS 4.10.2R, ICOBS 2.2.3R, MCOB 3A.2.5R.