

Guidance consultation

Financial promotions on social media

GC23/2

July 2023

1 Introduction

- 1.1 Social media has become an increasingly vital part of firms' marketing strategies, allowing them to reach a mass audience at increasing speed and frequency. While this has helped firms communicate with consumers more effectively, poor quality financial promotions on social media can lead to significant consumer harm due to their wide reach and the complex nature of financial services.
- 1.2 We want to ensure that consumers can access high quality marketing information across all channels, enabling them to make informed decisions. Our financial promotion rules are designed to be technology neutral and apply across all channels that can be used to advertise.
- 1.3 Social media is being used by many consumers as a go-to source of information, and this is reflected in advertising trends. [The AA/Warc expenditure report](#) found that the UK social media advertising market was worth £6.4bn in 2021, representing nearly a third of all internet advertising spend. It is crucial that financial promotions on social media are of good quality and are fair, clear and not misleading. Consumers should be able to trust that the information they receive online about financial products and services is reliable.
- 1.4 We have also seen a substantial increase in financial influencers, also known as 'finfluencers', on social media promoting financial products, particularly investment and credit products. Many of these promotions target younger consumers, who are likely to trust the information influencers provide them with. We want unauthorised

influencers to think carefully before promoting financial products or services and to understand their obligations when advertising through their social media channels. Promoting a regulated financial product or service without approval of an FCA authorised person, or providing financial advice without FCA authorisation, may be a criminal offence.

- 1.5 So that our expectations when communicating about financial products and services on social media are clear and reflect the current and future social media landscape, we are updating our existing guidance on social media and customer communications (FG15/4). We will be retiring FG15/4 when the new guidance is finalised.

Why we are consulting

- 1.6 FG15/4 was issued in 2015. Whilst many of its key principles still hold, it is heavily based around character-limited media such as Twitter and makes no reference to the use of influencers communicating financial promotions. Since we issued the guidance, social media has become an increasingly important marketing tool for firms, allowing them to reach a wide audience quickly when communicating financial promotions. Alongside this, the social media landscape has evolved. YouTubers and streamers have become a major source of financial promotions, and new platforms such as Threads or private communication channels such as Discord are increasingly being used to communicate financial promotions. We are therefore consulting on new, standalone guidance for financial promotions on social media to reflect the current landscape.
- 1.7 Where applicable, the Consumer Duty will further strengthen our expectations of how firms communicate with retail customers. We want firms to consider this guidance alongside their obligations under the Duty, to help them deliver good outcomes for retail customers. This will include ensuring that customers get the right information at the right time, and in a way they can understand to help them make effective decisions.
- 1.8 Since the pandemic we have seen an increasing number of young consumers entering the investment market. These young consumers are increasingly turning to social media for investment information, with social media becoming progressively more influential in driving behaviour. 58% of those under 40 who have invested in high-risk investment products say hype on social media and the news lies behind their investment decisions.
- 1.9 We have seen a growing trend in marketing strategies for newer business models such as buy-now-pay-later and cryptoassets focused on social media and we want to make our expectations clear to firms operating in these sectors. This guidance will help firms understand our expectations and help marketers navigate the regulatory regime.
- 1.10 In Q4 of 2022, 69% of financial promotions communicated or approved by authorised firms which were amended or withdrawn following our intervention involved website or social media promotions. This data tells us that consumers using social media to inform their financial decision-making will likely have seen promotions that are unfair, unclear, or misleading in some way, demonstrating the potential for widespread harm in this space.

- 1.11 In recent years we have observed the rise of ‘finfluencers’ with 62% of 18- to 29-year-olds following social media influencers and 74% saying they trust their advice. As a result, 9 in 10 young followers have been encouraged to change their financial behaviour. This has been coupled with a substantial rise in influencers being used by firms to promote financial products and services. Often these influencers have little knowledge of what they’re promoting. This lack of expertise is reflected in the large number of promotions that are either illegal or non-compliant, making it likely that consumers will see poor quality information on social media.

Who this applies to

- 1.12 This guidance will be of interest to:
- Consumers and consumer groups
 - Firms communicating or approving financial promotions on social media
 - Industry groups and trade bodies
 - Influencers and unauthorised persons communicating financial promotions on social media
 - Social media platforms
 - Overseas firms communicating financial promotions to UK consumers on social media

How this links to our objectives

- 1.13 This guidance contributes towards our strategic commitment of enabling consumers to help themselves. Consumers need good information to make decisions. But this does not always happen. Instead, they’re often targeted with adverts that may be illegal or that would not meet our requirements to be fair, clear and not misleading. This guidance aims to reduce the number of illegal and non-compliant financial promotions on social media through clarifying our expectations for firms as well as helping unauthorised persons to navigate the financial promotion perimeter.
- 1.14 This guidance will support our statutory consumer protection objective, helping secure an appropriate degree of protection for consumers. Through reducing the number of illegal and non-compliant financial promotions on social media, consumers will have access to better quality information, equipping them to make good decisions that meet their broader financial needs.
- 1.15 This guidance will also support our Consumer Investments Strategy outcome of seeking a 50% reduction in the number of retail consumers investing in high-risk investments (HRIs) who demonstrate a low-risk tolerance or characteristics of vulnerability by 2025. With an increasing number of consumers turning to social media for investment information, it is crucial that they are presented with information that is fair, clear and not misleading. This will enable them to make decisions in line with their risk appetite and ensure they’re not investing in HRIs despite demonstrating a low-risk appetite.

Equality and Diversity Considerations

- 1.16 We are required under the Equality Act 2010 to have due regard to the need to eliminate discrimination, harassment, victimisation, and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a

relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.

- 1.17 This guidance will not disadvantage or inadvertently discriminate against persons with protected characteristics under the Equality Act of 2010. This guidance seeks to protect all consumers from harm. As the current situation may mean people with protected characteristics are particularly at risk of being targeted by illegal or non-compliant financial promotions, the updating of social media guidelines may benefit people with protected characteristics.

Cost and benefits of our proposals

- 1.18 As we are not making new rules, our statutory obligation under FSMA to publish a cost-benefit analysis (CBA) does not apply. This guidance seeks to clarify the application of our existing rules and policies and provide guidance on the financial promotion perimeter.
- 1.19 Our [approach to CBAs](#) states that we do produce a CBA 'if a high-level assessment of the impact of the proposal identifies an element of novelty which may be in effect prescriptive or prohibitive such that significant costs may be incurred'. This guidance is not prescriptive and clarifies existing expectations that follow from the relevant rules. We therefore do not provide a CBA for this guidance.

How to respond and next steps

- 1.20 We welcome views and comments from respondents on the proposed guidance by 11 September 2023. Please send us your responses using the [form on our website](#), or alternatively email your responses to gc23-2@fca.org.uk.
- 1.21 We will consider your responses to this consultation and aim to finalise the guidance later in 2023.
- 1.22 We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

2 Summary

What we are changing

- 2.1 We retain the key principles of FG15/4, including our expectations for financial promotions to be standalone compliant. We retain the same expectations on the prominence of required information but will use this guidance to clarify how we expect these principles to be applied to different social media marketing channels, as

well as looking to address specific design features on social media that act to obscure required information. We also provide graphic examples of promotions across a variety of financial services to aid understanding of our expectations.

- 2.2 Where applicable, the Consumer Duty will raise our expectations of firms communicating financial promotions on social media above the requirement of Principle 7 to be 'clear, fair and not misleading'. Principle 12 (alongside PRIN 2A) requires firms to act to deliver good outcomes for retail customers and we use this guidance to supplement our expectations of this requirement for communications on social media.
- 2.3 We provide guidance on emerging marketing trends on social media such as affiliate marketing. We use the guidance to stress that firms should be monitoring the communications of those using their affiliate links to ensure good outcomes for consumers. We also look to address the harm that can occur where UK consumers interact with financial promotions which direct them to a non-UK entity while the UK consumer still believes they are engaging with an FCA regulated firm. We suggest techniques firms can use to mitigate this risk, as well as stressing to firms that any communication capable of having an effect within the UK will be subject to the rules.
- 2.4 We use this guidance to tackle harm arising from influencers communicating approved financial promotions, particularly for firms approving communications for HRIs. In [PS22/10](#) we strengthened the requirements for Section 21 approvers of promotions for investment business, including HRIs. We highlight how these should apply to firms approving the communications of influencers on social media, explaining that they should play an active role in ensuring the continuing compliance of the relevant communication for its lifetime.
- 2.5 We use the guidance to tackle harm occurring from unauthorised influencers communicating illegal financial promotions. We have seen cases of influencers communicating financial promotions without realising they fall within the financial promotion perimeter. This is because often firms and influencers assume there must be direct monetary compensation for an influencer's post to be subject to the financial promotion regime. We provide additional guidance on the perimeter in relation to financial promotions on social media under Section 21 of the Financial Services and Markets Act 2000.

Consultation questions

- 2.6 In summary, we are asking for views on the following questions:
 - Q1:** Do you agree with our approach to the prominence of required information in various social media settings? Please explain your answer, highlighting any other issues that would be useful to consider.
 - Q2:** Do you have any comments on our proposed expectations under the Consumer Duty for communications on social media? Please highlight any other issues it would be useful to consider.
 - Q3:** Do you agree with our approach to affiliate marketing? Please explain your answer, highlighting any other issues that would be useful to consider.

- Q4:** Do you have any comments on the use of shared social media profiles between UK and non-UK entities? Please highlight any issues that would be useful to consider.
- Q5:** Do you have any comments on the proposed guidance we have set out on the financial promotion perimeter? Please highlight any other issues that would be useful to consider.
- Q6:** Do you have any additional comments on our proposed guidance or think there are any other topics we should consider?

Annex 1 Draft guidance on financial promotions on social media

Chapter 1: Financial promotions

What is a financial promotion?

1. Under Section 21 ('S21') of the Financial Services and Markets Act 2000 ('FSMA'), a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity. This guidance will refer only to engaging in investment activity, but the principles are also relevant to invitations/inducements to engage in claims management activity. For these purposes, 'communicate' includes causing a communication to be made. This is known as the financial promotion restriction. This financial promotion restriction does not apply if:
 - the promotion is communicated by an authorised person;
 - the content of the promotion is approved by an authorised person; or
 - an exemption in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ('FPO') applies.
2. Cryptoasset firms registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('MLRs') should familiarise themselves with how they can communicate cryptoasset promotions under the regime, as summarised in [PS23/6](#).
3. S21 has a broad territorial application. It applies even where a communication originates outside the UK if it is capable of having an effect in the UK. A breach of S21 is a criminal offence which is punishable by up to **two years imprisonment, the imposition of an unlimited fine, or both**.
4. An illegal financial promotion is one communicated in breach of S21. For example, an (unauthorised) influencer communicating a financial promotion without approval from an authorised person and where no FPO exemption applies. We provide extensive guidance on the scope of the financial promotion regime in [Chapter 8 of the Perimeter Guidance Manual \(PERG\)](#).
5. A non-compliant financial promotion is one that has been lawfully communicated or approved by an authorised person but breaches our financial promotion rules. For

example, an authorised person communicating a financial promotion which has an obscured risk warning that breaches our rules on prominence.

6. We remind firms that any form of communication (including through social media) is capable of being a financial promotion if it includes an invitation or inducement to engage in investment activity. This will include communications through 'private' or invitation only social media channels like chatrooms such as Discord and Telegram.
7. A communication must be made 'in the course of business' ('the business test') to be a financial promotion. The business test requires a commercial interest on the part of the communicator. It is intended to exclude genuine non-business communications such as friends talking in the pub. [PERG 8.5](#) gives more detail on this.
8. The business test can capture communications even where the communicator is not making the communication in the context of a direct commercial arrangement. We provide additional guidance on the application of the business test in Chapter 3 of this guidance.

Our financial promotion rules

9. Authorised persons must comply with our rules when communicating or approving financial promotions. While the detail of these rules differs between sectors, as outlined in paragraph 13, financial promotions are generally subject to the requirement to be fair, clear and not misleading. Promotions that fail to meet this standard can cause consumers to buy products and engage in services that aren't suitable for their needs, leading to poor outcomes for them. These principles apply to promotions relating to claims management business in the same way as other financial products or services.
10. The Consumer Duty requires firms to build upon the core requirement for communications to be fair, clear and not misleading. Principle 12 and PRIN 2A, including the cross-cutting rules, will apply to a firm communicating or approving financial promotions which are likely to be received by retail customers. Where the Duty applies, firms must consider how their communications deliver good outcomes for retail customers and promote consumer understanding. Firms should review and consider how our [non-Handbook guidance on the Consumer Duty \(FG22/5\)](#) applies to their social media promotions. We also provide some additional suggestions in Chapter 2 of this guidance.
11. Communications through social media can reach a wide audience very rapidly. When designing their financial promotions, firms should carefully consider the way material on social media is distributed. For example, firms should ensure that their original communication would remain fair, clear and not misleading, even if it ends up in front of a non-intended recipient through third party sharing.
12. Firms are reminded that image advertising, only consisting of the name of the firm, a logo or other images associated with the firm, a contact point and a reference to the types of products or services provided by the firm or to its fees or commissions, are likely to be exempt from many of our financial promotion rules (and may not even amount to a financial promotion at all). However, the image advertising exemption from our rules does not extend to all sector-specific sourcebooks so firms should familiarise themselves with the relevant rules for their business.

13. Firms should be aware that different sectors have specific financial promotion rules. Firms communicating or approving financial promotions should be aware of the rules in the sourcebooks that are relevant to their business:
 - [Conduct of Business Sourcebook COBS 4 & COBS 22](#)
 - [Banking: Conduct of Business sourcebook BCOBS 2](#)
 - [Claims Management: Conduct of Business Sourcebook CMCOB 3](#)
 - [Consumer Credit sourcebook CONC 3](#)
 - [Funeral Plan: Conduct of Business sourcebook FPCOB 4](#)
 - [Insurance: Conduct of Business sourcebook ICOBS 2](#)
 - [Mortgages and Home Finance: Conduct of Business sourcebook MCOB 3A](#).
14. Cryptoasset firms should also be aware that we have published final rules ([PS23/6](#)) and proposed guidance ([GC23/1](#)) on how the financial promotion rules apply to them and what they should be considering when communicating financial promotions. Cryptoasset firms should familiarise themselves with both PS23/6 and GC 23/1 before communicating financial promotions on social media.
15. Firms approving financial promotions should familiarise themselves with our [guidance on approving financial promotions](#).
16. We expect firms to take account of the latest version of the [Web Content Accessibility Guidelines \(WCAG\)](#) accessibility standard when designing digital financial promotions, in particular in considering how any required risk warning will be displayed.

Standalone compliance

17. We expect financial promotions to be standalone compliant. This means that each stage of a financial promotion must comply with our rules.
18. However, promotions of complex financial products might require additional supporting information or disclosure to enable consumer understanding. In this case, firms may include supporting hyperlinks or separate pathways for a consumer to access this. Links to additional information should be clearly and prominently brought to the consumer's attention and should give consumers enough information to make an informed decision. We provide additional guidance on enhancing the clarity of communications, including through layering, in [FG22/5](#).
19. When assessing the compliance of a promotion that is viewed via a dynamic medium (such as Instagram stories), we assess the promotion as a whole and take a proportionate view based on the number of frames and where information about risk is displayed within the promotion. To meet our expectations regarding prominence, firms should aim to display the key information about risk upon a consumer's first interaction with the promotion and the warning should be displayed for a sustained period. Firms should familiarise themselves with our [guidance on prominence](#), which provides examples of good and poor practice on the prominence of required information.

Compliance issues on social media

20. The requirement to be fair, clear and not misleading means there should be balance in how financial products and services are promoted, so that consumers are informed

not only of the potential benefits but also of the relevant risks. Firms should consider the appropriateness of character-limited media as a means of promoting complex features of financial products or services. It may be possible to signpost a product or service with a link to more comprehensive information, provided that the promotion remains standalone compliant. Alternatively, it may be more appropriate to use 'image advertising' to promote a firm more generally. Figure 1 provides an example of a non-compliant promotion that lacks balance and Figure 2 shows a promotion that is fair, clear and not misleading.

Figure 1: A non-compliant promotion, lacking balance



Figure 2: A fair, clear and not misleading promotion



21. We've seen examples of firms lacking proper systems and controls to manage how their promotions are used on social media. We remind firms of our guidance in Senior Management Arrangements, Systems and Controls (SYSC), which states that a firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business. Having regard to Principle 3 (a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems), firms that use influencers to communicate financial promotions on social media should take appropriate steps to ensure any such influencer understands the product or service they are promoting and is aware of the relevant rules.
22. Firms should consider whether certain products are suitable for promotion on social media. For example, CONC 3.9.2G provides guidance that in light of the complexity

of debt counselling it is unlikely that media which provide restricted space for messages would be a suitable means of communicating financial promotions about debt solutions.

23. Given this guidance, firms should consider whether social media is appropriate for promotions for debt counselling services, and whether the promotion of debt counselling services on social media is compatible with prioritising good outcomes for consumers. We have seen promotions for debt counselling services on social media which lack balance and make little reference to the relevant risks or costs. Figure 3 provides an example of a non-compliant promotion of debt counselling services. Firms should be aware that Tik Tok prohibits advertising of some products and services, including debt assistance programs. Figure 4 shows a promotion which is compliant with CONC 3.1.7, signposting consumers to debt counselling services.

Figure 3: A non-compliant debt counselling promotion that does not reflect the complexity of the service

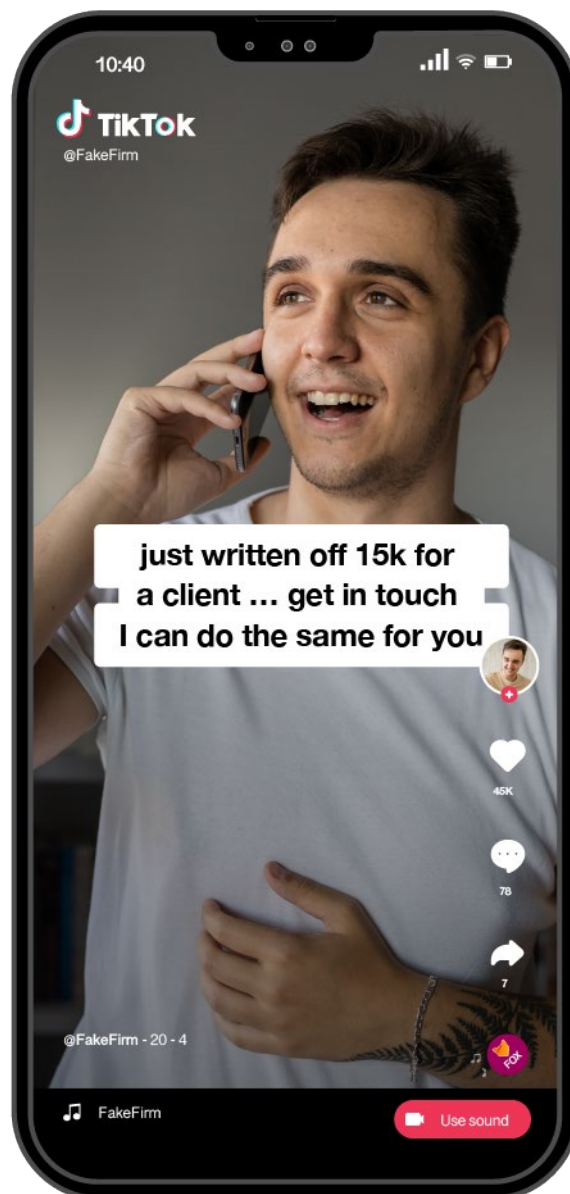
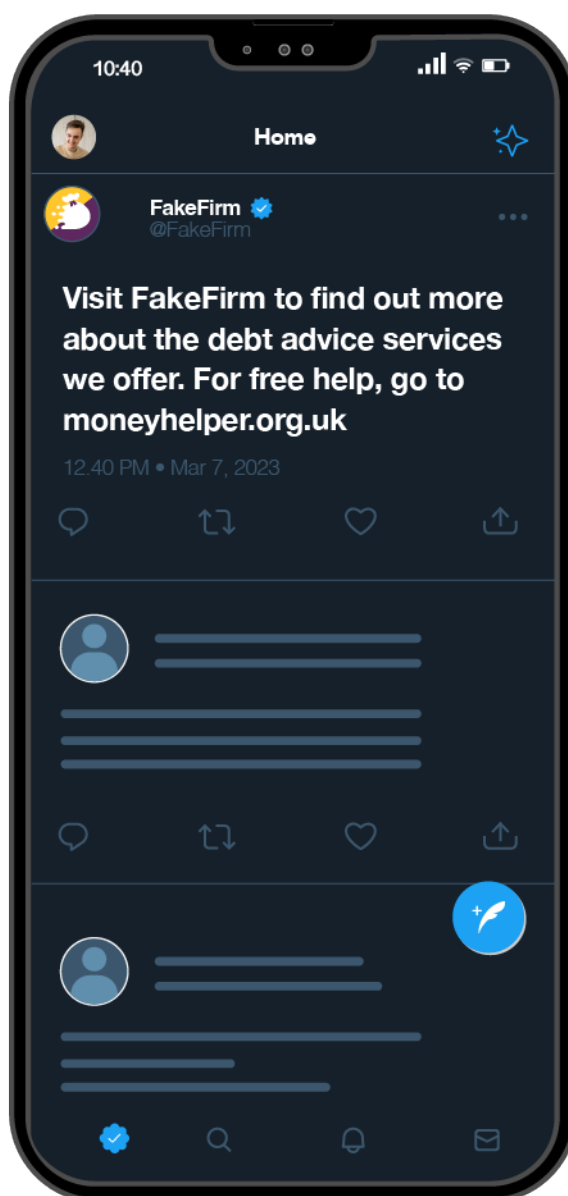


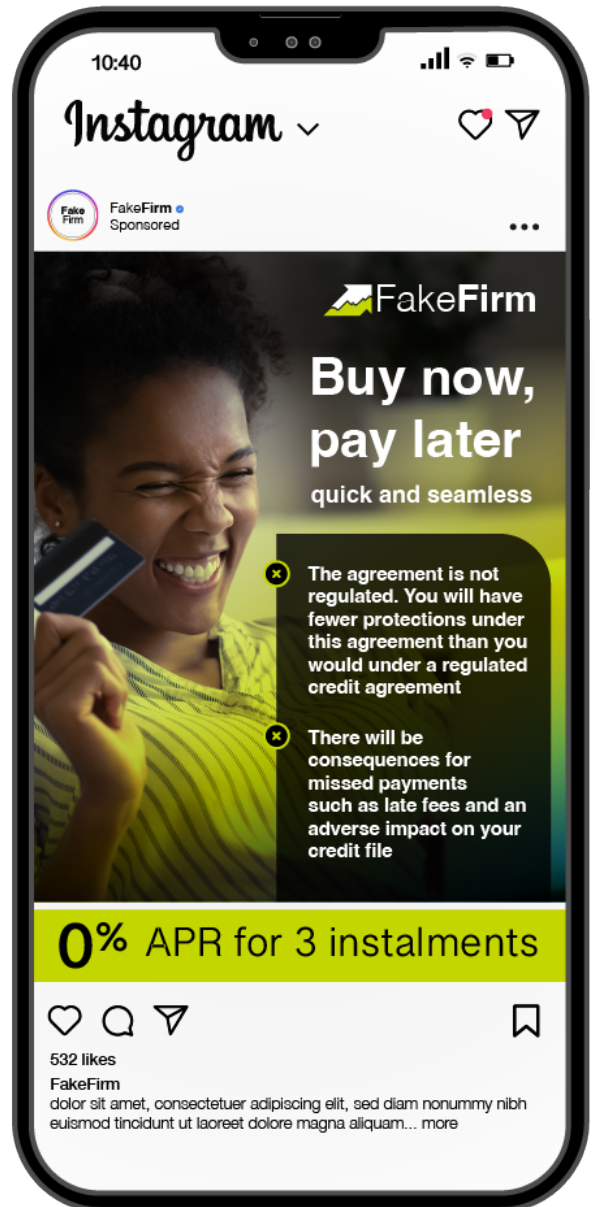
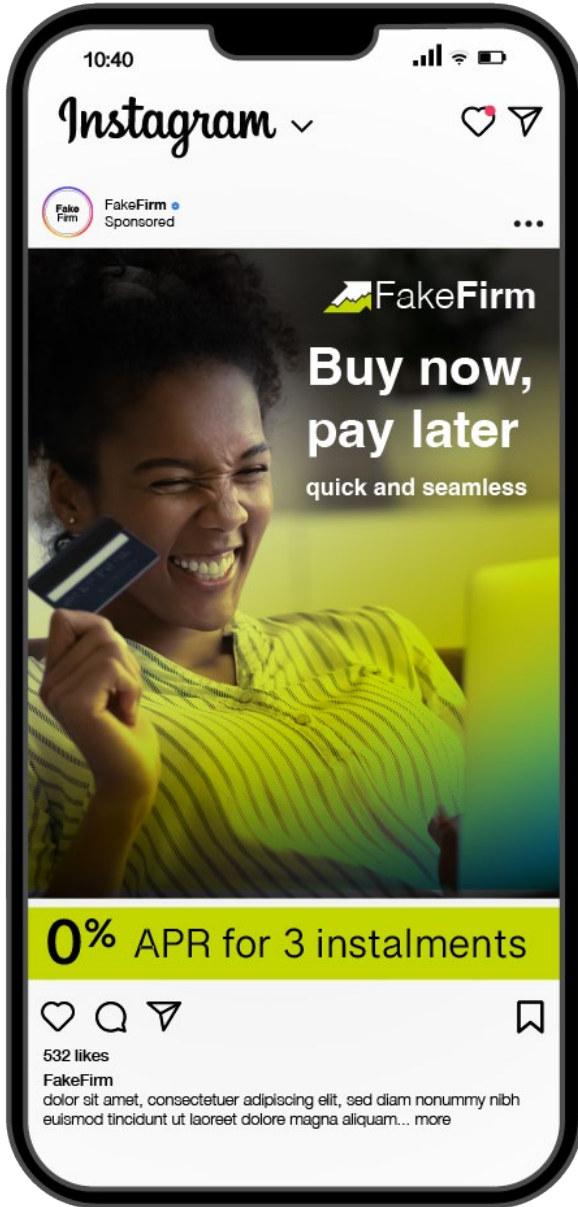
Figure 4: A debt counselling promotion that signposts consumers to a more appropriate channel for more information



24. We have also seen poor quality promotions of deferred payment credit, also known as buy-now-pay-later (BNPL) products. Firms should be aware of the [Dear CEO letter](#) we sent out to firms expressing our concerns with the promotion of BNPL products. Firms promoting BNPL products should make sure they include the relevant risks for these products including that these relate to unregulated credit agreements, the risks of taking on debt that consumers cannot afford to repay, the consequences of missed payments and information about when charges become payable. Figure 5 provides an example of a non-compliant promotion of BNPL, and Figure 6 shows a compliant promotion with sufficient presentation of the relevant risks.

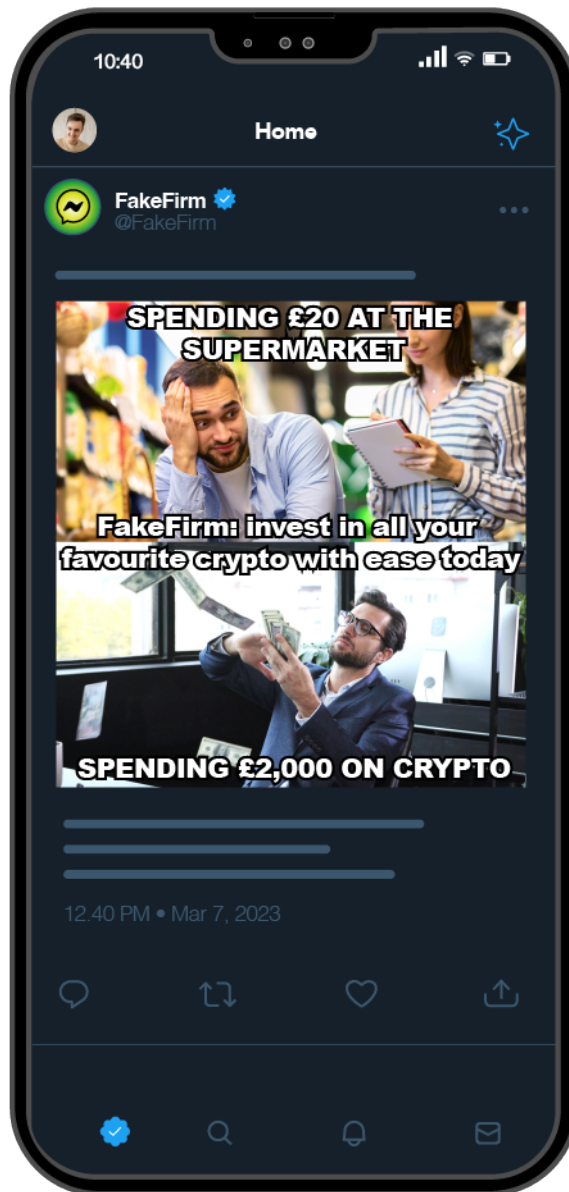
Figure 5: A non-compliant promotion for unregulated credit, that does not outline the relevant risks

Figure 6: A fair, clear and not misleading promotion for unregulated credit, outlining the relevant risks



25. Firms are reminded that any type of communication is capable of being a financial promotion and subject to S21. We have seen memes and other similar communications circulated on social media with users often not realising they are subject to our rules. The use of memes in promotions is particularly prevalent in the cryptoasset sector. Figure 7 is an example of a cryptoasset meme that would be subject to the financial promotion regime.

Figure 7: A meme that constitutes a non-compliant cryptoasset promotion



26. We have also seen harm occurring where UK consumers click a link on a financial promotion and are directed to an unauthorised non-UK entity, but still believe they are engaging with an FCA regulated firm. Firms should consider using mitigating strategies to ensure that consumers are not unknowingly directed to non-UK entities

for services where they will not benefit from the protection of UK regulation. Firms may wish to adopt one of the following strategies:

- Separate their social media profiles to have a solely UK-focused profile;
- Adopt geo location techniques to redirect consumers automatically to the UK firm website or mobile app

27. Firms operating social media profiles that are shared between UK and unauthorised non-UK entities should be aware that the financial promotion restriction is applicable to all communications capable of having an effect in the UK. A financial promotion communicated by the non-UK entity that can be viewed by UK consumers must comply with all relevant UK requirements.

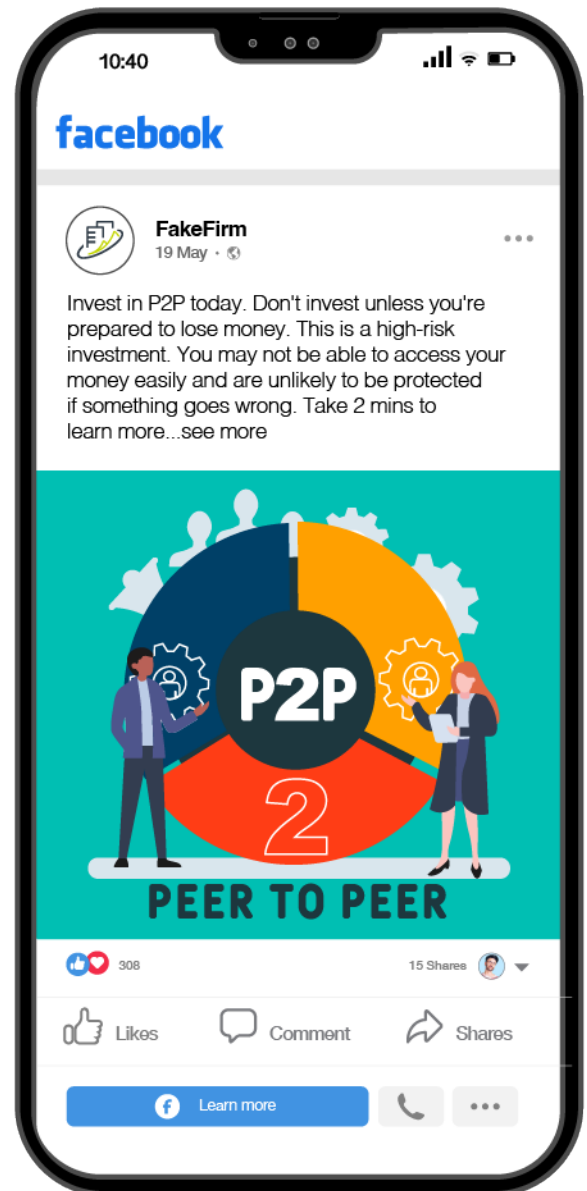
Risk warnings

28. We remind firms that there are requirements to include risk warnings or other statements in promotions for certain products/services. These rules are media-neutral, so apply to social media as they would any other channel. We expect risk warnings on social media to be clear, prominent and without a design feature that reduces their visibility or prominence. Firms should be aware that specific sectors have more prescriptive risk warning requirements and firms should familiarise themselves with these rules before communicating or approving financial promotions on social media.
29. Firms should be mindful of the various design features of different social media platforms and ensure required risk warnings or important information are not obscured.
30. Our behavioural research ([OP/26](#)) shows that risk warnings are more effective when viewed at the time of or just before the communication of the promotion, as well as when they are prominent and stand out from their surroundings. For this reason, evidence suggests that it may limit consumer understanding to display a risk warning which is less prominent than the headline, or which is presented at a later stage.
31. We have also seen promotions where the risk warning is obscured by truncated text. Truncated text occurs when part of the text in the promotion is obscured by an ellipsis (such as 'see more...'), which must be clicked on to access the rest of the text. For example, this feature appears on Facebook posts. Risk warnings should be clear to consumers on the face of the promotion. Firms should ensure on platforms that use truncated text, the risk warning is clear and doesn't require click-through to access. Figure 8 shows a promotion in which the risk warning is truncated, and Figure 9 shows a promotion in which the risk warning is clear and prominent.
32. If it is not possible to display the full risk warning without some of the text being cut off by truncation, firms should ensure as much of the warning as possible is shown. Where our rules allow shortened risk warnings, firms should ensure the shortened clause is clearly visible, and the full warning is included after click-through.

Figure 8: A non-compliant promotion for P2P investing – the risk warning is cut off by the features of the social media platform



Figure 9: A fair, clear and not misleading P2P promotion ¹



¹ 'Take 2 mins to learn more' is not required if its inclusion is not possible (see COBS 4.12A.11 R (3)(b))

33. Another example of poor practice is promotions on platforms such as TikTok which contain all the benefits within their noticeable video content, while the relevant risk warnings are in the caption below. We would consider promotions like this to lack balance and they are therefore likely to be unfair and misleading. Firms should ensure risk warnings have sufficient prominence, reflecting the relevant Handbook rules. Figure 10 shows a promotion in which the risk warning is only in the caption and is also obscured by the caption's truncation feature. Figure 11 shows a promotion in which the risk warning is clear and prominent within the content of the video.

Figure 10: A non-compliant promotion – the risk warning is not prominently displayed

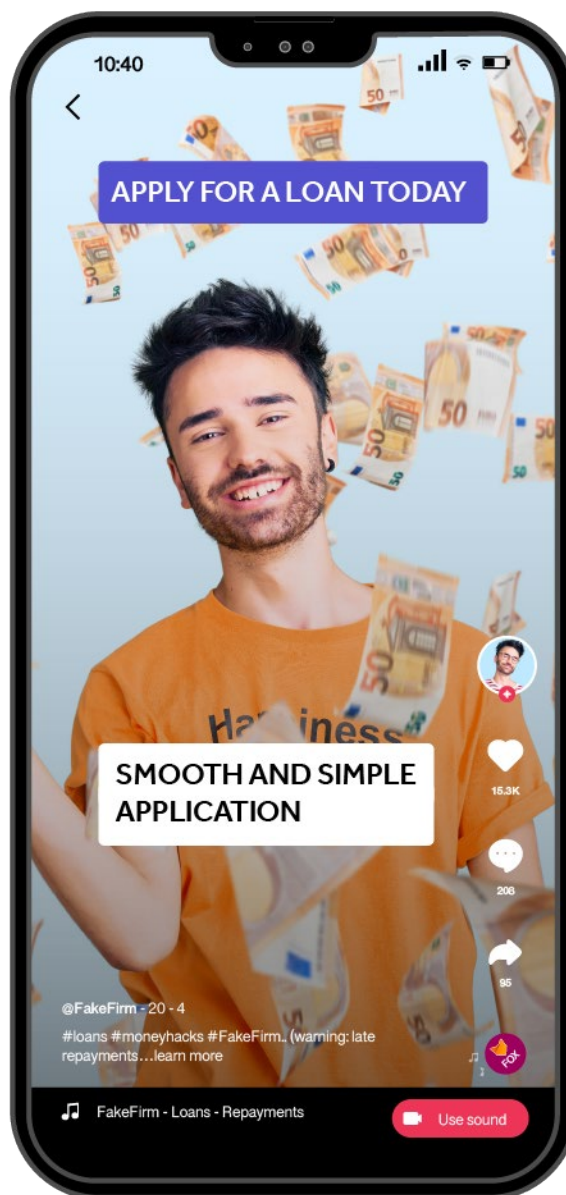


Figure 11: A fair, clear and not misleading promotion – the risk warning is prominently displayed and not obscured



34. To make our expectations on risk warning prominence clear to firms, below are some features of what we consider to be a prominent risk warning across various social media channels. Firms may find it helpful to familiarise themselves with more detailed [case studies](#) of our expectations when communicating financial promotions on social media.

Table 1: Application of prominence standards to social media channels

	Features of a prominent risk warning	Does not comply with our expectations
Stories and carousel posts (eg Instagram posts with multiple pictures)	The risk warning is clear and prominent, on every slide of the content. Consumers should see the risk warning as soon as they view the financial promotion.	The risk warning is significantly smaller than the other written content and is found in the last slide of the financial promotion.
Livestreams (including gaming streams such as Twitch)	The risk warning is displayed clearly and prominently on the screen for the duration of that part of the stream involving the communication of the financial promotion.	The streamer makes no mention of the risk warning while communicating the financial promotion.
Character-limited media (eg Twitter)	The risk warning is displayed clearly within the text. Where necessary, prescribed shortened risk warnings have been used.	The risk warning has been truncated in such a way that it ceases to comply with applicable rules.
Short-form video content (eg TikTok)	The risk warning is clearly and prominently displayed across the screen throughout the financial promotion.	The risk warning is found within the caption of the video, or the benefits are given disproportionate prominence (eg through use of flashing text or the dialogue in the video).
Long-form video content (eg YouTube)	The risk warning is displayed clearly and prominently on the screen for the duration of the video involving the communication of the financial promotion.	The risk warning is displayed at the end of the video rather than when the financial promotion is being communicated.

High-risk investments (HRIs)

35. Firms should be aware that HRIs are subject to specific promotion restrictions. These restrictions vary depending on the investment and are set out in COBS 4.12A, COBS 4.12B and COBS 22. Firms using social media to promote investment products should familiarise themselves with the relevant marketing restrictions for the products they're promoting.

36. In particular, firms should be aware that certain investments are banned from being mass marketed to retail investors, such as non-mainstream pooled investments and speculative illiquid securities (eg speculative 'mini bonds'). Firms should not be promoting these investments on social media as there is no guarantee that these promotions will not be viewed by ordinary retail investors.
37. Some high-risk investments including crowdfunding, cryptoassets and contracts for differences (CFDs) can be mass marketed to retail investors but are subject to certain restrictions. Firms must ensure that promotions for these investments comply with the relevant restrictions, such as the requirements around risk warnings and the bans on incentives to invest.

Chapter 2: Firms & marketing strategies

The Consumer Duty

38. The Consumer Duty comes into force on 31 July 2023 for products and services that are on sale to new customers or available for renewal to existing customers. It will apply to closed book products from 31 July 2024. We remind firms that the new standards under Principle 12 and PRIN 2A, including the cross-cutting rules, apply to communications and financial promotions on social media. This applies whether the firm has a direct relationship with the customer or not, including where a firm approves a financial promotion.
39. Firms advertising using social media must consider how their marketing strategies align with acting to deliver good outcomes for retail customers. All the cross-cutting rules will be relevant to social media promotions, and firms should take into account how promotions that do not support consumer understanding may cause consumers to buy products that are unsuitable for them, leading to foreseeable harm.
40. Our basic expectations under Principle 7, requiring all communications (including financial promotions) to be clear, fair and not misleading, remain but compliance with these by themselves will not be sufficient to ensure compliance with the Duty. Firms' communications should support and enable informed decision-making, equipping consumers with the right information in a timely way. Firms must also consider how they tailor communications to account, for example, for the likely audience on social media and the features of different platforms. [FG22/5](#) outlines examples of good and poor practice under the Duty that firms can refer to.
41. We have seen consumers on social media be repeatedly bombarded by financial promotions from the same service or firm. Vulnerable consumers may be more susceptible on social media to the type of behavioural biases that excessive targeting tries to exploit. We do not think this type of practice is acting in good faith, and firms should consider whether their marketing strategies are consistent with enabling good consumer decision making.
42. In some cases, social media will not be an appropriate channel for advertising. All firms should consider how suitable social media is for the promotion of their product or service. This will involve considering factors such as the likely audience on social media and the complexity of a product or service. Firms may want to use social

media to signpost potential customers towards other channels where more comprehensive information can be provided.

43. Firms should regularly test, monitor and adapt communications to support good consumer outcomes. This will be especially relevant as social media evolves and new features emerge that may impact consumer understanding.
44. We have published behavioural research that firms may find helpful to review when considering how to aid consumer understanding, including [OP17](#), [OP23](#), and [research notes on high-risk investments](#). [FG22/5](#) also contains information on how to aid consumer understanding.
45. Firms should also reflect on the relevance of our sector-specific reviews to their social media promotion strategy. For example, consumer finance firms are reminded of the marketing expectations we outlined in our review of [relending by high-cost lenders](#).

Recipients sharing or forwarding communications

46. In the case of third party sharing such as retweeting, we remind firms that any breaches of our rules in the original communication are still the responsibility of the originating firm, and not the sharer. Sharing or forwarding by a third party does not eliminate any original non-compliance.
47. There is a risk that sharing or forwarding creates the non-compliance. For example, a communication that is intended for a professional investor is viewed by a retail customer. Firms are reminded that it is difficult to guard against communications being distributed beyond their target market on social media. For that reason, firms should consider whether social media is an appropriate channel to promote products or services with a restricted target market.
48. If a firm shares a customer's social media post, whether that sharing amounts to the communication of a financial promotion will depend on the content and context of the social media post. This will be determined by whether it amounts to an invitation or inducement to engage in investment or claims management activity. The firm is responsible for compliance if it shares the post, even though the firm did not generate the original content of the communication. Firms may wish to review our existing guidance on communicating and its relevance to financial promotions in [PERG 8.6](#).

Unsolicited promotions

49. We remind firms that are considering sending marketing through electronic media that there are specific legal requirements that they must comply with when doing so. Firms should be aware of the Privacy and Electronic Communications Regulations 2003 (PECR) and the Information Commissioner's Office [Direct Marketing guidance](#).
50. Social media is often used for making unsolicited promotions. For such promotions and 'cold calling' (unsolicited real-time promotions), we remind firms of our rules in COBS 4.8 (cold calls and other promotions that are not in writing), MCOB 3A.3.5 (prohibition on cold calls of qualifying credit, a home reversion plan or a regulated sale and rent back agreement), CONC 3.10 (financial promotions not in writing), and FPCOB 4.2 (funeral plans). A promotion by a tweet (for example) is not a real-time

promotion within the meaning set out in the FPO. However, firms may wish to follow up promotions in social media with real-time promotions. In this context, our view is that being a 'follower' of a firm on Twitter or 'liking' a firm's Facebook page does not in itself constitute 'an established existing client relationship' for the purposes of COBS 4.8.2R (1).

51. Whether a financial promotion is real or non-real time has implications for the financial promotion rules that will apply. We remind firms that a financial promotion is likely to be non-real time if it is made or directed at more than one recipient in identical terms, creates a record which is available to the recipient at a later time, and is made by way of a system which in the normal course does not enable or require the recipient to respond immediately. This means channels like live-streams or gaming streams are likely to be considered a non-real time promotion and be subject to the full scope of our financial promotion rules.
52. We note that in May 2023 the Government announced their intention to extend the current bans on cold calling for pensions and claims management firms to cover all consumer financial services and products.

Approval and record-keeping

53. We remind firms of their obligations to have an adequate system in place to sign off digital media communications. This sign-off should be by a person of appropriate competence and seniority within the organisation².
54. Firms should also keep adequate records of any relevant communications³. As well as helping to protect consumers, these records enable the firm to deal effectively with any subsequent claims or complaints. Firms should not rely on digital media channels to maintain records, as they will not have control over this. Social media platforms may refresh content from time to time, with the consequent deletion of older material.
55. The current sign-off and record-keeping provisions in our Handbook apply to digital (including specifically social) media in the same way as to print, broadcast and outdoor media. Beyond that, these issues are a question of risk management by the firm. Firms should consider the provisions in SYSC. Risk management encompasses all relevant risks, including legal and reputational risk, as well as regulatory risk.

Affiliate marketing

56. Affiliate marketing has become a common part of firms' marketing strategies. This is where a firm makes an agreement to pay commission to a person (who could be an unauthorised person) based on business generated from referrals. Firms should take proactive responsibility for how their affiliate marketers communicate financial promotions.
57. Where an affiliate marketer is communicating a financial promotion containing a firm's referral link without the firm having developed, created or controlled the content of that communication, we may consider that the firm is causing the

² SYSC 3 and 4 generally, but particularly SYSC 3.1.6R, 3.2.6R, 4.1.1R and 4.3.1R; see also COBS 4.10, and ICOBS 2.2.3R

³ COBS 4.11; MCOB 3A.9; ICOBS 2.4

communication to be made. In such a case, the firm would be liable for the compliance of that financial promotion. If the affiliate is not an authorised person, they will also need to consider how they are complying with S21, and firms should ensure they are not engaging affiliates to promote its products or services in a manner that would breach S21.

58. Firms should consider how they can monitor the marketing actions of their affiliate partners to ensure good customer outcomes, and how many partnerships the firm can viably maintain before adequate monitoring is no longer possible.

Chapter 3: Influencers and social media platforms

What is an influencer?

59. We have seen harm occurring from influencers communicating financial promotions both in the authorised space (where promotions have been approved by an authorised person) and unauthorised space (where promotions have been communicated illegally). The influencer market is varied; some influencers have direct relationships with firms and others promote on their own initiative. We have broken down the influencer market and the commercial incentives behind each group with a view to offering guidance on how the financial promotion restriction might apply to the different models in the market.
60. First, there are the archetypal celebrity influencers who are not associated with financial services but have large follower groups. These influencers are not financial experts but may be compensated for using their digital presence to promote companies that have a business interest in persuading people to make certain financial decisions.
61. Second, there are financial influencers known as 'finfluencers' who may not be authorised by the FCA to provide financial advice yet share their opinions and recommendations on digital platforms. Consumers exhibit high levels of trust in finfluencers, but their advice can often be misleading.
62. Third, there are forums and discussion groups on financial topics that function as spaces in which individuals exchange information and share knowledge. These forums can be both public (such as Reddit) or private (such as Telegram). Sometimes these groups are set up to encourage participants to register for a specific course or are used by participants to encourage others to engage in personal chats outside the platform where they sell financial advice or financial products.
63. All segments of the influencer market are capable of communicating a financial promotion, and whether a communication falls within the scope of S21 is not based on the size of an influencer's following.
64. The FCA has partnered with the Advertising Standards Authority (ASA) to create an infographic, which is designed to help influencers when they are approached with the opportunity to promote a financial product or service. This infographic encourages influencers to consider whether they are the right person to promote a product or service as well as highlighting when they may be at risk of communicating financial promotions illegally.

Figure 12: FCA – ASA infographic to help influencers who have the opportunity to promote a financial product

Fin-fluencing? Get it right.

Got an opportunity to promote a financial product to your followers?

1 Did you know that the Financial Conduct Authority (FCA) polices the promotion of MOST financial products and services? You could be on the wrong side of the law if you promote without cluing yourself up first.

Could you be providing financial product advice or arranging for your followers to deal in a financial product? Making an unlawful financial promotion is a criminal offence that carries a maximum sentence of 2 years imprisonment and an unlimited fine.

2

3 Are you aware that the Advertising Standards Authority (ASA) regulates the promotion of other financial products, including cryptocurrency, fan tokens and NFTs, and ensures that all ads are responsible? If your post breaks the rules, the ASA will take action.

Are your posts responsible?

4 Are you the right person to be promoting financial services and products? You have an obligation to your followers and they rely on what you post. Don't assume that they fully understand what you are promoting or that it's in their best interests to follow your guidance.

5 Do you know that the FCA does not currently regulate firms offering direct investments in cryptocurrency or NFTs? If anything goes wrong with these products your followers could lose all their money. The FCA will soon start policing the promotion of cryptocurrencies too – watch this space.

6 Is the company whose services you are promoting legitimate? Investment scams are on the rise and you may be unknowingly introducing your followers to criminals. If you are unsure, search 'ScamSmart'.

7 Is it clear which of your posts are ads? You must label your content as an ad upfront if you get any form of payment (not just financial) from the brand, including affiliate links. Make sure you're working with a brand that knows the rules.

Get it right – The checklist for responsible financial promotions

The FCA and ASA monitor content online and will take action against those not following the rules. This checklist will help you get it right.

- Are you providing advice about a financial product?
- Are you authorised by the FCA or has your post been approved by an FCA authorised person? Seek legal advice if you are unsure.
- Have you or your agent done your due diligence?
- Does your post follow the ASA rules? Is it legal, truthful, responsible and correctly labelled as an ad?
- Promoting crypto? You must make it clear to your followers:
 - that cryptocurrency is unregulated;
 - profits may be subject to tax; and
 - the value of any investment could fall.
- Don't suggest to your followers that cryptoassets would be an easy investment decision or create any sense of urgency or FOMO.

If in doubt, don't promote.

Disclaimer - This publication provides a summary of basic information, it does not cover all of the relevant law and is not a substitute for professional legal advice.

ASA **FCA** FINANCIAL CONDUCT AUTHORITY

Other policies to be aware of

65. Firms and influencers should be aware of wider regulation on advertising online set out by the ASA. The ASA recently published an update on their expectations of influencer advertising. If an influencer receives payment or any other incentive from a brand, or they are otherwise personally or commercially connected to the brand, any content featuring or referring to the brand will need to be obviously identifiable as advertising. More broadly, firms and influencers should make sure they have familiarised themselves with the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing (the CAP code).

Social media platforms

66. The Government's Online Safety Bill (OSB), once passed, will place duties on search engines and social media sites to put in place proportionate systems and processes to mitigate the risks to users posed by the presence and dissemination of illegal content on their sites, including illegal financial promotions. This new regime will be overseen by Ofcom who we have worked closely with to create a shared understanding of how platforms' obligations under the OSB will interact with financial promotion legislation.
67. Firms and influencers using social media to communicate financial promotions should be aware of social media platforms' own policies relating to advertising on their platforms. There may be additional requirements or restrictions beyond what is set out in this guidance. Firms and influencers should make sure to check a social media platform's own policy before using it to promote.
68. Online platforms need to consider how the financial promotion regime applies to them and ensure that they do not host illegal content. Platforms should consider whether their sites are suitable for promotions of certain high-risk products given their complexity. For example, some platforms have banned the promotion of binary options or other similar financial products.

Firms and their responsibilities as approvers of financial promotions

69. Unauthorised influencers who are communicating financial promotions without S21 approval from an authorised person are likely to be communicating an illegal financial promotion unless the promotion falls within an exemption under the FPO.
70. Firms approving the financial promotions of influencers should pay particular consideration to the influencer's audience demographics and whether they are likely to have an audience demonstrating characteristics of vulnerability. For example, it would be inappropriate for investment firms to work with influencers whose content centres around tips on how to quickly get out of debt, without regard for the nature of the influencer's audience.
71. Firms that approve investment-related financial promotions (including for HRIs) are reminded that from February 2023, strengthened requirements (in COBS 4.10) apply to such approvals. Under the new ongoing monitoring requirement, firms are required to play an active role in ensuring approved promotions remain compliant for their lifetime. In support of this requirement, they are also required to obtain

attestations of 'no material change' for the approved promotion every 3 months. This was intended to place greater responsibility on firms in their role as an approver.

72. Firms approving the communication of influencers' investment-related promotions should ensure they are playing an active role in ensuring the promotion remains compliant for its lifetime. They should also be mindful of their choice of influencer when communicating financial promotions. We have observed firms using influencers that may not be appropriate for the promotion of complex products such as CFDs. Firms should ensure the influencer understands the products they are promoting and how to be compliant in their promotions on social media.

'In the course of business'

73. We have seen cases of influencers communicating financial promotions without realising they fall within the perimeter of S21. This is because often firms and influencers assume there must be direct compensation for an influencer's post to be subject to the financial promotion restriction. We have also seen examples of unauthorised persons communicating financial promotions in chatrooms without realising that any underlying commercial interest could mean the promotion is subject to the S21 restriction.
74. We have seen financial promotions be communicated on chatrooms such as Reddit and Telegram, often using memes to hype up specific investments. Users of chatrooms or forums should be aware that financial promotions on these channels will still be subject to the financial promotion restriction. This applies to both public and invitation only platforms.
75. S21 provides that a person must not communicate an invitation or inducement to engage in investment (or claims management) activity 'in the course of business'. This requires a commercial interest on the part of the communicator. This does not necessarily have to be a direct interest and is intended to capture any level of commerciality.
76. Below, we have set out some examples where influencers and unauthorised persons communicating financial promotions would, in our view, likely be acting 'in the course of business' within the meaning of S21. These scenarios purely look at the business test, but firms and unauthorised persons should consider all elements of S21 when considering whether communications are subject to the financial promotion restriction.

An influencer is directly compensated by a firm and issues posts encouraging followers to use the firm's services.

77. An influencer would likely be acting 'in the course of business' because they are employed or recruited to promote the services of the firm and therefore the requirement that there is 'a commercial interest' on the part of the influencer, as set out in [PERG 8.5.2G](#), would be satisfied.

An influencer is not currently employed by a firm but is promoting a firm's services in order to generate revenue from a relationship with the firm in the future.

78. An influencer would likely be acting 'in the course of business' because they have a commercial interest in promoting the firm's services as they are communicating in anticipation of future revenue from a relationship with the firm. As set out in [PERG 8.5.2G](#): (i) a person who is carrying on any business may satisfy the 'in the course of business' criterion if the promotion is in the course of business and (ii) the commercial interest does not have to be a direct interest.

An influencer is promoting the services of a firm on a social media platform in a bid to acquire more views and attention for their content. They are then directly compensated by the social media platform for the views they acquire.

79. An influencer would likely be acting 'in the course of business' because the promotion is aimed at acquiring more views, attention, and 'traffic' for which they will be directly compensated by the online platform, which would constitute a commercial interest.

An influencer is promoting the services of a firm but only in an attempt to acquire more followers and likes. They will then use the increased followers and likes to ask for a higher fee in future brand deals with firms.

80. An influencer would likely be acting 'in the course of business' because their promotion of the firm's services is to increase their followers or likes, improve their brand and use that improved brand to negotiate higher fees in future commercial deals. This constitutes a commercial interest. The interest does not need to be direct and therefore the 'future seeking' aspect of this scenario does not prevent it from being 'in the course of business.'

Person A is promoting chatroom B which they run in order to promote investment products. They have a commercial relationship with firm C who sells investment products.

81. Person A would likely be acting 'in the course of business' because there is a commercial interest on their part in promoting both chatroom B and firm C's products. Depending on the circumstances, the promotion of the chatroom alone may or may not be an invitation or inducement to engage in investment activity.

Person A is promoting investment products on a social media platform to lead people to a chatroom centred around investing that they run or are involved in running. They gain a monetary benefit from the success of the chatroom, for example by selling courses about investing.

82. Person A is likely to be acting 'in the course of business' because there is a commercial interest on their part to promote products to attract people towards a specialist investments chatroom they run or are involved in running. Depending on the circumstances, the promotion of the investment products in this example may or may not be an invitation or inducement to engage in investment activity.

An influencer promotes the services of a firm through an affiliate link. When a consumer clicks the link and purchases the product the influencer will be directly compensated for their purchase.

83. An influencer would likely be acting 'in the course of business' because they are promoting the firm's affiliate link and their services to receive direct compensation when the consumer clicks or purchases the product. Therefore, the requirement that there is 'a commercial interest' on the part of the influencer, as set out in PERG 8.5.2G, would be satisfied.

The regulatory regime

84. This guidance has been written based on the regulatory regime in place at the time of publication. It is reflective of the landscape at the time of writing and should be taken in this spirit rather than as exhaustive. Firms should consider this guidance alongside the relevant rules and legislation.