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Financial Conduct Authority
12 Endeavour Square London
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14 September 2023

By email: gc23-2@fca.org.uk

Dear FCA,

Financial Services Consumer Panel response to GC23/2: Financial promotions on social media

The Panel welcomes the FCA's consultation on guidance for financial promotions on social media. As mentioned within the consultation¹ document, poor quality financial promotions on social media can lead to significant consumer harm due to their wide reach, frequency and complex nature of financial services. The quality of financial promotions, the lack of prominence of associated risk warnings and the absence of a suitability check for those viewing and acting on such promotions have been longstanding concerns of the Panel, especially within the crypto space.

The Panel thanks the FCA for the opportunity to respond to this consultation and would like to make the following general points:

1. Financial promotions for sophisticated products should be limited to, and only targeted toward, professional investors. This will reduce the harms faced by consumers who may enter into an unsuitable investment after seeing a financial promotion on social media for a product they do not fully understand. The Panel believe that self-certification as a 'sophisticated' (the Panel has consistently expressed a preference for 'experienced'), or high net worth investor should not be permitted as a route to demonstrate suitability.
2. Financial promotions for crypto related products should be communicated in the appropriate mediums. Given the large volume information that needs to be shared with consumers, the Panel is not convinced that it is possible for financial promotions for crypto

¹ <https://www.fca.org.uk/publication/guidance-consultation/gc23-2.pdf>

related products to be communicated via social media. Social media adverts are by nature limited: in terms of the content they can include, the way in which content is displayed, the lack of equal prominence given to regulatory warnings and the time during which any content is viewed and read. We recommend the FCA make it clear within the guidance that social media promotions on crypto tokens are unlikely to comply with the guidance.

3. Purchases should be supported by tools such as cooling off periods in order to allow consumers additional time to digest the often-complex information that comes with financial services purchases.
4. The Panel would expect firms issuing financial promotions to do so in line with the principles under the Consumer Duty, especially Principle 7 to be 'clear, fair and not misleading'.

Please find our responses to the questions posed in Annex A, below.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

Annex A – Response to consultation 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.

The Panel broadly agrees with the FCA’s approach to the prominence of required information in various social media settings. The Panel agree with the FCA’s view that 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.

The Panel would however point out that the nature of social media promotions is often through short and snappy videos and would therefore question how suitable such promotions are for social media and whether it is genuinely possible to issue a social media promotion that is in line with the updated guidance.

The FCA has stated the following:

“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.”

The Panel would be interested in understanding more about what a “sustained period” looks like. If a promotion on social media is a 10 second video, does the FCA believe a 10 second warning (often accompanied by other text/graphics about the product) is enough to ensure consumer understanding of the risks associated with the product?

The Panel would suggest that warnings take longer to understand and digest than the headline, attention grabbing, content in social media. This may mean social media promotions may, by their very nature, be difficult to make compliant and fair. The Panel would encourage the FCA to consider consumer testing of warnings, this would help shape any further necessary guidance.

Q2. Do you have any comments on our proposed expectations under the Consumer Duty for communications on social media? Please highlight any other issues that would be useful to consider.

The Panel agree that the Consumer Duty should further strengthen FCA expectations of how firms communicate with retail customers. Whilst the Panel supports the FCA’s proposed guidance, it is important that the FCA get the right balance of information provided. Consumer risks should given at the very least, equal prominence to any performance-related

information. The Panel would urge the FCA to undertake Enforcement action against firms who breach the Consumer Duty.

Whilst the Duty may strengthen the FCA's expectation of firms, the Panel believes that increased awareness and knowledge of the Duty amongst consumers is critical. This will enhance consumer empowerment and will give them the knowledge they need in order to set reasonable expectations. An enhanced awareness of the Duty may also help consumers identify instances where firms have not adhered to the Duty and therefore act as an early intervention point to reduce further harm arising.

The Panel would encourage the FCA to undertake consumer testing to get feedback on such financial promotions. This would be able to help identify consumer issues and potential areas for harm that can then be used to update the proposed guidance.

Q3. Do you agree with our approach to affiliate marketing? Please explain your answer, highlighting any other issues that would be useful to consider.

The Panel agrees with the FCA's approach to affiliate marketing.

Q4. Do you have any comments on the use of shared social media profiles between UK and non-UK entities? Please highlight any other issues that would be useful to consider.

As mentioned within the consultation document, harm 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. The Panel would encourage the FCA to ensure firms are using the techniques set out within the guidance to mitigate this risk. The FCA could do this through the Supervision engagement with the firm.

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.

The Panel does not have any comments on the proposed guidance set out on the financial promotion perimeter. We would however stress the importance of firms communicating this effectively with any influencers they use to promote their products. As mentioned in the consultation document, influencers may communicate financial promotions without realising they fall within the financial promotions' perimeter. The Panel would encourage the FCA to work with the Advertising Standards Agency (ASA) to provide more tailored guidance to influencers.

Q6. Do you have any additional comments on our proposed guidance or think there are any other topics we should consider?

The Panel agrees that there needs to be guidance for financial promotions on social media. However, before considering any detailed guidance the FCA should consider whether promoting products of such novelty and complexity can reasonably be achieved on social media.

We are not convinced that: 1) all the necessary information can be properly and clearly displayed on social media nor consumed by social media users; 2) that social media targeting is accurate enough to ensure that promotions only reach the intended target groups and 3) that the viral nature of social media might not compromise any targeting.

The Panel would encourage the FCA to consider including in the guidance that social media promotions are highly unlikely to comply.

Alongside the above, the Panel would like to make the following general points:

1. Financial promotions for sophisticated products should be limited to, and only targeted toward, professional investors. This will reduce the harms faced by consumers who may enter into an unsuitable investment after seeing a financial promotion on social media for a product they do not fully understand. The Panel believe that self-certification as a 'sophisticated' (the Panel has consistently expressed a preference for 'experienced') or high net worth investor should not be permitted as a route to demonstrate suitability.
2. Financial promotions for crypto related products should be communicated in the appropriate mediums. Given the large volume of information that needs to be shared with consumers, the Panel is not convinced that it is possible for financial promotions for crypto related products to be made on social media. Social media adverts are by nature limited: in terms of the content they can include, the way in which content is displayed, the lack of equal prominence given to regulatory warnings and the time during which any content is viewed and read. We recommend the FCA make it clear within the guidance that social media promotions on crypto tokens are unlikely to comply with the guidance.
3. Purchases should be supported by tools such as cooling off periods in order to allow consumers additional time to digest the often-complex information that comes with financial services purchases.

4. The Panel would expect firms issuing financial promotions to do so in line with the principles under the Consumer Duty, especially Principle 7 to be 'clear, fair and not misleading'.