

Introducing a gateway for firms who approve financial promotions

Consultation Paper

CP22/27**

December 2022

How to respond

We are asking for comments on this Consultation Paper (CP) by **07 February 2023**.

You can send them to us using the form on our [website](#).

Or in writing to:

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Financial Conduct Authority
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1 Summary

Why we are consulting

- 1.1** In July 2020, the Treasury launched a consultation on a 'Regulatory Framework for the Approval of Financial Promotions.' Their subsequent consultation response confirmed the Treasury's intention to introduce a new regulatory gateway for all authorised firms under the Financial Services and Markets Act 2000 (FSMA), who wish to be able to approve financial promotions on behalf of unauthorised persons.
- 1.2** Currently, any authorised person can generally approve financial promotions for unauthorised firms. Once the gateway comes into effect, all firms that want to continue to be able to approve promotions will need to apply to the FCA for permission to do so (subject to certain exemptions). Firms that don't apply for, and obtain, permission to do so, will not be permitted to approve financial promotions once this legislation comes into force. The transitional arrangements for the coming into force of the gateway are described in paragraphs 3.12 to 3.15 below, and on page 11 of the Treasury's Consultation Response.
- 1.3** Legislation sets out how a financial promotion can be lawfully communicated in the UK. Generally, a person cannot communicate a financial promotion unless (i) they are an authorised firm, (ii) the content of the financial promotion has been approved by an authorised firm, or (iii) an exemption applies. Authorised firms communicating financial promotions, or approving financial promotions (as a 's21 approver'), are responsible for ensuring the promotion complies with FCA financial promotion rules. These include a requirement that the promotion is clear, fair and not misleading. This means authorised firms play an important role in ensuring the promotions they communicate and approve accurately represent the product or service promoted, particularly on matters that are relevant to helping consumers make informed decisions, like risk and return.
- 1.4** Historically, we have seen too many non-compliant promotions being approved and then communicated by unauthorised firms to retail consumers. Harm has occurred when these promotions have been relied on by consumers for whom the product or service being marketed is inappropriate. This harm has been most common in the consumer investments market. We've seen evidence of consumers investing in high-risk products that are not aligned with their risk tolerance, due to poor-quality approved financial promotions. In the worst cases, the performance of investments was markedly different from the claims made in promotions or the product failed, in each case leading to significant and unexpected losses for retail investors.
- 1.5** We recently introduced new rules and updated guidance to strengthen our financial promotions rules for high-risk investments. Some of these rules came into effect on 1 December 2022, and the rest will come into effect on 1 February 2023. This includes new requirements for s21 approvers that approve promotions subject to the COBS 4 rules in the FCA Handbook (primarily applying to approvals of promotions for investment business). These new measures aim to strengthen the role of a s21 approver in this area, including by introducing an explicit requirement that s21 approvers:

- take reasonable steps to monitor the continuing compliance of an approved promotion for as long as it is communicated
- do not approve promotions unless they have appropriate competence and expertise in the product or service to which the promotion relates.

However, it is difficult to effectively supervise measures like this when firms are not required to inform us that they approve financial promotions, or of the types of products and services in relation to which they are approving promotions.

1.6 On 20 July 2022, the Treasury introduced the Financial Services and Markets Bill (the Bill) to Parliament. This Bill includes provisions to amend the Financial Services and Markets Act 2000 ("FSMA") to create the regulatory gateway for s21 approvers. The Treasury envisioned that this gateway would lead to several improvements to the regulatory framework in this area, including enhanced oversight of the approval market by the FCA and an improved standard of approvals.

1.7 This consultation paper (CP) supports these proposed legislative changes. It sets out how we plan to operationalise the new gateway if the relevant parts of the legislation are made in broadly the way that they are drafted in the Bill. We are publishing this CP now so that we can be ready to open the gateway as soon as is reasonably possible once the legislation is made and relevant provisions commenced. However, the proposals in this CP remain subject to the passage of the Bill through Parliament and the Bill receiving Royal Assent. In the event that the relevant provisions of the Bill are not made law, or that Parliament makes them in different terms to those contained in the draft Bill, we shall reflect this in the way that we respond to this consultation. In publishing this CP, we are not anticipating, or presuming to anticipate, the outcome of the Bill's passage through Parliament or the Bill obtaining Royal Assent.

Scope of this consultation

1.8 The proposals in this CP will affect authorised firms who approve, or intend to approve, financial promotions for unauthorised firms. Based on the Treasury's Consultation Response, we do not anticipate that the proposals in this CP will generally be relevant to authorised firms approving the financial promotions of their appointed representatives (ARs) or of unauthorised firms within their corporate group. In the event that the Treasury does not allow such exemptions from the gateway process, we will need to consider how this affects the proposals in this CP.

1.9 This consultation will also be of interest to:

- consumers and consumer organisations
- authorised firms which communicate financial promotions
- firms operating in the cryptoasset market
- applicants and prospective applicants for authorisation which may wish to approve financial promotions for unauthorised firms
- relevant trade bodies
- unauthorised firms that get their financial promotions approved by authorised firms

What we want to change

- 1.10** The Treasury has signalled that it intends to create a transition period for existing authorised firms which approve financial promotions to enable them to continue doing so until their applications for permission to approve have been determined. This CP includes detail on the following aspects of the new gateway (based on our understanding of the way that these are expected to operate):
- an application period, to give existing authorised firms the opportunity to apply for permission to approve promotions
 - a transitional period following the application window, during which firms that have applied at the gateway will be able to continue approving financial promotions for unauthorised firms, until their applications have been determined
 - our plans for changes to the Financial Services Register, to reflect the impact of the new gateway
- 1.11** We are consulting on the following proposals to operationalise the new gateway:
- how we assess applicants at the gateway
 - the basis for our granting or refusal of applications
 - a bi-annual reporting requirement for firms that are given permission to approve financial promotions
 - a requirement that firms that are granted permission to approve financial promotions must notify us when they approve, or amend or withdraw approval of, a financial promotion, within 7 days of doing so
 - not extending the compulsory jurisdiction of the Financial Ombudsman Service to the approval of financial promotions
 - further consequential changes made to our non-Handbook guidance for firms that approve financial promotions for investments, and additional text on the Consumer Duty

Measuring success

- 1.12** We will measure the effect of the gateway using metrics on:
- gateway admissions, eg the number of applications received and the ratio of successful to unsuccessful applications
 - instances of supervisory investigation, and intervention, in relation to s21 approval activity
 - instances of enforcement action involving s21 approval activity
 - the data we are proposing to collect from s21 approvers as set out in this consultation, such as complaints about approved financial promotions
- 1.13** The introduction of the gateway will help us meet our Business Plan outcome of enabling consumers to help themselves. This aims to ensure that consumers have the information they need to make good financial decisions, and are not targeted with adverts that are illegal, unclear, unfair or misleading. So an indirect success measure of the gateway is achieving the aims of this particular outcome.
- 1.14** As the area in which we have seen the most approval activity and the most harm is the high-risk investment market, these proposals also form part of our Consumer

Investments Strategy. The Strategy sets out our 3-year plan to address harm in the consumer investments market. We have published metrics against each of the strategy's 4 outcomes so that people can judge whether we are achieving them and to ensure that both we and the firms we regulate are called to take action when things are not going right. A key success measure is whether these proposals, together with our other work in this area, such as the final rules and guidance published in PS22/10, will contribute to achieving our target of a 50% reduction by 2025 in the number of consumers investing in high-risk investments who indicate a low risk tolerance or demonstrate the characteristics of vulnerability. We will use consumer research, such as our Financial Lives Survey, to monitor progress against this target.

Next steps

- 1.15** We welcome feedback on our proposals by 7 February 2023. We will consider all feedback and expect to publish our Policy Statement and final rules in the first half of 2023. However, this will be contingent on the progress of the legislation and the timing of the Bill receiving Royal Assent.

2 The wider context

- 2.1** As we face the rising cost of living, consumers are having to make difficult decisions about their finances and how they pay for things. Firms need to ensure consumers, particularly those in vulnerable circumstances, are equipped with the right information at the right time, so they can make effective, timely and properly informed decisions.
- 2.2** With the proliferation of digital services like Meta, Google and Twitter, it has become faster and easier than ever for people to engage with financial services. People are taking less time between seeing and buying a product or service, often without advice. The European Commission's [Behavioural study on the digitalisation of the marketing and distance selling of retail financial services](#) says the online environment puts a strong focus on providing products to customers as fast as possible, with as few barriers as possible. This might endanger consumers if they do not take enough time to reflect on purchasing financial products.
- 2.3** When it comes to their personal finances, consumers need good information to make good decisions. But this doesn't always happen. Instead, they're often targeted with adverts that are unclear, unfair or misleading. A majority of financial services customers (77%) prefer researching and buying products online over in-branch, and roughly the same proportion are confident they can find the best products for their needs. Similarly, a majority (71%) say they look for reviews and recommendations before arranging a new product, with digital channels allowing consumers to obtain the opinions of thousands of others (Mintel's Financial Services: The Path to Purchase-UK 2021).
- 2.4** In broad terms, s21 of FSMA defines a financial promotion as an invitation or inducement to enter into an agreement for a financial product or service (or claims management activity). This can include any form of communication made across any media in the course of business, that invites or seeks to persuade a consumer to purchase a financial product or service. This can include, but is not limited to, posters in shop windows, advertising online, and posts made by influencers on social media.
- 2.5** A financial promotion is often a consumer's introduction to a financial product or service and can have a significant influence over their decision to proceed. So, it is crucial that it accurately represents the product or service, particularly on matters relevant to help consumers make informed decisions, like risk and return.
- 2.6** Our Financial Lives 2022 survey showed that social media was used by 1 in 6 investors in the last 12 months to research investing, find opportunities to invest, or to keep up to date with investments. We often encounter financial promotions on websites and social media, including those communicated by social media influencers, which emphasise the benefits of financial products without giving fair and prominent indication of relevant risks. Where the person communicating such promotions is not authorised, the promotion may require approval. Promotions communicated or approved by authorised firms which fail to adequately identify relevant risks may breach our requirements. We are particularly alive to promotions which seek to take advantage of behavioural biases by encouraging impulse buying and thereby hindering effective consumer decision making.

- 2.7** A particular focus of our recent work has been on promotions for high-risk investments. Many new investors don't realise that they can lose everything they invest in these products. We are focused on making sure consumers are accessing investments that reflect their risk appetite and receiving appropriate information that supports them in making decisions.
- 2.8** We also frequently see scam adverts in the high-risk investments space. In these cases, the product clearly shouldn't be promoted at all. We are working hard to address this, amongst other things by working closely with online platforms to stop these promotions reaching consumers in the first place. Usually, scam adverts are also in breach of the financial promotion restriction in s21 FSMA. Where we identify such financial promotions, we generally add those behind them to our Warning List.
- 2.9** Another area where we have concerns is the promotion of 'Buy-Now Pay Later' (BNPL) products. We have seen promotions of these products that do not prominently warn consumers of the risks, such as the risk of taking on debt they cannot repay, the consequences of missed payments and other possible adverse consequences such as the impact on their credit file. We have warned firms that offer BNPL products that although some agreements are unregulated, the financial promotions of all BNPL products must comply with the requirements of the financial promotion regime.
- 2.10** The s21 gateway, as currently drafted, and our accompanying proposals in this paper are designed to address gaps in the s21 approver framework, when an authorised firm approves a promotion for communication by an unauthorised firm. The proposed changes will help us intervene faster in response to harmful financial promotions that are within our remit but are communicated by unauthorised firms, in areas such as high-risk investments and BNPL.

The existing regulatory landscape

- 2.11** We have limited powers over some financial services market participants where they are not carrying out a regulated activity. For example, issuing non-transferable securities is generally not a regulated activity. Therefore, we cannot generally impose requirements on the issuers of high-risk investments themselves, if they are unauthorised and not subject to our rules. However, if these investments are marketed then it is likely that they will have to meet the requirements of the financial promotions regime. So ensuring this regime is fit for purpose is vital in protecting consumers and helping them make informed investment decisions. The Treasury can, by legislation, amend the scope of the regulatory regime. In relation to issuers of non-transferable securities, the Treasury has indicated its preference to include such securities within the scope of the new public offering regime.
- 2.12** The financial promotions regime consists of 3 core elements that work together to govern how financial products and services are marketed:
- Section 21 (s21) of the Financial Services and Markets Act 2000 (FSMA) sets out 'the financial promotion restriction'. This prohibits the communication of a financial promotion unless it is communicated or approved by an authorised firm. A breach of s21 is a criminal offence. Authorised firms can approve financial promotions for communication by unauthorised firms. The authorised firm must only approve the financial promotion if it complies with FCA Handbook rules and must withdraw

approval if it becomes aware that the promotion no longer complies. Our Handbook rules and guidance for s21 approvers are supplemented by our [guidance for s21 approvers, published in November 2019](#).

- The FSMA (Financial Promotion) Order 2005 (FPO) includes a number of exemptions from the financial promotion restriction. These enable an unauthorised firm to communicate a financial promotion, without the approval of an authorised firm, in certain circumstances and subject to certain conditions. If a promotion can be made within the scope of an exemption, our financial promotion rules do not then apply to that promotion.
- FCA Handbook rules prescribe the requirements for financial promotions that apply to authorised firms when they communicate or approve them (financial promotion rules). This includes the overarching standard that a financial promotion must be clear, fair and not misleading. [The FCA has a specific power to ban promotions which breach these rules](#).

Regulation of s21 approvals

2.13 Currently, any authorised firm can act as a s21 approver and approve a financial promotion for communication by an unauthorised firm. The regime was created at a time when the regulatory perimeter was narrower and authorised firms were mainly 'traditional' financial services firms. Such firms would therefore have generally been expected to have the competence and expertise needed to approve promotions falling within the scope of the perimeter and to ensure the promotions they approved were clear, fair and not misleading.

2.14 However, our perimeter has expanded far beyond the scope of 'traditional' financial services such that it is now far more likely that an authorised firm might be asked to approve a financial promotion for a product or service that is beyond the sphere of its own competence and expertise. We have seen examples of authorised firms approving financial promotions for products which are completely unrelated to the firm's permissions and areas of expertise.

2.15 In addition, we now oversee many more firms than we did when the regime was created. This creates challenges when trying to supervise s21 approval activity when there are not any formal channels to identify the firms actively engaged in this activity. This has meant that historically, we have often only found out about an approved promotion, or an active s21 approving firm, when harm to consumers has already occurred as a result of a particular approval.

The FPO exemptions

2.16 Unauthorised firms can communicate financial promotions without approval from an authorised firm if they do so within the scope of an exemption in the FPO. If a financial promotion can be made within the scope of an exemption, our financial promotion rules do not then apply to that promotion.

2.17 Some commonly used exemptions in the FPO are those enabling promotions to 'high net worth individuals' (Article 48 of the FPO), self-certified 'sophisticated' (Article 50A of the FPO) and certified 'sophisticated' (Article 50 of the FPO) investors. In this CP, we call these the 'FPO exemptions'. The effect of these exemptions is that unauthorised firms can communicate financial promotions for certain types of investments outside of the regulatory regime, as long as they are only promoted to investors that satisfy the criteria for these exemptions and otherwise satisfy the conditions for the relevant

exemption to apply. Where the conditions of an exemption are met, the FCA's financial promotion rules do not apply to that promotion such as the need to be fair, clear and not misleading.

2.18 We believe that there is a need for significant changes to the FPO exemptions, particularly to the relevant thresholds and consumers' ability to self-certify as one of these investor types. The Government has recently consulted on these issues. We believe that leaving this aspect of legislation unchanged will continue to cause significant consumer harm that we are unable to act against.

2.19 If the Government's consultation results in a tightening of these exemptions, there may be an increase in demand for s21 approvals. Unauthorised firms that currently rely on the FPO exemptions to promote their products may see it as less viable to do so following any changes to the legislation and choose to seek s21 approval instead. This could lead to an increase in the number of firms that want to undertake s21 approvals for unauthorised firms in the future, given the potential increase in demand for this service.

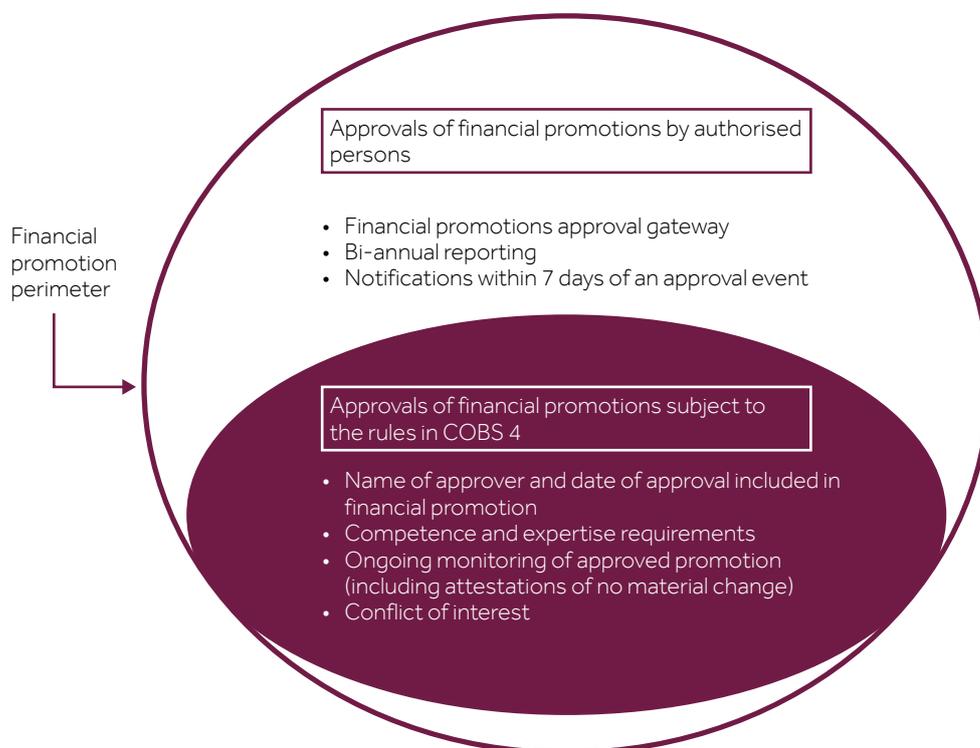
Strengthening measures for authorised firms communicating and approving financial promotions subject to COBS 4

2.20 On 01 August 2022, we published a [policy statement](#) on strengthening our financial promotions rules for high-risk investments (PS22/10). This was in response to an observed mismatch between consumers' risk tolerance and the high-risk investments many are choosing to invest in. The policy statement included new rules for firms that approve financial promotions for unauthorised firms subject to the rules in COBS 4 of the FCA Handbook, as such firms play an important role in enabling unauthorised issuers of high-risk investments to reach consumers. These rules were designed to complement the s21 gateway and create a robust regime that holds these firms to high standards.

2.21 From 01 February 2023, authorised firms approving financial promotions under COBS 4 will need to comply with the following new and clarified requirements:

- the name of the approver and date of approval must be included on the face of an approved promotion
- the approving firm must self-assess that it has appropriate competence and expertise in relation to the financial product or service to which the promotion relates, before agreeing to approve it
- the approving firm must take reasonable steps to monitor the financial promotion on an ongoing basis, for the lifetime of that promotion, to ensure that it remains compliant with our rules
- the approving firm must obtain quarterly attestations of 'no material change' from the firm issuing the promotion, to assist it with its ongoing monitoring obligations
- the approving firm must take appropriate steps to identify and prevent or manage conflicts of interest in relation to its s21 approval activity

Figure 1: PS22/10 measures vs proposals in this consultation paper



A new regulatory gateway for s21 approvers

- 2.22** In July 2020 the Treasury launched a consultation on a Regulatory Framework for Approval of Financial Promotions. Under the current framework, authorised firms are generally able to approve the financial promotions of any unauthorised firm. The rationale for this position was that authorised firms must meet the applicable ‘Threshold Conditions’ set out in FSMA, including conditions as to fitness and propriety, and are subject to FCA rules.
- 2.23** However, the Treasury was concerned that this position no longer delivers an adequate degree of regulatory protection as there is no specific assessment authorised firms must undergo before they are able to approve financial promotions of unauthorised firms.
- 2.24** The Treasury’s consultation raised the following potential risks with the current framework:
- **Lack of relevant approver firm expertise:** Any authorised firm can currently approve any financial promotion. Firms are not subject to separate assessment by the FCA before they can begin approving promotions. In the absence of such an assessment, we do not have a mechanism to consider whether, for example, a firm has sufficient expertise in the types of products in relation to which it is approving, or intends to approve, financial promotions before it begins doing so. This creates a risk that an authorised firm approves promotions which are misleading, inaccurate or inappropriate for the intended consumers because the approving firm does not have sufficient understanding of the relevant product or service.
 - **Lack of approver firm due diligence:** We have identified cases where authorised firms have approved financial promotions which do not comply with our rules

because the approving firm has not undertaken sufficient due diligence for the product or service being promoted to be able to properly assess the promotion before approval.

- **Challenges in undertaking appropriate regulatory oversight:** We do not currently have a comprehensive and complete view of firms undertaking approvals, the nature of the financial promotions being approved and how they relate to the authorised firms' areas of expertise. While we may get information about firms which are undertaking approvals on an ad hoc basis in the course of our supervisory activities, we do not hold a definitive and up-to-date list of which authorised firms are undertaking this activity at any moment in time.

2.25 In response to this, the Treasury proposed amending FSMA so that authorised firms can no longer approve the financial promotions of unauthorised firms, unless the authorised firm had passed through a new regulatory 'gateway' operated by the FCA. The Treasury intended this to lead to the following improvements:

- More effective prevention and intervention: We will be able to assess firms' suitability and competence before they are able to approve financial promotions of unauthorised firms. This will allow us to prevent unsuitable firms from approving financial promotions.
- Ensuring approver firms have relevant expertise: The ability to approve promotions could be linked to products or services within the firm's area of expertise so that only firms with the relevant expertise can approve the promotion of a particular product.
- More effective FCA oversight and supervision: We will have better oversight of which firms are carrying on approval activity. This would mean we could take a more proactive supervisory approach, for example targeting our supervision where risks are highest.
- Improved due diligence: More effective oversight and supervision should, in practice, mean that authorised approvers conduct more thorough due diligence to provide a greater level of assurance that the substance and presentation of a promotion meets regulatory standards, before providing approval.

2.26 The Treasury has now included the relevant proposed amendments to FSMA in the FS Bill. More information about how we expect the gateway to operate can be found in Chapter 3, along with the Treasury's [consultation paper](#) and [feedback statement](#).

Related developments

The Consumer Duty

2.27 On 27 July 2022, we published our [policy statement](#) on the Consumer Duty. This sets out a higher expectation for the standard of care that firms give consumers. For many firms, this will require a significant shift in both culture and behaviour. The Duty is underpinned by the concept of reasonableness, taking into account the firm's role in relation to the product or service, the nature of the product or service and the characteristics of consumers. All authorised firms need to comply with the Duty for retail business.

2.28 In general, firms are responsible under the Duty only for their own activities and do not need to oversee the actions of other firms in the distribution chain. There are

exceptions when they are required to under our existing rules, such as principals being responsible for ensuring appointed representatives comply with our rules. We generally expect firms with a direct relationship with the retail customers to have greatest responsibility under the Consumer Duty. However, all firms that have a material influence on or can determine consumer outcomes will need to consider their obligations.

- 2.29** Authorised firms need to consider their responsibilities under the Consumer Duty when approving promotions for unauthorised firms. In particular, firms will need to have due regard to their responsibilities under the Duty's general obligations and the consumer understanding outcome. S21 approvers will need to ensure that the financial promotions they approve support retail consumers' understanding by ensuring that they meet the information needs of customers, are likely to be understood by customers intended to receive them, and equip them to make decisions that are effective, timely and properly informed. They should also ensure that the financial promotion is tailored to the characteristics of the customers intended to receive the financial promotion, including by reference to any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm.
- 2.30** Firms that approve financial promotions on behalf of others must meet these expectations where they are relevant to their role. Given the nature of the role of a s21 approver and the lack of direct relationship with the underlying customer, some of these requirements may not be relevant to their role. For example, monitoring communications that are not financial promotions, the timing of a communication by an unauthorised firm or testing communications. More detail on the Consumer Duty and the obligations of authorised firms can be found in [FG22/5](#) and [PS22/9](#).
- 2.31** In our work following publication of the Duty, we have identified that the application provisions are not sufficiently clear when a firm is only approving or communicating a financial promotion, where there is no underlying regulated activity. On 2 December 2022, we published a [quarterly consultation paper](#) that contains proposed amendments to the application provisions of the Duty. These aim to clarify which aspects of the Duty apply when firms are approving or communicating financial promotions.

A proposed anti-greenwashing rule

- 2.32** On 25 October 2022, we published a [consultation](#) on Sustainability Disclosure Requirements (SDR) and investment labels. This proposes a package of measures aimed at clamping down on greenwashing. This includes measures for the use of sustainable investment labels, disclosure requirements and restrictions on the use of sustainability-related terms in product naming and marketing.
- 2.33** While the majority of the proposals in that consultation are focussed on asset managers, the proposals include a general 'anti-greenwashing' rule that would apply to all FCA-regulated firms. This proposal is intended to affirm existing requirements with a view to ensuring that sustainability-related claims, in the context of naming and marketing financial products, are clear, fair and not misleading. The rule would also require that firms ensure that such claims are consistent with the sustainability profile of the product or service, ie proportionate and not exaggerated. By applying this rule to all FCA-regulated firms, we would also be capturing firms that approve financial promotions for unauthorised firms, who will need to ensure that the promotions they approve for unauthorised firms comply with this rule as well as the usual financial promotions rules. Although firms should already be making sure promotions are clear,

fair and not misleading under provisions such as Principle 7 and COBS 4.2.1, we consider it necessary to add a specific rule to the Environmental Social and Governance (ESG) Sourcebook to link this standard directly to sustainability claims. More information, including how to respond to this consultation, can be found on our website.

Bringing cryptoassets into the financial promotions regime

2.34 The Treasury has indicated that it intends to introduce legislation that will bring the promotions of certain 'qualifying cryptoassets' into the financial promotions regime. The final scope of cryptoassets that will be covered by these changes will be determined by the Treasury and set out in a statutory instrument. As many cryptoasset firms are not authorised with Part 4A permissions under FSMA, it is likely that many crypto firms will require their promotions to be approved by a s21 approver, if the Treasury does proceed to extend the financial promotion perimeter in the way that it has indicated.

2.35 Subject to the Treasury's proposals for qualifying cryptoassets, it is likely that the number of firms that apply at the gateway with sufficient competence and expertise to approve cryptoasset financial promotions will be limited at first, and we therefore expect an increasing number of firms to successfully obtain permission to approve promotions of qualifying cryptoassets with time. However, we anticipate there to be strong demand from crypto firms seeking approval of their financial promotions.

Online Harms

2.36 We have previously highlighted that over recent years, rises in fraud cases in the UK have been increasingly influenced by scammers' use of online platforms, including fraudulent advertising on search engines and social media. Our latest [review](#) indicates that the volume of scam enquiries to us continues to rise. Between April 2021 and March 2022, we received over 36,000 enquiries about possible scams; a 24% annual increase. We have therefore continued our work with the largest platforms to consider the application of the financial promotion regime to their business models and ensure that they are compliant.

2.37 Following ongoing engagement, most of the largest search engines and social media platforms, including Google and Meta, have implemented new financial services verification policies to ensure they only allow financial promotions that are made by, or with the approval of, firms regulated by us. We continue to engage with most other large online platforms to ensure these policies are implemented consistently and robustly. We are mindful that online platforms may need to adapt their approach to reflect the new s21 approvers gateway and proposals in this CP and will continue to engage with them on this.

2.38 We have been clear that the protection of consumers from illegal online scams should be strengthened through clear legal obligations in the Online Safety Bill. We welcome the announcements that the Government made earlier in 2022 about the scope of the Bill. These include a duty on the largest online platforms to protect consumers from fraudulent advertising and designating material for fraud offences as 'priority illegal content' under the draft Bill. We look forward to working closely with the Government and regulatory partners as the draft Bill makes its way through Parliament, as well as on the Online Advertising Programme, which the Government consulted on earlier this year.

How it links to our objectives

Consumer protection

- 2.39** Our proposals aim to advance our consumer protection objective by trying to reduce and prevent harm to consumers, from making financial decisions based on non-compliant or illegal financial promotions and buying products that don't suit their circumstances. Our proposed reporting requirements would allow us to be more proactive where a financial promotion was approved despite not complying with our rules, enabling us to intervene earlier to try to prevent consumer harm from occurring.

Market integrity

- 2.40** Our proposals are also relevant to our integrity objective. Consumers buying financial products that do not meet their needs due to poor quality financial promotions undermines confidence in UK financial markets. This may affect the soundness, stability and resilience of the UK financial system. Supporting consumer understanding and good decision making increases trust in the system, and ultimately encourages further use.

Competition

- 2.41** We do not consider it to be in consumers' interests for authorised firms to approve financial promotions for unauthorised firms unless they have been assessed as suitable to do so, and are required to provide the FCA with the data needed to assess this on an ongoing basis. We recognise that the implementation of the gateway itself could lead to a decline in the number of active s21 approvers, and potentially restrict the ability of unauthorised firms to promote to consumers. Our approach to assessing applications and our proposed reporting requirements will influence how significant the possible contraction will be. In considering these proposals, we have had regard to our duty to promote effective competition in the interests of consumers. We have tried to strike the right balance between creating a regime that holds firms to high standards, and ensuring approving financial promotions is a commercially viable activity for firms to undertake.

Wider effects of this consultation

- 2.42** This gateway will give us a mechanism to gain greater insight into the type of products being promoted in the market, and the standard of financial promotions being approved. So it will help us in our goal to become an increasingly data-driven regulator, as firms that have permission to approve will be required to provide regular, ongoing reporting on their approval activity.

- 2.43** We have considered the following potential issues when deciding on the proposals in this paper:

- Our proposals, along with the new rules in PS22/10 to strengthen the role of a s21 approver under the COBS 4 rules, are likely to make the approval of a financial promotion more costly and resource intensive to undertake. There is a risk that firms choose not to provide this service as a result. We will engage with firms through the consultation process to ensure that approving financial promotions

remains economically viable considering the price that can reasonably be charged. The pool of firms being able to approve promotions being limited may increase demand and associated revenue for those that are successful at the gateway.

- As the number of firms who can approve promotions will be restricted by the gateway, there is a risk that this will drive more unauthorised firms to using exemptions in the FPO to communicate their financial promotions instead. This is particularly the case where the promotions are unlikely to pass more effective and thorough due diligence by s21 approvers. This could increase the level of financial promotion activity that takes place outside our perimeter, despite these changes seeking to achieve the opposite. However, if the Treasury decides to proceed with its consultation proposals on reforms to the FPO exemptions for high-net worth and sophisticated investors (as discussed in paragraphs 2.16 to 2.19), this will help to drive unauthorised firms in the investments space back within the scope of our financial promotion rules through seeking a s21 approval from an authorised firm, due to narrowing of the scope to promote within the FPO exemptions.

Equality and diversity considerations

- 2.44** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper and have had due regard to the public sector equality duty. Overall, we do not consider that the proposals materially negatively impact any of the groups with protected characteristics under the Equality Act 2010.
- 2.45** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules. In the meantime, if you have any views on this, please include them in your response to this consultation.

3 New regulatory gateway for s21 approvers

Overview

- 3.1** On 20 July 2022, the Treasury introduced the FS Bill to Parliament. The Bill contained proposed amendments to s21 of FSMA to enable the introduction of a new regulatory gateway for firms approving financial promotions. Only authorised firms can approve financial promotions.
- 3.2** The proposed FSMA amendments will impose the new 'Financial Promotion Requirement' (FPR) on all existing and newly authorised firms, restricting them from approving financial promotions. The Treasury's [consultation and response document](#) suggested a number of exemptions would apply to this general restriction.
- 3.3** An authorised firm who wants to approve financial promotions for unauthorised firms will need to apply to the new s21 gateway for permission to do so. Firms will be able to apply to approve all types of financial promotion or only those promotions for certain types of products. However, it is unlikely that many firms will have the competence and expertise to obtain permission to approve all types of financial promotions.
- 3.4** When the gateway takes effect (subject to Parliamentary process and Royal Assent), firms with an existing Part 4A permission (existing authorised firms) should apply for permission to approve financial promotions as per our [normal process](#), by submitting a Variation of Permission (VOP) application through Connect. This is the same process as applying for a standard variation or cancellation of a requirement. It will also be possible for any EEA firms which still have temporary permissions when the gateway opens to apply for permission to approve financial promotions, as well as Gibraltar-based firms exercising passport rights in the UK. The length of the application period will be determined by secondary legislation produced by the Treasury.
- 3.5** Applicants for authorisation who want to apply for permission to approve financial promotions at the same time as applying for Part 4A permission so they can approve promotions for unauthorised firms from day 1 of their authorisation, will be able to do this as part of their application for Part 4A permission. These firms will also need to complete the relevant application pack and submit the required supporting information detailed in paragraphs 4.1- 4.6 below.
- 3.6** This paper and the proposed legislation references authorised firms having to apply to the gateway to get 'permission' to approve financial promotions. This is referring to the permission firms must get from us to have the FPR varied or cancelled. This is not the same as a Part 4A permission to carry on regulated activity.
- 3.7** When an authorised firm or applicant for authorisation applies to the s21 gateway, we will assess the firm and determine whether to grant permission. The draft legislation specifies that the FCA may refuse to grant permission at the gateway if it appears to the FCA that it is desirable to do so in order to advance one or more of its operational

objectives, eg to secure an appropriate degree of protection for consumers. More information on our proposed approach to assessing applications is in Chapter 4, paragraphs 4.1 to 4.6.

- 3.8** The draft legislation contains provisions giving us power to amend the terms of, or to cancel, a firm's permission to approve financial promotions. The power could be exercised by us either where it appeared that a firm had failed to engage in any approval activity over a 12 month period or where this was otherwise desirable to advance one or more of our operational objectives.
- 3.9** The draft legislation will require us to consult with the PRA before acting at the gateway in relation to firms or applicants for authorisation which are, or will be, PRA-authorised or which are members of groups which include PRA-authorised firms.

Exemptions

- 3.10** The Treasury indicated in its consultation response that authorised firms only approving financial promotions for the following purposes would be exempt from the need to apply to the gateway:

- approving their own financial promotions for onward communication by an unauthorised firm
- approving financial promotions for an unauthorised business in their corporate group
- approving financial promotions for their ARs, where the promotion relates to a regulated activity for which the principal has the relevant permissions and has agreed to accept responsibility

- 3.11** Any exemptions will be made through secondary legislation. The proposed FSMA legislation provides that the FPR will not apply to the giving of approval falling within the scope of an exemption. However, persons approving in these circumstances must still ensure they are aware of their role and responsibilities as a s21 approver under the relevant financial promotion rules (eg COBS 4). This includes ensuring that the financial promotion is fair, clear and not misleading and complies with marketing restrictions as required. For more information, please see our guidance on approving financial promotions.

- 3.12** We will keep s21 approval activity under review. This will include assessing whether firms are seeking to inappropriately exploit the exemptions to avoid applying to the s21 gateway.

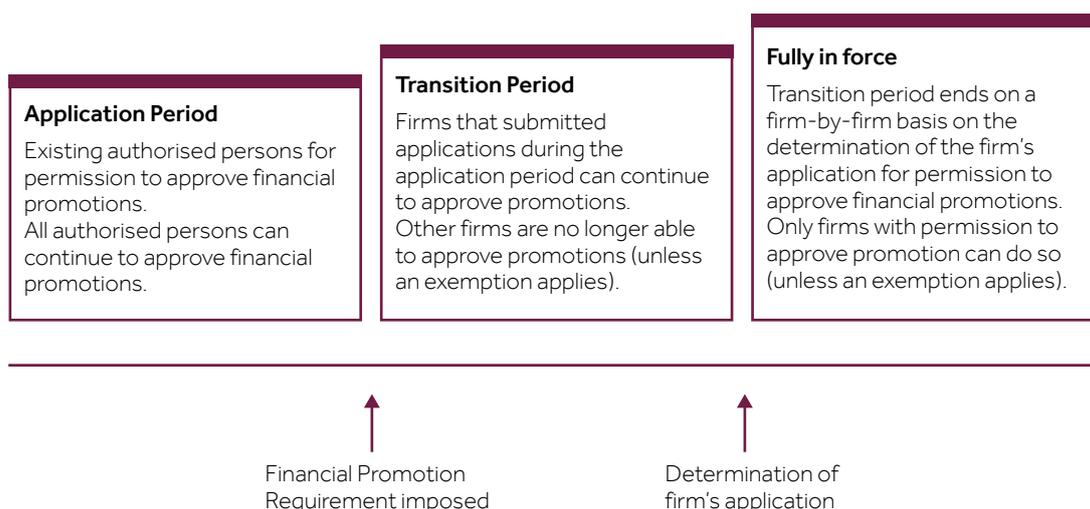
Transitional Regime

- 3.13** In recognition that the imposition of the FPR represents a significant change for existing authorised firms approving financial promotions for unauthorised firms, the Treasury's consultation response set out plans for a transition period on introduction of the s21 gateway. If this transition period is legislated for as set out in the consultation response, it would begin as soon as the initial application period has closed. Firms that apply at the gateway within the application period will be allowed to continue approving promotions for unauthorised firms while their application for permission to approve is being determined (during the transition period). If their application is successful, they will see no interruption to their ability to approve

financial promotions. If their application is unsuccessful with regards to a particular product type for which they have applied for permission to approve promotions, the firm will need to cease s21 approval activity immediately in relation to that product type once their application has been determined.

- 3.14** During the transitional period, we will assess applications received and the period will end on a case-by-case basis as each application has been determined. The FCA will have up to 12 months to determine applications for permission to approve financial promotions.
- 3.15** All other existing authorised firms that do not apply to the gateway within the initial application period will have the FPR imposed on them by legislation at the end of the application period and will no longer be able to approve financial promotions for unauthorised firms from that date (other than within an exemption). Should they wish to approve financial promotions in the future, they can apply for permission to approve using a VOP form. However, as with the existing VOP process, they will not be able to approve financial promotions until their application has been determined as successful.
- 3.16** If an applicant for authorisation receives confirmation that Part 4A permission has been granted before the s21 gateway application period begins, it will still need to apply to the s21 gateway along with other existing authorised firms if it wishes to approve financial promotions. This applies even if the firm indicated in its authorisation application that it intended to do this, as it will still need to go through the more robust assessment of this part of its business at the s21 gateway in order to be granted the additional permission to approve promotions. Newly authorised firms will benefit from the transitional period however, just like other existing authorised firms.

Figure 2: A timeline of the application process & transition period



The Financial Services Register

- 3.17** The Financial Services Register is a public record of (amongst other things) firms that are, or have been, regulated by us and individuals that have been approved. The register includes information on requirements placed on firms. We plan to make information about firms' permission to approve financial promotions publicly available on the Register.

Fees

- 3.18** We will be required to assess applications, and to determine whether to grant permission on the terms for which applicants have applied. This will likely require the review of large volumes of information related to the applicant firm's systems and controls, resources, key individuals and business model.
- 3.19** On 29 November we consulted on an application fee of £5,000 to contribute towards the cost of resourcing and operating the s21 gateway. The consultation closes on 16 January 2023.

4 Proposals to operationalise the s21 gateway

Approach to assessing applications

How we evaluate applications for permission to approve financial promotions

- 4.1** Our assessment of whether to grant firms permission to approve financial promotions for unauthorised firms will be determined by reference to our operational objectives. We will need to ensure that firms seeking authorisation that have also applied for permission to approve financial promotions, satisfy the Threshold Conditions. We need to ensure that authorised firms applying for permission to approve financial promotions have adequate systems, controls and processes in place to continue to satisfy the Threshold Conditions.
- 4.2** Removing or amending the Financial Promotion Requirement (FPR) that will be imposed by the legislation will increase the scope of activities in which the firm is permitted to engage. This will increase the potential risk of harm arising from the applicant's activities. When assessing an application for permission to approve promotions (ie to remove or amend the FPR) we will need to consider whether it is desirable to refuse the application to advance any of our operational objectives.
- 4.3** We published - and have subsequently updated – guidance for firms approving financial promotions in 2019. Applicants should ensure they have reviewed this and considered its contents before submitting an application.
- 4.4** We propose that an applicant for permission to approve promotions will need to detail the type of financial promotions it is seeking permission to approve. Financial promotions in different sectors are subject to different rules. Applicant firms will be assessed by reference to the relevant rules that apply to the promotions of the type they have indicated that they wish to approve. Below we have detailed what we propose that firms applying to approve financial promotions for investments will need to demonstrate, to show that they will satisfy the requirements of our rules. Firms applying to approve financial promotions in other sectors will need to demonstrate the elements below that are relevant to the rules in those sectors.
- 4.5** A firm applying to approve financial promotions of investments will need to demonstrate the following:
- That it has processes in place for maintaining adequate records of the financial promotions which the firm approves. When the firm approves a financial promotion, it should consider recording how the promotion complies with our rules.
 - How it will consider the commercial viability of the proposition described in the promotion. Has the promotion adequately disclosed any significant factors that could threaten the product's viability? Could potential investors make an informed decision about the investment?

- Where the financial promotion relates to a service that will be provided by the issuer of the promotion to a customer, how the approver will satisfy itself that the service will, in fact, be provided.
- How it will assess whether there are any fees, commissions or other charges within the investment's structure or elsewhere that could materially affect the ability of the product provider to deliver advertised or headline rates of return.
- The firm will need to demonstrate that it has adequate systems, controls and processes in place to ensure that the promotions which it approves comply with our rules. Fundamentally, this means ensuring that promotions are fair, clear and not misleading. In undertaking this assessment, we will want to understand how, for example, the firm will go about assessing the authenticity and veracity of claims made in the promotion and whether advertised or headline rates of return are reasonably capable of being achieved. In carrying out this assessment, we will refer to the detailed requirements of our rules as well as to our expectations for firms approving financial promotions as set out in our guidance.
- That it has suitable policies and procedures for monitoring promotions and, where appropriate, withdrawing approval or requiring a promotion be amended.
- Steps have been taken to identify whether by approving financial promotions there are any additional risks presented to the firm, and confirmation of how those will be mitigated.
- That the firm has the individuals it needs to approve financial promotions of the type in relation to which it is seeking permission. This includes having sufficient individuals with appropriate competence and expertise, both to provide initial approval and then to monitor the compliance of approved promotions on a continuing basis as well as clear lines of responsibility for approving a promotion.
- We would normally expect applicants to apply for permission to approve financial promotions for investment types which are broadly in line with their Part 4A permissions. Where firms apply to be able to approve financial promotions of investment types that are beyond their Part 4A permissions we will scrutinise more closely the systems and controls that the firm will maintain to ensure the compliance of those promotions.
- In order to determine the size and scale of the applicant's business, including whether it has sufficient resources to undertake its proposed approvals, the firm will need to demonstrate it has considered the volume of promotions it intends to approve and the revenue it intends to generate from this.

4.6 The information we will use when assessing applications will include but not be limited to:

- Information provided by firms in the application, including information on the systems and controls of the applicant. For example, this will include the processes the firm has in place to validate information in financial promotions it intends to approve, the policies and procedures that the firm will use when determining whether to approve, or withdraw approval of, a financial promotion, and the systems it has in place to record its assessment and decision.
- The systems and controls the firm will have in place to undertake the ongoing monitoring of the financial promotion (for COBS 4 activities).
- Information provided by the applicant to show the individuals who will be involved in approving financial promotions have the relevant skills, knowledge and experience. This includes the previous employment history and qualifications of the individuals at the firm and how that relates to the financial promotions the firm intends to approve.
- Market research and intelligence.

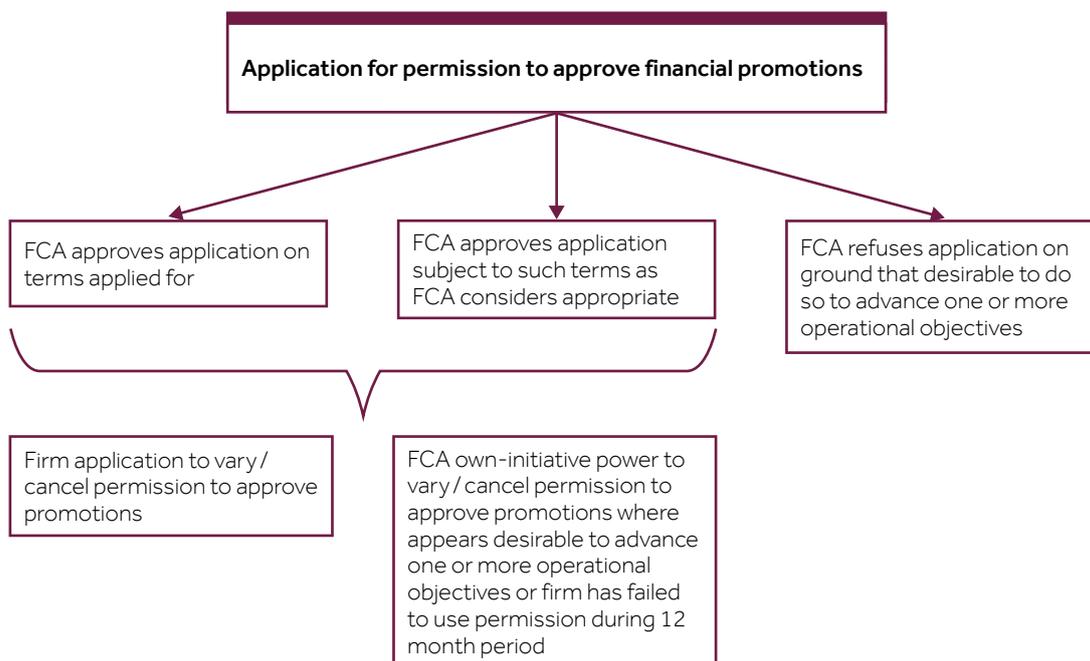
- Calls made to the FCA contact centre, and complaints data from external sources such as the Financial Ombudsman Service.
- Our experience of supervising already-authorized firms that provide similar financial services, eg currently act as an approver of financial promotions.
- Specific information we have and judgements we make about the firm or relevant individuals, which may include an interview with them.

Q1: Do you agree with our proposed approach to assessing applications?

Refusing applications

- 4.7** We will recommend the refusal of an application for permission to approve financial promotions if it appears to us that it is desirable to do so in order to advance one or more of our operational objectives. That decision will be taken by reference to the information that we assess in the course of determining an application as described above.
- 4.8** We will also consider the appropriate course of action in the event that, in determining an application to approve financial promotions, we identify concerns relating to the firm's continuing satisfaction of the Threshold Conditions. For firms applying for authorisation and also applying for permission to approve financial promotions, our course of action will be guided by any concerns related to the firm satisfying the Threshold Conditions.
- 4.9** If we are not minded to grant a permission to approve financial promotions in the terms for which the applicant has applied, we may indicate that we would consider granting permission on different terms or that we are minded to refuse the application by reference to our operational objectives. In these circumstances we might grant a firm permission to approve financial promotions in relation to a narrower range of investment types than the firm applies for.
- 4.10** If we refuse an application to approve financial promotions, we will follow the process set out in the legislation and described in the Decision Making and Penalties Manual (DEPP). Under the draft legislation, this would result in the applicant being given a warning notice in the usual way with the opportunity to make representations. After that, the firm may be given a decision notice and then the firm would have the right to refer the matter to the Upper Tribunal.
- 4.11** Where a firm has been granted permission to approve financial promotions, we may subsequently take steps to vary the terms of, or cancel, the firm's permission to approve financial promotions. This might be done on the voluntary application of the firm or using the FCA's own-initiative powers.

Figure 3: Applications for permission and possible outcomes



Q2: Do you agree with our proposed approach to determining whether to refuse an application or to grant permission on terms which are different from those for which application has been made?

Redress

The Financial Ombudsman Service

- 4.12** The Financial Ombudsman Service is an independent organisation set up by Parliament to resolve certain financial services complaints between eligible complainants and businesses that provide financial services. Its role is to resolve these disputes quickly and with minimum formality, on the basis of what in the opinion of the ombudsman is fair and reasonable in all the circumstances of the case.
- 4.13** Under its compulsory jurisdiction (CJ), the Financial Ombudsman Service can consider a complaint if it relates to an act or omission by a firm in carrying out a regulated activity (or one of the other activities specified in DISP 2.3.1R), or any ancillary activity (including advice) carried on by a firm in connection with such an activity.
- 4.14** Approving a financial promotion is not a regulated activity and is not otherwise specified in DISP 2.3.1R, and as such complaints about the approval of a financial promotion are generally not covered by the Financial Ombudsman Service.
- 4.15** We are proposing not to make any changes at the current time that would extend the Financial Ombudsman Service’s CJ, to create a general right to complain to it about the approval of financial promotions.

- 4.16** We believe it is preferable not to extend the Financial Ombudsman Service's CJ. This is because giving access to the Financial Ombudsman Service could raise an unrealistic expectation for consumers about what redress might be available from the approver of the financial promotion. Even if the financial promotion was found not to meet the requirements of our rules, it would not automatically follow that the approver was responsible for the losses suffered by a complainant, particularly where the financial promotion was communicated by an unauthorised firm.
- 4.17** We are satisfied that our proposals strike the appropriate balance between allowing a healthy s21 approval market to exist, ensuring approvers are subject to an appropriate level of regulation and that consumers are adequately protected.
- 4.18** While we are not proposing to extend the Financial Ombudsman Service's CJ, we are able to exercise supervisory and enforcement powers in relation to authorised firms to secure redress in appropriate cases. For example, in an appropriate case, we may decide to agree or impose a redress scheme on an authorised approver, as we can with any other authorised firm, if we consider that the firm is not meeting our regulatory requirements and the exercise of our formal powers is appropriate. Subject to further consideration during the consultation process, we consider that the potential use of our existing supervisory and enforcement powers will act as a further strong incentive for approving firms to ensure they comply with the relevant requirements. This, along with the more proactive approach to preventing harm that our proposed notification requirements (see paragraphs 4.26 to 4.31) would enable, would act to limit the risk to consumers and therefore the need to complain to the Financial Ombudsman Service.

Q3: Do you agree with our proposal not to make changes to the Financial Ombudsman Service's CJ for complaints about the approval of a financial promotion?

The Financial Services Compensation Scheme (FSCS)

- 4.19** The approval of a financial promotion is not regulated activity. As a result, no FSCS cover is available for claims based on a complaint regarding the approval of a financial promotion.

Reporting requirements

- 4.20** We are proposing new reporting requirements for firms which have applied to the s21 gateway and are approving promotions for unauthorised firms (eligible firms). This means that existing authorised firms which apply to the gateway during the initial application period, but are waiting for their application to be determined, will need to begin complying with these proposed reporting requirements once the application period has ended, and the transitional period has begun. For firms that apply for permission to approve financial promotions after the initial application period, our proposed reporting rules would only apply once the firm had been granted permission to approve promotions.
- 4.21** Historically, we have not had the necessary information available to proactively monitor financial promotions approved for unauthorised firms. In line with, and in support of, our transition to being a more data-led and assertive regulator, these reporting

proposals will give us access to up-to-date transactional information on approval activity. This means we will be able to act to prevent consumer harm at a much earlier stage. Collecting information on the unauthorised firms for which firms are approving promotions will help us to better understand the nature and activities of those promoting financial products on the edge of our perimeter.

4.22 Our proposals seek to find a balance between getting enough data to help us monitor approval activity effectively, while not placing an unreasonable burden on eligible firms. We will use this data to inform our supervisory approach, to identify and monitor:

- non-compliant promotions early and take appropriate action
- higher risk firms approving financial promotions
- the effectiveness of the gateway for s21 approvers and firms' business models
- changes in firm activity, such as those firms able to approve promotions but not doing so and those firms approving promotions in large volumes
- firms connected to, or which may be approving promotions related to suspected fraud or scam activity

4.23 The data we propose to collect will also help us to identify where it may be possible to secure redress in the event of product failures.

4.24 We are only proposing that approvals of financial promotions that would require a firm to have permission to approve under the legislation, would need to be included in the reports submitted by eligible firms. Eg: a firm that had permission to approve financial promotions would not need to include any approvals of promotions for their ARs in the reports they submitted to us.

4.25 For the purposes of these reporting requirements, we consider '1 approved financial promotion' to be one set of promotional content for a campaign for a particular product. For example, we do not consider the same promotional content, but displayed across different media (eg webpage, email and banner) to be three separate approved financial promotions. For a financial promotion to be considered distinct for the purposes of reporting, it should be for a different product, or a new campaign for the same product. We propose to add guidance to this effect in the Handbook.

Notifications

4.26 To help us to monitor approval activity, we propose to require eligible firms to submit a notification to us for every financial promotion they approve. Although we will be collecting more information about financial promotions in the market, this is not for the purpose of the FCA approving or signing off such promotions itself. This would include the following information:

- Product name: This information will help us to locate and review individual promotions and identify promotional trends (eg greenwashing).
- Product type: This information will enable us to identify high-risk products, applicable marketing restrictions and to monitor trends, eg an increase in approvals of promotions related to a particular type of product.
- Name of client(s): This information will tell us the name(s) of the unauthorised firm(s) that produced the financial promotion and/or will be communicating the financial promotion.
- Size of issuance (if applicable): This information will tell us how much a security issuer is seeking to raise. This will help us to understand the size of the market for

unregulated securities and identify and monitor any particularly large, or recurring, issuances.

- Advertised rate of return (if applicable): This information will tell us how much a security issuer is indicating that it is aiming to return to investors.
- Date of approval: The date on which the promotion was approved will tell us from which date the promotion was lawfully able to be communicated.
- Medium of communication: This will tell us what mediums the financial promotions for the product are, or will be, spread over.

4.27 We also propose to require firms to submit a notification when they withdraw their approval of a promotion. In this notification, the firm would need to give us the date of withdrawal, the mediums the withdrawn promotion is communicated over and the reason for removing approval of the promotion (eg due to concerns with the content of the financial promotion). The s21 approver will need to notify us each time the promotion is approved and withdrawn, if this happens on multiple occasions.

4.28 We propose that the s21 approver will also need to notify us each time it approves amendments to the financial promotion to comply with the financial promotion rules. Notifications concerning amendments will include the reason for the amendment: whether it is due to a concern with the promotion, or if it is in response to a change to the product. We will also require the date the amendment was implemented, and the amended promotion's mediums of communication.

4.29 For the purposes of submitting a notification about amendments to a financial promotion, we are only proposing to require a notification when the change to the promotion is material. Changes to administrative details such as a contact number or email address, or a change in physical address, are not considered material changes for this purpose.

4.30 We propose to require that firms submit a notification via Connect within 1 week of approving a financial promotion, approving amendments to a financial promotion or withdrawing approval of a promotion. We consider this frequency to be appropriate because undertaking s21 approvals is a high-risk activity with historically poor standards of compliance. To address this, we need to be able to proactively monitor the standard of promotions while they are live and not after harm has occurred. We believe that the information should be readily available to firms who are already required to keep adequate records for any approved promotions under COBS 4.11.1R (1), or SYSC 9.

4.31 We are proposing these notification requirements to help us supervise approval activity, particularly where promotions are likely to be directed towards retail consumers. We are not proposing to publish the data received in notifications externally.

Q4: Do you agree with our proposal for s21 approvers to submit a notification to us within 1 week of every approval, withdrawal or amendment of a financial promotion?

Bi-annual reporting

4.32 In addition to the notifications described above, we propose to collect the below information as part of half yearly aggregate reporting using our Regdata collection

platform. Eligible firms required to provide these reporting metrics for the preceding 6 month period will already have access to and regularly use both Connect and RegData systems, other than Gibraltar firms which will submit this information in their usual way. The information we propose to collect is:

- Total number of approvals in the last period: This information will allow us to identify how much s21 activity the firm has undertaken in the last period.
- Total number of consumer complaints for approved promotions: This information will enable us to identify promotions and approvers that are subject to consumer complaints and where there is a risk of consumer harm.
- Revenue from s21 approval activity: This information will enable us to monitor which firms are most active as s21 approvers and, when compared to the income reported in the normal way, the proportion of total income that is attributed to s21 approval activity. Alongside the number of approvals undertaken, we can also gain insight on how much firms are charging on average for their approval of promotions and whether this changes over time.
- Total revenue, regulated and unregulated, in the last period: This information will allow us to understand the proportion of the firm's business that comes from s21 activity. If a firm has not generated any revenue from s21 activity in the reporting period, it will not be required to submit total revenue data.

4.33 For firms that apply during the application period, we propose to require the first bi-annual report to be submitted to us within 30 business days following whichever of the following dates falls first after the beginning of the transitional period:

- a firm's Accounting Reference date (ARD) or
- the date falling 6 months after the firm's ARD.

4.34 In their first report, firms would only need to include data from the start of the transitional period up until whichever comes first of their ARD or 6 months following their ARD. In the first reporting period may cover a time period shorter than 6 months, as firms will not be required to report data from any time preceding the beginning of the transitional period. This will mean that from the second report onwards, all firms' reports will cover a period of exactly 6 months.

4.35 For firms that apply to approve financial promotions any time after the application period, we propose to apply the same principle. Firms will need to submit their first report 30 business days following whichever comes first of the firms' ARD or 6 months following their ARD, but this will only need to cover the period between this point and when they were granted permission to approve financial promotions. So their first report may cover a period of less than 6 months, but all subsequent reports will cover a period of exactly 6 months.

4.36 Firms' second and subsequent reports would cover the preceding 6 months and be submitted on the firm's ARD and on the interim reporting day, that is, every six months thereafter, as part of their half-yearly aggregate reporting using our Regdata collection platform.

Q5: Do you agree with our proposal for s21 approvers to submit regular reports to us on financial promotions approved for unauthorised firms?

- Q6:** Do you agree with the proposed metrics and bi-annual report frequency?
- Q7:** Do you intend to apply for permission to approve financial promotions?

Annex 1

Draft updated non – Handbook guidance for s21 approvals for investments

[This guidance is published on the FCA's website. We confirmed an updated version of this guidance in PS22/10. We are now consulting on the changes to this guidance which are needed to reflect the introduction of the gateway and the Consumer Duty. We have included the full text of the guidance below for convenience.]

1. Read our guidance on approving the financial promotions of unauthorised firms. Firms which approve financial promotions are already required to ensure that those promotions comply with our rules, both in presentation and in substance. The guidance explains some practical implications of our existing requirements. This guidance applies to firms when approving financial promotions either within the scope of an FCA permission to do so or within the scope of an exemption (see paragraph 9 below).
2. This guidance is focused on the rules applicable to the approval of financial promotions relating to investments and, in particular, investments promoted to retail investors. However, the broad principles outlined here are also likely to be relevant to approving financial promotions in other sectors. In our Dear CEO letter of 11 April 2019, we set out some examples of firms failing to meet our requirements when approving the financial promotions of retail investments (for example 'mini bonds').

Background

3. We aim to deliver a consumer investment market that works well for the millions of people who stand to benefit from it, helping them to invest with confidence and save for planned and unexpected life events, and for the businesses in the real economy for which it provides essential funding.
4. Our Consumer Investments Strategy, published in September 2021, sets out our plan to achieve this. A key part of the strategy is addressing the harm from consumers investing in high-risk investments that do not match their risk tolerance.
5. The main way consumers build their understanding of the risks and regulatory protection associated with an investment is through the information they are given in a financial promotion when deciding whether to invest.
6. A financial promotion is an invitation or inducement to engage in investment activity (or claims management activity), that is communicated in the course of business. They can take a wide variety of forms, including adverts placed through print, broadcast or online media, marketing brochures, emails, websites or social media posts. For the purposes of this guidance, we are principally concerned with financial promotions that relate to investment business and are subject to the financial promotion rules in COBS 4, although the broad principles outlined here are also likely to be relevant to approving financial promotions in other sectors.

7. The financial promotion restriction in section 21 (s21) of the Financial Services and Markets Act 2000 (FSMA) means that a person must not communicate an invitation or inducement to engage in investment activity (or claims management activity), unless:
- the person is an authorised firm, i.e. generally authorised by the FCA or the Prudential Regulation Authority (PRA) under Part 4A of FSMA to carry on certain regulated activities;
 - the promotion has been approved by an authorised firm, i.e. a s21 approver; or
 - an exemption in the Financial Promotion Order (FPO) applies.

Introduction

8. On this page, where we refer to a 'firm', we mean an authorised firm approving a financial promotion of, and for communication by, an unauthorised firm. Where we refer to a 'product provider', we mean an unauthorised provider of retail investment products (eg, a company issuing a bond) that has its financial promotions approved by a firm.
9. The effect of section 55NA of FSMA is that a firm can only approve a financial promotion if the firm has been granted permission by the FCA to do so or the approval falls within the scope of an exemption. If you intend to begin approving the financial promotions of unauthorised firms, then you may need to apply for permission to do so. SUP 6A contains guidance on applying for permission to approve financial promotions.
10. FCA permission is not required to approve the financial promotions of unauthorised firms in the following circumstances:
- Approvals of financial promotions for your Appointed Representatives (ARs), where the financial promotions relate to the regulated activities they are permitted to undertake
 - Approvals of financial promotions for unauthorised firms within your corporate group.
11. If you are granted permission to approve financial promotions, you will need to comply with the reporting requirements for approvers of financial promotions for unauthorised firms (also subject to the exemptions outlined above). This involves ad-hoc notifications to the FCA about your approval activity and a bi-annual report (see SUP 16.30).
12. We have permanently banned the mass marketing of speculative mini-bonds to retail consumers from 1 January 2021, to prevent consumer harm. Read our [Policy statement](#).

The Consumer Duty

13. Firms need to consider their responsibilities under the Consumer Duty, in particular the consumer understanding outcome, in relation to their approval of financial promotions for unauthorised firms. Approvers need to ensure that the financial promotions they approve support retail consumers' understanding and deliver good outcomes, by ensuring that the promotions:

- meet the information needs of customers
- are likely to be understood by customers intended to receive them, and
- equip them to make decisions that are effective and properly informed

14. Approvers should also ensure that the financial promotion is tailored to the characteristics of the customers intended to receive the financial promotion, taking into account any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm.

15. We expect firms that approve financial promotions on behalf of others to meet these expectations where they are relevant to their role. This means that firms must act reasonably in the circumstances to support good consumer outcomes. However, given the nature of the role of a s21 approver and the lack of direct relationship with the underlying customer, some requirements may not be relevant to their role. For example, it may not be appropriate for an approver to monitor communications that are not financial promotions, to oversee the timing of a communication by an unauthorised firm or to test communications with the unauthorised firm's investors. More detail on the Duty and the obligations for authorised firms can be found in [FG22/5](#) and [PS22/9](#).

Ensuring that a promotion is fair, clear and not misleading

16. Before a firm approves a financial promotion for communication by an unauthorised firm, it must confirm that the financial promotion complies with our financial promotion rules (COBS 4.10.2 R (1)). This is also true of firms which approve their own financial promotions for communication by unauthorised firms (see PERG 8.9.3 G).

17. All financial promotions must be fair, clear and not misleading (COBS 4.2.1 R). This means that you must not approve the content of a financial promotion for communication by an unauthorised firm, unless you are satisfied that the promotion is fair, clear and not misleading.

18. To be in a position to confirm this, you should consider both:

- the presentation of the promotion (eg, whether the risk warnings are given sufficient prominence)
- the substance (eg, the fairness and veracity of claims made and whether these can be substantiated)

19. You should therefore analyse, and carry out due diligence regarding, the substance of a promotion before approving its content for communication by an unauthorised firm. The extent and substance of the analysis and diligence needed to be able confirm that a promotion is fair, clear and not misleading will vary from case-to-case and will depend on the form and content of the promotion.

20. When assessing whether a promotion is fair, clear and not misleading, a firm may need to consider (among other things):

- The authenticity of the proposition described in the relevant promotion. This may mean undertaking background checks on directors, controllers or other key individuals associated with the product provider

- The commercial viability of the proposition described in the promotion. Has the promotion adequately disclosed any significant factors that could threaten the product's viability? Could potential investors make an informed decision about investment?
- Whether advertised or headline rates of return are reasonably capable of being achieved. This may mean reviewing materials such as the product provider's financial statements and/or management accounts, business plan, financial projections and capital position.
- Whether there are any fees, commissions or other charges within the investment's structure or elsewhere that could materially affect the ability of the product provider to deliver advertised or headline rates of return.
- If the product is advertised as being eligible for a particular tax treatment (eg, for inclusion within an Innovative Finance ISA), does the product actually meet the requirements for this treatment? (For tax treatment, see also COBS 4.5.7 R; COBS 4.5A.8 UK).

21. In assessing whether a financial promotion is fair, clear and not misleading, a firm should consider the guidance in COBS 4. In particular, firms are reminded that COBS 4.2.5 G states that 'a financial promotion should not describe a feature of a product or service as 'guaranteed', 'protected' or 'secure', or use a similar term unless:

- that term is capable of being a fair, clear and not misleading description of it
- the firm communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading

22. This means that where an investment is described in a promotion as 'secured' or 'asset-backed' (or equivalent), you should consider whether the promotion contains the information necessary to enable investors to:

- understand how such protection operates
- assess any potential weaknesses or deficiencies in it

23. This may involve taking steps to ascertain the likelihood of any security being sufficient to cover investors' investments (eg, capital repayments, interest payments).

24. You are also reminded of the importance of being clear with investors about the extent to which a product or service is regulated. A financial promotion that you approve for a product provider should not suggest or imply that the product provider's activities (eg, issuing bonds) are regulated if they are not (COBS 4.2.4 G (4)). We wrote separately to firms in January 2019 on the importance of being clear with consumers about the extent of regulation applicable to products or services.

25. A firm approving a financial promotion must confirm that the promotion complies with all applicable financial promotion rules (COBS 4.10.2 R (1)). In particular, a financial promotion that is likely to be received by a retail client must give a fair and prominent indication of relevant risks when referencing potential benefits (COBS 4.5.2 R (2); COBS 4.5A.3 UK).

26. On the need to ensure that risk warnings are afforded sufficient prominence within financial promotions, firms are reminded of our guidance.

- 27.** When approving a financial promotion, you should form your own view of the risks associated with an investment in order to confirm that this requirement is satisfied (ie, that the promotion gives sufficient prominence to all relevant risks). You should not assume that the product provider has done so.
- 28.** Where a financial promotion contains certain types of comparison, the firm approving the promotion must ensure that such comparisons are meaningful and presented in a fair and balanced way (COBS 4.5.6 R; COBS 4.5A.7 UK). This would include, for example, where a retail investment product is compared to a bank savings account. The promotion should contain enough information to enable prospective investors to make an informed decision.

Name of s21 Approver

- 29.** S21 approvers are required by our rules in COBS 4.5.2R to ensure a financial promotion to a retail client includes the name of the firm that approved the promotion. This information is important to consumers so that they can confirm the identity of the authorised firm on the FCA's Financial Services Register. S21 approvers must also ensure that the financial promotion clearly states on its face the date on which it was approved.
- 30.** We expect firms to give sufficient prominence to the name of the firm that approved the financial promotion, to assist consumers should they wish to confirm the identity of the approving firm to understand who is responsible for ensuring the financial promotion complies with applicable FCA rules.
- 31.** When financial promotions are placed on digital media, firms may encounter space limitations. In these instances, firms are permitted to display text on the face of the promotion that refers to the approver's Firm Reference Number (FRN), instead of the full name and date of approval. This text must include a link that opens a web page where the firm's full name and the date of the approval is displayed. The format to be used is 'Approver FRN xxxxxx' (the firm's relevant number to be inserted).

Reliance on others

- 32.** When approving a financial promotion of, and for communication by, an unauthorised firm, it is unlikely to be appropriate to accept at face value information provided by the unauthorised firm. You should form your own view as to whether the promotion complies with our financial promotion rules.
- 33.** That said, in carrying out the types of assessment and analysis described here, you may be able to rely on information and analysis prepared by independent professional advisers on behalf of the unauthorised firm. You should consider the appropriateness of relying on this type of information on a case-by-case basis.

Social media and digital communications

- 34.** Retail investment product providers are increasingly relying on social media and other forms of digital communication to promote their products. Firms approving financial promotions for communication through this type of channel are reminded of our guidance (FG15/4).

Systems and controls

- 35.** COBS 4.10.1 G reminds firms that when approving financial promotions they should have in place systems and controls or policies and procedures, or an effective internal control system, in order to comply with our financial promotion rules in COBS 4.
- 36.** You are also reminded of the importance of maintaining adequate records of the financial promotions which you approve (COBS 4.11.1 R (1)). When you approve a financial promotion, you should consider recording how the promotion complies with our rules (COBS 4.11.2 G).

Ongoing monitoring

- 37.** A firm that has approved a financial promotion is also required to take reasonable steps to monitor the continuing compliance of the financial promotion with the financial promotion rules for the lifetime of the promotion (COBS 4.10.2 R), i.e. not just at the point of approval. This means that a s21 approver is expected to monitor each financial promotion it has approved periodically to assess whether (among other things and as applicable):
- there have been any changes to the promotion, which mean it is no longer being lawfully communicated
 - there have been any changes which may affect whether the promotion continues to be fair, clear and not misleading, including consideration of the ongoing commercial viability of the proposition described in the promotion, and whether the headline rates of return in the promotion continue to be reasonably achievable
 - funds raised are being used for the purposes described in the promotion
 - any new and relevant requirements, i.e. that have come into force post-approval, are being complied with.
- 38.** If at any time the firm becomes aware that the approved promotion no longer complies with the financial promotion rules – through its monitoring activity or otherwise – it must withdraw its approval and notify any person known to be relying on its approval (COBS 4.10.2 R (2)).
- 39.** As part of the ongoing monitoring requirements, firms that have approved promotions for unauthorised firms are also required to collect quarterly attestations of 'no material change' from the unauthorised firms for whom they have approved promotions (COBS 4.10.2R(1B)). Where a client is unable to provide the attestation, because there have been material changes or the client is unresponsive, the firm should consider all information available to it and where appropriate consider withdrawing its approval. Firms cannot rely solely on attestations of no material change to meet their

responsibilities under the ongoing monitoring requirement and should take reasonable steps to satisfy themselves that approved promotions remain compliant.

40. The ongoing monitoring requirement applies to firms for the lifetime of the approved promotion, so it is in a better position to withdraw its approval if necessary.

High-risk investments

41. A s21 approver may approve a direct offer financial promotion for a restricted mass market investment or a financial promotion for a non-mass market investment for communicating to a retail client. In this case, the s21 approver must take reasonable steps to ensure, on a continuing basis, that the detailed conditions applying to such promotions (in COBS 4.12A and 4.12B) are being satisfied (COBS 4.10.2A R (2)).

Appropriateness assessments

42. Where the rules on restricted mass market investments require an appropriateness assessment to be undertaken, s21 approvers must ensure that the relevant automated, or other, processes for appropriateness tests comply with our rules periodically throughout the life of the promotion, not just at the point of first approval (where the s21 approver will not itself carry out the appropriateness assessment). We would expect firms to consider the following in reviewing the processes in place to assess appropriateness, where this is to be undertaken by a person other than the s21 approver. Firms should consider that the person who will undertake the assessment has:
- adequate systems and controls in place to assess the knowledge and experience of the customer
 - adequate systems and controls in place to assess the customer's understanding of the risks involved with the product or service
 - adequate systems and controls in place to record the customer's information (see also COBS 4.11.6 R which requires a s21 approver to take reasonable steps to ensure that adequate records are made and are available to it).
43. An assessment of what is adequate should be objective and unbiased. If a firm is not satisfied with any of the above, having conducted its checks or via any other information it has available to it, it must withdraw its approval.

Preliminary suitability assessments (NMMI promotions)

44. Firms approving financial promotions for non-mass market investments (NMMI) must conduct a preliminary assessment of suitability before an unauthorised firm can communicate a promotion to a high-net worth or self-certified sophisticated investor. The s21 approver should take reasonable steps to acquaint itself with the intended client's profile and objectives as stated in COBS 4.12B.9G 2(c).
45. This may include a s21 approver having sight of the following information in relation to the client, which is not an exhaustive list:

- knowledge and history of investing in the type of product in question
- financial circumstances
- investment objectives

46. If a firm is not satisfied that the NMMI product is likely to be suitable for the client, having conducted a preliminary assessment of suitability, or via any other information it has available to it, it should not grant its approval for the promotion.

Competence & Expertise

47. When a firm applies for permission to approve financial promotions for unauthorised firms, their competence and expertise (C&E) to do so in relation to the investment types for which permission is sought will be assessed at the gateway. Only firms that can demonstrate that they have the relevant C&E in house will be granted permission.

48. Even if a firm does not require permission to approve financial promotions, we nevertheless expect firms to have persons with relevant C&E before approving or communicating a financial promotion (PRIN 2, SYSC 3.1.6 R and SYSC 5.1.1 R). In assessing whether it has the relevant C&E to communicate or approve financial promotions for a particular product type, a firm should, as a minimum, consider:

- whether the firm has adequate resources, systems and controls in place to approve and monitor the financial promotions, particularly when the firm is approving large volumes of promotions
- whether it has relevant experience and/or qualifications in the investment products/sectors that are the subject of the financial promotions
- the previous employment history and qualifications of the individuals responsible for approving promotions and whether they align with the products and sectors underlying the promotions.

49. As well as an assessment by the FCA at the gateway, firms are required to self-assess that they have the relevant C&E in the underlying product before approving or communicating a particular financial promotion (COBS 4.10.9AR).

50. Where the promotion is related to a regulated activity for which the firm has a Part 4A permission (e.g. dealing in investments) in relation to the relevant type of investment, we would generally expect the firm to have met the C&E self-assessment requirement by virtue of its regulated business. However, we expect firms to take particular care when considering their competence and expertise and when approving financial promotions related to new or innovative products in their respective fields.

51. We require that the firm self-assesses that they have the necessary C&E for the investment product itself, but not necessarily C&E in any specific commercial sector/s underlying the investment. For example, a firm approving a promotion of an unlisted equity share should have C&E in relation to unlisted equities, but is not required to assess whether it has C&E in the farming or mining business for example, if the underlying business to which the share offer relates is in these sectors.

52. Firms are also reminded of the importance of maintaining adequate records of the financial promotions which they approve (COBS 4.11.1 R (1)). This includes making an adequate record of how the firm has met the competence and expertise rule when communicating or approving a financial promotion (COBS 4.11.1R (2B)).

Conflicts of Interest

53. Firms approving financial promotions are required to identify and prevent or manage any conflicts of interest relevant to s21 approval activity (COBS 4.10.12R).

Complying with FCA requirements

54. Our guidance on approving financial promotions is not exhaustive and is not a complete description of the steps which you should take when approving a financial promotion for a retail investment. It is up to you to determine the extent of the analysis or review needed to confirm that a financial promotion complies with our rules on a case-by-case basis.
55. Where we identify a financial promotion that has been approved by a firm but does not meet our requirements, there are a range of steps which we can take. These include:
- Asking the firm that approved the promotion to ensure that it is changed or withdrawn.
 - Directing the firm to withdraw its approval of the financial promotion using the power in section 137S of the Financial Services and Markets Act 2000.
 - Directing the firm to have the FPR reinstated, in part or in full.
 - Opening an Enforcement investigation which, if we find serious misconduct, may lead to Enforcement action such as a financial penalty.

Q8: Do you agree with our proposed changes to the non-Handbook guidance for the approval of financial promotions for unauthorised firms?

Annex 2

Questions in this paper

- Q1:** Do you agree with our proposed approach to assessing applications?
- Q2:** Do you agree with our proposed approach to determining whether to refuse an application or to grant permission on terms which are different from those for which application has been made?
- Q3:** Do you agree with our proposal not to make changes to the Financial Ombudsman Service's CJ for complaints about the approval of a financial promotion?
- Q4:** Do you agree with our proposal for s21 approvers to submit a notification to us within 1 week of every approval, withdrawal or amendment of a financial promotion?
- Q5:** Do you agree with our proposal for s21 approvers to submit regular reports to us on financial promotions approved for unauthorised firms?
- Q6:** Do you agree with the proposed metrics and bi-annual report frequency?
- Q7:** Do you intend to apply for permission to approve financial promotions?
- Q8:** Do you agree with our proposed changes to the non-Handbook guidance for the approval of financial promotions for unauthorised firms?

Annex 3

Cost benefit analysis

Executive Summary

1. This Annex sets out our assessment of the costs and benefits of the FCA's proposals for how to implement a gateway for firms who wish to approve financial promotions.
2. Historically, we have seen non-compliant financial promotions being approved by authorised firms and then communicated by unauthorised firms to retail consumers. Harm has arisen when these promotions have been acted on by consumers, leading to the purchase of an underlying product that is inappropriate. This has been most common in the consumer investments market. We have seen evidence of consumers investing in high-risk products that are not aligned with their risk tolerance, often as a result of poor-quality approved financial promotions. In the worst cases, the investments underperformed or failed and led to significant and unexpected losses for these retail investors. This undermines confidence in investing more widely and makes it harder for all firms to raise capital.
3. Currently, we do not have a robust framework for supervising approvals of financial promotions. We have no clear means of identifying which firms are approving promotions, and therefore establishing if they are practicing good governance with regards to the promotions they've approved. The FS Bill includes amendments to FSMA to enable the introduction of a gateway, whereby firms will need to apply to the FCA for permission to approve financial promotions for unauthorised firms. Once we have evaluated all applications received at the gateway, we will have built a list of firms that have been granted permission to approve financial promotions. We are proposing to impose reporting requirements on the firms that initially apply at the gateway, and firms that are granted the permission in the future.
4. We propose to require an approver to notify us within 7 days of approving, withdrawing approval, or amending approval of a promotion. We are also proposing that firms complete a bi-annual report on other elements of their approval activity. This CBA covers the cost and benefits of these reporting requirements to firms, consumers and the FCA, but does not cover the costs and benefits of the gateway itself. As this will be imposed by legislation by the Treasury, the costs related to the implementation of the gateway will be covered in The Treasury's impact assessment.
5. Whilst our analysis gives an indication of the benefits of our proposals, we cannot reasonably quantify them due to the lack of data available on non-compliant promotions. We have, however, produced a breakeven analysis to provide an indication of the overall scale of the anticipated benefits that would be necessary to offset the costs of the policies. We estimate that for our intervention to be net beneficial in monetary terms, each consumer (as defined in paragraph 36) would need to make a saving of more than 5 pence to 51 pence on average from financial losses which would have arisen from non-compliant financial promotions. We believe that this is more than

achievable due to the small savings needed per consumer and justifies the proposed policy given the scale of financial losses that can occur due to misleading financial promotions.

- 6.** We estimate that there will be one-off and ongoing compliance costs to firms that apply to the gateway resulting from compliance with our proposed reporting requirements. These costs include the expense of resources allocated to ensure that the necessary notifications are sent to the FCA within 7 days of an approval or amendment of a financial promotion, or the withdrawal of a financial promotion approval. There will also be familiarisation costs and the cost of staff allocated to completing a bi-annual report containing various metrics required by our proposed rules, which we estimate will differ for small and medium sized firms. Based on our lower and upper bound scenario assumptions for the number of firms that will apply at the gateway, and the number of notifications that firms will need to submit on average per year (based on supervisory evidence and judgement), we estimate a total one-off cost to firms of between £21k to £54k and total ongoing cost between £30k and £503k per annum.
- 7.** We also expect other ongoing costs to firms and consumers, but we do not consider these to be reasonably practicable to estimate. The extra regulatory burden of the proposed changes may lead to an increase in the cost of obtaining a s21 approval. Some unauthorised firms may be discouraged from promoting widely and instead promote only within exemptions in the FPO. This may lead to reduced choice for consumers, which would be a cost if any of the promotions would have been appropriate for them.
- 8.** We consider some of our assumptions and estimates to be uncertain. We would therefore encourage any data input from firms regarding the cost of compliance with our proposals, or any other aspects of this cost-benefit analysis, within their response to this consultation.

	Costs	Benefits
Firms	<ul style="list-style-type: none"> Quantified one off familiarisation costs - £21k to £54k Quantified ongoing compliance costs of submitting notifications and bi-annual reports: £30k - £503k depending on number of notifications and approving firms Potential indirect increase in costs for unauthorised firms that require approval of their promotions Potential loss of revenue for unauthorised firms from not being able to promote their products, if approval fees charged by s21 firms rise Loss of revenue for s21 approvers who chose not to continue approving financial promotions due at least in part to the proposed reporting requirements 	<ul style="list-style-type: none"> Improved consumer trust in the financial services market, potentially leading to higher demand for firms' products
Consumers	<ul style="list-style-type: none"> Potentially higher costs when purchasing products where the promotion has been approved Potentially fewer product options available 	<ul style="list-style-type: none"> Reduced risk of financial difficulty due to purchasing inappropriate products, leading to better financial well-being Reduce risk of knock-on difficulties as a result of financial difficulty, such as psychological stress, leading to improved consumer welfare Improved confidence and trust in the financial services market and related financial well-being benefits from investing in products which are appropriate for their needs
FCA	<ul style="list-style-type: none"> Absorbed as business as usual 	
Total quantified	One-off - £21k to £54k Ongoing - £30k to £503k	

Introduction

- The Financial Services and Markets Act 2000 (FSMA 2000), as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
- This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide an analysis of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, taking into account all the impacts we foresee.

11. In PS22/10, we published new rules for s21 approvers of financial promotions that are subject to the rules in COBS 4 (ie primarily approvals for investments), to place more responsibility on these authorised firms. This was in response to the identification of significant harm to consumers from poor quality approved financial promotions for high-risk investments. For wider context, the measures that were included in PS22/10 were the following, and will be in effect from 1st February 2023:
- the name of the approver and date of approval must be reflected on the face of a promotion
 - the approving firm must have competence and expertise in relation to the financial product being promoted
 - the approving firm must monitor the financial promotion on an ongoing basis, for the life of that promotion, to ensure that it remains compliant with our rules
 - the approving firm must obtain quarterly attestations of 'no material change' from the firm issuing the promotion
 - Our conflicts of interest obligations were extended to firms approving promotions for unauthorised firms
12. Following on from the new s21 gateway being introduced by the Treasury, the proposed reporting requirements in this consultation paper will build upon the new rules for these s21 approvers. Firms that conduct s21 approvals outside the scope of the COBS 4 rules, eg consumer credit lending including unregulated buy-now-pay-later (BNPL) when it comes within our perimeter will also need to apply to the s21 gateway and comply with the proposed reporting requirements in this consultation. This will enable both greater oversight of this market across financial services, and a data-led approach to supervision of this activity.

Problem and rationale for intervention

13. The routes by which financial promotions can lawfully be communicated in the UK are set out in chapter 2 of this CP. One of these routes is where an authorised firm approves the financial promotion for communication by an unauthorised firm. Under the current financial promotions framework, authorised firms are generally able to approve the financial promotions of any unauthorised firm. Before doing so they must ensure it meets our financial promotion rules, including the overarching requirement to be fair, clear and not misleading. There is no requirement for authorised firms to inform us that they approve financial promotions for unauthorised firms, and there is no specific assessment authorised firms must undergo before they are able to do this. It has therefore been difficult for the FCA to proactively address observed harm from poor quality, non-compliant financial promotions that have been approved.
14. The FCA has seen examples where authorised firms have approved financial promotions for products they have no expertise in and do not understand. Historically the quality of approved financial promotions has been found to be poor, especially in the high-risk investments market.
15. This has caused harm to consumers from purchasing products that do not meet their needs, after viewing non-compliant financial promotions that had been approved. This harm has been driven by the following market failures: **asymmetric information** as non-compliant approved financial promotions are a source of incomplete and/or inaccurate information supplied by the firm to the consumer, upon which consumers

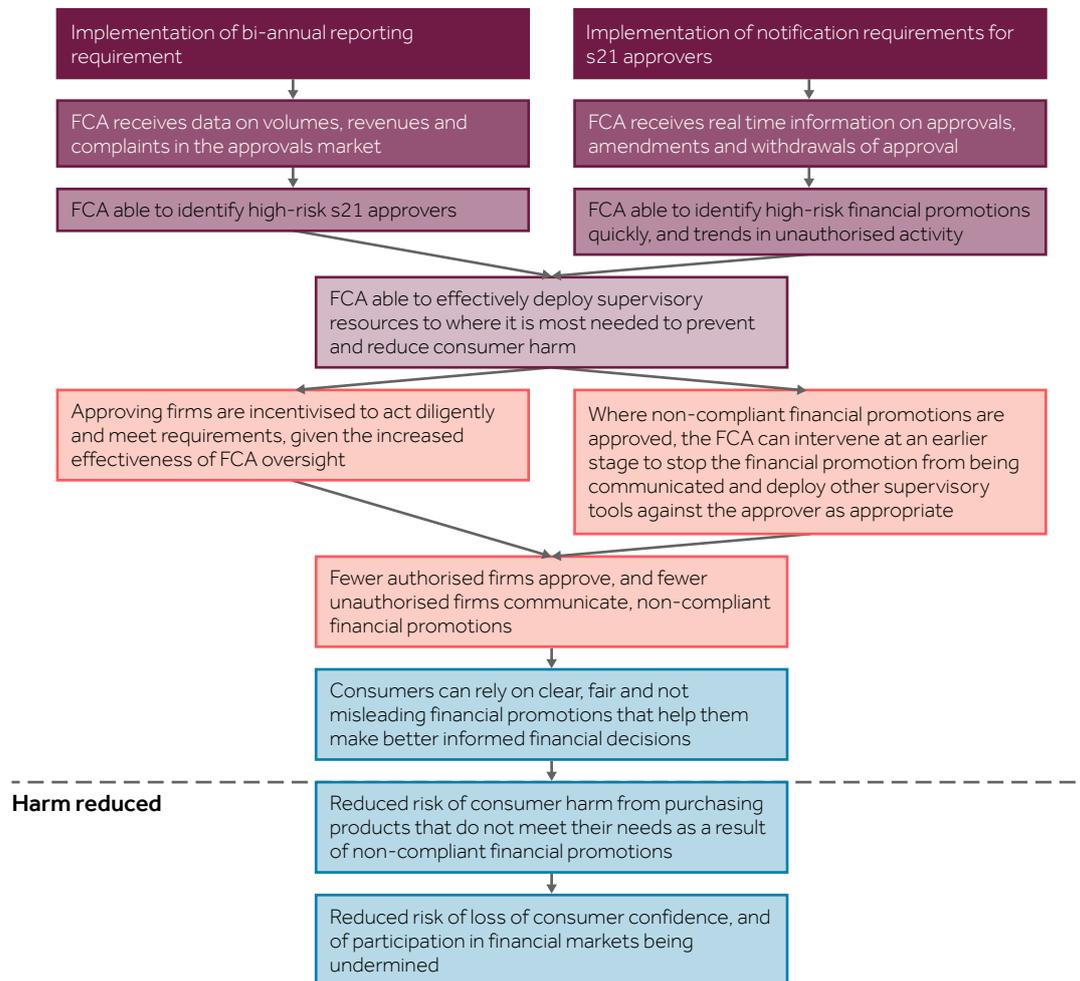
may act, and **regulatory failures** which have arisen in part due to the limited application of regulation in this area. The gaps in the regulatory framework described above have meant that this consumer harm has often already occurred when we intervene.

16. In the past three years we have imposed requirements on a number of firms, either in response to the voluntary application of the firm (VREQ) or on our own initiative (OIREQ) to restrict their ability to partake in s21 approval activity. There are also currently 10 live enforcement investigations regarding s21 approval activity.
17. The new requirements introduced in PS22/10, for firms that approve financial promotions for unauthorised firms under the COBS 4 rules, will not allow us to address the market failures on their own for two main reasons:
 - a. We still currently have no means of exhaustively knowing who should be following these rules or monitoring their implementation, other than using tools such as web-scraping software to find approved financial promotions.
 - b. The PS22/10 measures only apply to financial promotions of mainly investment products, and do not cover the full scope of financial promotions that can be approved.
18. In July 2020, the Treasury launched a consultation on a Regulatory Framework for Approval of Financial Promotions. The Treasury proposed amending FSMA so that authorised firms are no longer able to approve the financial promotions of unauthorised firms, unless the authorised firm had passed through a new regulatory 'gateway' operated by the FCA. The Treasury intended this to lead to several improvements, including more effective FCA oversight and supervision and improved due diligence by approvers.
19. The Treasury has now included the relevant proposed amendments to FSMA in the FS Bill. A new Financial Promotion Requirement (FPR) will be imposed on all firms, requiring that they do not approve financial promotions for unauthorised firms. Firms that are successful at the gateway will be able to approve financial promotions without breaching this requirement. Firms that are in the process of applying for Part 4A permissions may simultaneously apply for permission to approve financial promotions. More information about how the gateway will operate can be found in chapter 3, and the Treasury's [consultation paper](#) and [feedback statement](#).
20. We believe a more proactive approach to supervision of this activity is needed to prevent further harm. By imposing a new reporting regime on these firms, we will be better equipped to intervene early to prevent consumer harm, rather than addressing it after it's happened.
21. The measures we're proposing in this paper will provide us with the supervisory tools to oversee the s21 approval market in a manner which has not been possible to date. This includes an enhanced ability to ensure firms are in compliance with the new rules for s21 approvers confirmed in PS22/10.

Summary of proposed interventions

- 22.** Once the Treasury's proposed legislation underpinning the s21 gateway comes into force, we will implement a process to provide firms with the opportunity to submit an application to approve financial promotions. The cost of this application process is not included in this analysis, as it has been brought about by legislation, and is therefore accounted for in the Treasury's Impact Assessment for the s21 gateway. In this paper, we only focus on costs and benefits related to our proposals for s21 approvers to provide the FCA with both **notifications** and **bi-annual reporting**.
- 23.** For firms who apply at the gateway, we are proposing that each firm must submit a notification to us upon an approval, amendment of a financial promotion, or withdrawal of an approval of a financial promotion, within 7 days. Details to be submitted per notification can be seen in paragraph 4.26 of the CP. The fields include the reason for amendment/ withdrawal, for example. Entries in these fields allow the notification to be ranked in terms of risk posed to consumers, to direct supervisory resources where they are most needed.
- 24.** Additionally, firms will be required to report to us bi-annually, providing us with the following 4 metrics for the preceding reporting period:
- Number of approvals
 - Number of consumer complaints specifically related to approved financial promotions
 - Revenue earned from the approval of financial promotions
 - Total revenue for the firm
- 25.** This bi-annual reporting would provide the FCA with a snapshot of the approvals market. It would allow the FCA to monitor the size of the market, how reliant firms are on s21 approval revenue and changes in revenues over time. This will enable the FCA to have a better understanding of the workings of the approvals market at a high-level, to contextualize supervision in this area and monitor whether the number and size of firms being approved at the gateway raises any competition concerns.
- 26.** Figure 1 provides a casual chain analysis, illustrating the envisaged effect of our proposals on consumer harm.

Figure 1: Causal chain illustrating the intended effect of our proposals



Baseline and key assumptions

The current market for approving financial promotions

- 27.** We have limited information on the number of financial promotions that have been approved previously. However, data from slightly less than half of the authorised firms that we are aware of who have approved financial promotions in the past indicates that at least 10,080 financial promotions have been approved over the past three years. Given that this was data from only half of the firms we reached out to, the true number could be over double this on the basis of the sample being representative.
- 28.** The firms affected by our proposals are all the authorised firms that will apply to obtain permission to approve financial promotions for unauthorised firms, and all firms that are applying for Part 4A permissions and wish to apply for permission to approve financial promotions for unauthorised firms at the same time. We explain our estimates for the number of approvers affected in paragraph 44. We currently observe 39 firms that have previously approved a financial promotion, of which 4 are medium firms and the rest are small firms, however this information may be an incomplete picture.

29. These proposals only affect sectors where there is an unauthorised population of firms (subject to the intended exemptions from the gateway relating to intra-group businesses and ARs) that currently promote products in scope of the financial promotions regime, or that are intended to be brought into scope of the financial promotion regime.

Consumers potentially affected

30. In theory, all consumers could be affected by our proposals. This is because any consumer could come across a financial promotion that has been approved by an authorised firm, and make financial decisions as a result. However, almost all cases of financial promotion approvals that the FCA is aware of are for high-risk investments. The consumers most likely to be affected are therefore likely to be those retail consumers who are seeking to invest their funds, and are interested in high-risk investment products. This is because issuing your own security is generally not a regulated activity, so issuers of high-risk investments may be unauthorised. Unauthorised issuers will therefore need to get their financial promotions approved unless they limit promotion so that it falls within the scope of an exemption in the Financial Promotion Order (FPO).
31. Some financial promotions by unauthorised firms of unregulated buy-now-pay-later agreements (BNPL) must also have a s21 approval that would be in scope of the new gateway, if an FPO exemption doesn't apply. So some consumers who purchase, or who are interested in purchasing, BNPL products will be affected. This will also extend to financial promotions by unauthorised firms in relation to regulated BNPL agreements when, under the Treasury's proposals, these agreements fall into regulation. This would mean unauthorised merchants would be required to obtain approval for promotions of BNPL products from an authorised firm (which could, but does not have to, be their BNPL lender partner).
32. S21 approval activity is likely to increase in the coming years due to several regulatory changes. The Treasury has proposed reforms to tighten several FPO exemptions (which many unauthorised firms currently use to lawfully communicate their financial promotions). If these exemptions can no longer be used, this may lead to unauthorised firms seeking a s21 approver for their promotions. Chapter 2 of the CP contains more information on this.
33. In addition, the Treasury intends to bring cryptoassets within the financial promotions regime. Subject to the Treasury's proposals for qualifying cryptoassets, unauthorised firms promoting these cryptoassets will need to get their financial promotions approved by a s21 approver, unless an FPO exemption applies. The final definition and what is covered will be determined by the Treasury via their statutory instrument.
34. Due to proposed exemptions to the s21 gateway, and FPO exemptions and how these may change following reforms by the Treasury, it is difficult to gauge what proportion of each affected sector's or individual firm's financial promotions are reliant on s21 approvals. However, the Treasury's proposed reforms should make this proportion relatively higher.
35. The populations of consumers we believe will be primarily affected by our proposals are:

- Investment-based crowdfunding platforms: a stock of 800,000 consumers (Financial Lives Survey 2022) – a proportion (or potentially all) of these could be affected. There will also be a flow of new consumers affected but the number is unknown
- Mini bonds: a stock of 300,000 consumers (Financial Lives Survey 2022) – a proportion (or potentially all) of these could be affected. There will be a flow of new consumers affected but the number is unknown.
- Cryptoassets*
- Buy-now-pay-later agreements*
- Other high-risk investment types*

*= unknown number of consumers affected

36. Based on the available information, we have therefore assumed that a total number of at least 1,100,000 consumers will be affected by our proposals.

Mini bonds and investment based crowdfunding platforms

37. We are aware that s21 approvals have been regularly undertaken in these areas. We have assumed that all the relevant financial promotions for these investments are approved promotions that are in scope of the incoming s21 gateway. This is unlikely to be the case, for the reasons described in paragraph 37 and the fact that some will be communicated by authorised persons rather than being approved. Although these factors suggest that our estimations of the consumers affected is an overestimate, this is likely to be cancelled out due to the other products where our proposals are likely to have an effect, but where we have not been able to estimate the number of consumers affected.

Buy-now-pay-later (BNPL) agreements, cryptoassets and other high-risk investments

38. As indicated above, we cannot reasonably estimate the number of consumers for these financial products who may be potentially impacted by our proposals. This is because:

- a.** we have limited information on consumers and financial promotions in areas outside of our perimeter
- b.** the proportion of consumers and firms that will be reliant on financial promotion approvals is unclear due to the presence of FPO exemptions, upcoming legislative reforms and s21 gateway exemptions.

Therefore, simply assuming in our analysis that all consumers of each of these products will be affected by our proposals would risk overstating the likely benefits of our proposals.

39. To provide some context, our Financial Lives Survey 2022 suggests that over 3 million UK consumers have invested in cryptoassets. Other research estimates suggest the number is higher. Estimates of the number of consumers that use unregulated BNPL also vary, with some external reports estimating around 10 million consumers (Mintel Buy Now Pay Later Financing UK, 2022) whilst others consider the figure to be higher, at around double that. Moreover, we are aware that s21 approval activity could span to other high-risk investments such as Non-Mainstream Pooled Investments (NMPI) and Non-Readily Realisable Securities (NRRS) not promoted on investment-based crowdfunding platforms. Accounting for all of these products would likely increase

the number of consumers affected. For example, even if only a small percentage of crypto, BNPL and other high risk investment consumers are affected by our proposals, the number of consumers affected by our proposals in total is likely to be significantly higher. We therefore consider our estimates of consumers affected to be conservative.

40. While we are not aware of a significant amount of approval activity in other areas that is in scope of the gateway, (which is why the s21 gateway will be of great benefit to our oversight of the approvals market), there may be other financial products whose promotions may require approval in scope of the gateway now and in the future. Consumers who purchase, or are interested in purchasing, those products as a consequence of being exposed to a financial promotion will also be affected by our proposals.

Baseline

41. Once the applicable amendments to s21 in the FS Bill are applied through legislation, authorised firms will have the opportunity to apply to approve financial promotions for unauthorised firms. In a counterfactual scenario where we do not impose any reporting requirements on firms that are approved at the gateway, firms' approval activity would not be monitored in near real time or otherwise, and we would still not have sufficient market oversight. While we would be aware of which firms have permission to approve financial promotions, we would not know which promotions are being approved and for which products these promotions are approved unless we followed up with each firm individually on a case-by-case basis. We would have less systematic insight into this market, which would not allow us to prevent harms through a proactive supervisory approach. In this case, harms related to misleading financial promotions could continue to occur and we would likely not be aware of most specific cases until after the harm has occurred, if it is brought to our attention.

Key assumptions

42. Our analysis of the costs and benefits of our proposals uses the current market sizes, levels of requirements and associated harm as the baseline. We assume 100% compliance with our proposed requirements. As our proposals will result in a much higher degree of market oversight and proactive supervision, firms will be more inclined to ensure their compliance with our rules.
43. After the imposition of the FPR, any authorised firms that 'approve' promotions without having had their application approved at the gateway will be in breach of a requirement on their Part 4A permissions and may be subject to supervisory intervention or, where appropriate, enforcement action. The number of firms we expect to apply at the gateway is uncertain. To provide an indication of costs we use a range of 39 to 100 firms that might apply. The lower bound number of 39 firms is based on the number of active firms that we know have approved a promotion for an unauthorised firm and could still feasibly do so (eg they have not been prevented from doing so again by supervisory intervention). The upper bound of 100 is based on supervisory expectations and judgement and assumes the same firm size profile as the 39 active firms we currently observe.

- 44.** However, we expect to receive applications from authorised firms where we are unaware they currently approve financial promotions. There may also be an increase in approvers if cryptoassets are brought within the financial promotions regime, changes are made to the BNPL financial promotions perimeter as planned and the Treasury proceeds with tightening the FPO exemptions for high-net worth and sophisticated investors.
- 45.** As we cannot predict whether these assumptions will prove to be correct, it remains very uncertain how many firms will apply at the gateway and these scenarios provide only an indication of the likely costs.
- 46.** We are assuming that all firms that apply to the gateway will have their application granted, to keep our cost estimates conservative.
- 47.** Although we assumed 100% compliance with the rules confirmed in PS22/10 in CP22/2, we do accept that in some instances this may not be case. The proposals in this paper will provide extra benefit and protection for consumers in these specific cases where firms do not approve appropriately despite the strengthening measures for s21 approvers under COBS 4, by allowing the FCA to act on receipt of notifications and reports. We therefore assume that these proposals will have 2 effects: (1) a deterrence effect as firms will be wary that the FCA is monitoring their financial promotions approvals, and (2) the FCA will now have the ability to more effectively intervene in cases where inappropriately approved financial promotions have been identified.

Benefits

Benefits to firms

- 48.** We expect that our proposals will lead to improved trust in the retail investment market and firms who communicate financial promotions. Over time, a higher level of trust in firms may lead to them gaining more clients due to consumers being more confident to engage with the market. This could lead to higher volumes of transactions, and ultimately increased revenue for firms.

Benefits to consumers

- 49.** Examples of losses consumers have incurred after investing in high-risk investments issued by unauthorised persons provides some context on the potential benefits that this proposal may help achieve. An authorised firm that later went into administration approved financial promotions for Secured Energy Bonds Plc, Providence Bonds plc and Providence Bonds II plc which have all gone into liquidation or been dissolved. Investors lost approximately £15m when these failed. In 2019, another bond collapsed (which had its financial promotions approved by an authorised firm) and current estimates of outstanding funds due to bondholders and creditors are over £20m. Another similar example has current losses estimated at over £4m, and another at £2.4m. There are many other similar instances, including more recent examples that are still the subject of ongoing investigations.
- 50.** Our interventions are not primarily aimed at addressing these specific cases, which have also been mitigated by other FCA interventions such as our ban on the mass-

marketing of speculative illiquid securities. However, they demonstrate the magnitude of losses that consumers can face when things go wrong.

- 51.** As explained in paragraph 17, we have imposed requirements on a number of firms, to restrict their ability to partake in s21 approval activity which highlights the scale of concern regarding the quality of the financial promotions that had been approved. There are also currently 10 live enforcement investigations regarding s21 approval activity.
- 52.** Supervisory action in this area is typically retrospective. Historically, we have only known about a non-compliant approved financial promotion at a point where consumers have already invested and potentially lost all their money. We would expect that if the s21 gateway had been in place prior to the harms outlined above occurring, the resultant consumer losses would have been lower. This is because the market oversight to be provided by the implementation of the gateway and the subsequent reporting we're proposing will enable more proactive supervision to take place, addressing potential harms earlier.
- 53.** The notifications we are proposing would enable a proactive approach to supervision, in contrast to a reactive supervisory approach that often only deals with harms after they have happened. We think that this approach will have a significant impact on our ability to provide consumer protection in the market, through providing the FCA with the data necessary to trigger intervention at an earlier stage if an approved promotion is not compliant.
- 54.** For example, the FCA could receive a notification that a promotion has been approved, look at this promotion and consider it to be misleading, and then immediately follow up with the approving firm. This would reduce the chance that any consumers have already made misinformed financial decisions after seeing it.
- 55.** These notifications will also allow us to gather data about the type and volume of promotions being approved in the market. This will allow us to spot trends in the types of products being promoted by unauthorised firms. For example, we would be able to detect an uptick in the promotion of a type of high-risk investment. Having access to such data trends provides us with an opportunity to direct our supervisory resources where they're likely to be most effective.
- 56.** The bi-annual reporting will act as a second line of defence to identify high risk approvers and high-risk financial promotions, through the complaints data. This will allow the FCA to focus supervisory resources on financial promotions that have been the subject of complaints, and specifically on approvers where complaints occur most frequently in relation to the total number of financial promotions they approve. The complaints metric allows us to see how many complaints firms have specifically about their financial promotion approval activity; our existing complaints returns do not give this level of detail.
- 57.** Both of these reporting measures should work together to encourage firms to approve financial promotions diligently and ensure financial promotions meet our standards, given the increased transparency required. Firms are incentivised to take steps to avoid FCA intervention more than they did previously, given the increased oversight the reporting requirements facilitate.

58. We anticipate that the improved oversight and supervision from our proposals will deliver benefits to consumers. However, it is not reasonably practicable to estimate the consumer benefits of our proposals. This is because we cannot reasonably predict how many approved financial promotions will be in circulation, and how many consumers will see and interact with these promotions (and we have no information on this from previous years). It is also difficult to understand how consumers will respond to financial promotions and whether the financial product communicated would likely meet their needs. We expect the following benefits to accrue to consumers:
- **Less inappropriate transactions:** By ensuring more transparency between financial promotion approvers and the regulator, and enabling the FCA to act faster in relation to misleading financial promotions, approved financial promotions in circulation are more likely to support **informed financial decision making amongst consumers**. For example, consumers may be less likely to invest in high-risk investments without realising they've done so as a result of a poor-quality financial promotion. If a consumer purchases a high-risk investment product without realising that they have done so, they may benefit from their inappropriate purchase if the investment yields high returns. The benefit being referred to here, is a benefit in the sense that the consumer is protected from purchasing an investment that has the potential to incur higher losses than the consumer realises is possible/likely. This in turn will reduce financial difficulty experienced by consumers and bring wellbeing benefits.
 - **Potentially more appropriate transactions:** Consumers may be more likely to invest in a more appropriate investment, bringing related benefits. More appropriate transactions may lead to improved trust and consumer confidence in financial services, due to less instances of this being undermined. This in turn may lead to benefits to consumers from investing in products that they would otherwise have not invested in and benefited from.

Breakeven analysis

59. Whilst we have been unable to estimate benefits, we have undertaken a breakeven analysis, to further illustrate the benefits of our proposal. This estimates the benefits that will need to be realised for the proposed package to be 'net beneficial', given the compliance costs incurred by firms.
60. We have illustrated the costs of our proposals per year, and averaged them against the population of consumers that may potentially benefit from the proposals. As is explained in our baseline and key assumptions section, we have assumed that this population is current holders of certain high-risk investments, namely those who have invested using investment-based crowdfunding platforms and holders of speculative illiquid securities. We have therefore used a total number of 1.1 million consumers for our calculation.
61. Looking at the total costs of our proposals under our scenarios, we estimate costs at both the lower bound and upper bound estimates of firms who may apply at the gateway and the number of notifications they will need to submit per year. Based on our scenarios, we expect total ongoing costs to range from £30,200 to £503,000 per year.
62. To calculate the break-even level, we divide the total year 1 cost (£51k for lower bound and £557k for upper bound) of the proposal by the number of consumers affected (1.1

million consumers). This implies that for the impact of our interventions to break even in monetary terms, each consumer estimated to be affected by our proposals would need to realise or make a saving of between 5p and 51p on average. As described in our baseline and key assumptions section, our estimate for the number of consumers affected is likely to be a underestimate. We consider it likely that these benefits will be realised and believe that it is realistically achievable that our proposal will be net beneficial due to the small savings needed per consumer especially compared to the scale of financial losses that can occur due to misleading financial promotions (as shown in the examples in the benefits to consumers section).

63. While the range of the possible year 1 costs of our proposals (between £51k and £557k) is relatively large, this reflects the range of notifications and firms that may apply for permission to approve promotions. As we are unaware of how many firms currently approve financial promotions, and how many promotions they approve each year, we must allow for a wide range of possible costs.

Costs

Direct costs to firms

Ongoing costs to firms

64. We expect that firms will incur compliance costs as a result of our proposals. There will be costs associated with providing us with a notification upon the approval or withdrawal of approval, or amendment of approval of a financial promotion. We conservatively expect a compliance officer to take between 30 and 60 minutes to complete a notification form. This is based on discussions with FCA colleagues who have created the form to be completed for these notifications.
65. In addition to the estimated number of firms (39-100), we have also used lower and upper bound scenarios for notifications to assess the cost of firms, (1) where there are 10 notifications per annum in the lower bound, or (2) 100 notifications per annum in the upper bound. This is because approval activity can vary significantly and we anticipate a range of between 10 and 100 notifications per annum for each firm, based on data we have received from known approving firms about how many approvals they currently undertake.
66. Using our standardised assumptions, we then calculate the cost of one notification, using a formula which estimates the costs of time of the staff carrying out the notification using data on professional salaries. Taking an annual salary of £56,000 (the annual salary for a compliance staff member), we divide this number by the typical annual working hours (1,540 hours), which tells us the hourly rate of a compliance officer's salary. We also account for a 30% overhead which gives an hourly rate of £47.27. Allowing for a full hour of a compliance officer's time to complete a notification, we multiply the hourly rate of £47.27 by the number of notifications (which range from 10-100 depending on scenario) and then multiply this number by the number of firms (ranging from 39 to 100).
67. Based on these calculations, we estimate the projected ongoing cost to firms from our notification requirements will range from £18,400 to £472,700 per year, depending on the number of notifications submitted.

- 68.** To calculate the cost of a small firm providing us with a bi-annual report, we estimate that the bi-annual report will take approximately 3 hours of a compliance officer's time to prepare. This is based on discussions with FCA colleagues who have created the form for this report.
- 69.** For medium firms, we expect an additional cost for 2 hours of a senior manager's time, to ensure the bi-annual report is compliant. Taking an annual salary of £117,583, (the annual salary for a senior manager in compliance) using the same formula above also accounting for an overhead, we calculate an hourly rate of £99.26.
- 70.** Of the 39 firms that we are aware of having previously approved financial promotions, 4 are medium sized firms and 35 are small sized firms. This is a ratio of approximately 1 to 9. We have therefore assumed the same ratio for our upper bound estimate. We therefore estimate that the total ongoing cost of preparing the bi-annual reports will range between £10,000 and £25,500 per annum for small firms and between £1,900 and £4,800 for medium firms.
- 71.** This gives a total estimated ongoing cost to firms ranging from £30,300 to £503,100 per annum for a range of 10-100 notifications a year and 39-100 firms. This implies an ongoing cost per firm ranging from £780 to £5,000 on average per year depending on the number of notifications per year.

One off costs to firms

- 72.** For one-off costs, we consider there will be familiarisation costs incurred by firms as a result of proposals. We anticipate that there will be approximately 120 pages of documentation, . Assuming 300 words per page and a reading speed of 100 words per minute, it would take around 3 hours to read the document. It is further assumed that 5 staff at each medium firm and 2 staff at each small firm will read the text. We estimate the total one-off familiarisation cost to range from £21,200 to £54,000. This implies a one-off cost per firm of approximately £540 on average.
- 73.** We do not expect any need for firms to upgrade their systems or any need to purchase new software to meet our data collection requirements. We do not expect there to be any IT, legal, governance and change or training costs associated with this proposal. Therefore we see familiarisation costs as the only one-off cost for firms.

Indirect costs to firms

- 74.** We expect there will be indirect costs to firms as a result of our proposals. However, given their nature and the number of uncertain factors surrounding these, it is not reasonably practicable to estimate the value of these indirect costs.
- 75.** The increase in regulatory burden that the reporting requirements represent for s21 approvers may contribute to a reduction in authorised firms that choose to undertake approval activity. A reduction in the number of s21 approvers might increase the demand for a small number of firms, leading to higher fees charged per approval. This may increase the cost of promoting for unauthorised firms that rely on approvals. From our Supervisory work, we estimate firms charge between £5,000 and £15,000 for approving a financial promotion, depending on the nature and complexity of the product.
- 76.** A higher fee for approvals may price out some unauthorised firms from obtaining this. They may then choose to promote within an exemption in the FPO instead, to avoid

the approval fee. However, these often restrict the client base that can be promoted to. Alternatively, they may choose not to promote to retail clients, or not to offer the product altogether. This in turn may increase their capital raising costs and/or reduce their revenue.

- 77.** Authorised persons that decide against continuing to approve financial promotions, due at least in part to the extra regulatory burden of the proposed reporting requirements, would also lose the revenue they generate from financial promotion approvals.
- 78.** As part of the bi-annual reports that firms will be required to submit if we proceed with the proposals, we will have sight of revenue earned by firms directly related to their financial promotion approval activity. We will use the number of firms seeking approval, the numbers of notifications and the revenue levels earned from approval activity to monitor indirect impacts such as potential increases in prices charged for approvals.

Costs to Consumers

- 79.** We consider there may be some costs to consumers as a result of our proposals. If the extra burden from the new reporting requirements, and the associated additional scrutiny of their approval behaviour, discourages authorised firms from carrying out this activity altogether, the increased scarcity of approvers may lead to their prices increasing. The increased scarcity may also increase the search costs for unauthorised firms to find a firm willing to approve for them. The firms seeking approval of their promotions may pass any increase in cost for approval services on to consumers- in the form of any product-related fees, making the products more expensive to purchase.
- 80.** If it becomes too costly for unauthorised firms to obtain an approval, they may decide not to promote their products. This may reduce consumer awareness of these products if firms cannot promote, and/or reduce the choice of products available from unauthorised firms if firms then choose not to offer these products at all.
- 81.** We do not consider it reasonably practicable to estimate these potential costs to consumers. We consider the costs of our proposals to consumers to be proportionate, considering the risk of harm posed to consumers from non-compliant financial promotions. We consider the costs of potentially reduced choice and/or higher prices to be necessary to achieve the wider benefits of these proposals.

Costs to the FCA

- 82.** Existing FCA resources will be used to review and act on the notifications and reports we receive. There will be costs to the FCA as a result of implementing an application process, and costs associated with evaluating firm applications, these costs will be covered in the Treasury's Impact Assessment, as they are directly related to legislation that the Treasury has proposed.

Annex 4

Compatibility statement

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised firms.
3. This Annex also sets out the FCA's view of how the proposed rules regarding notifications and reports relating to the approval of financial promotions are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4) FSMA). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of consumer protection. They are also relevant to the FCA's market integrity objective.

8. Our consumer protection objective is to secure an appropriate degree of protection for consumers. In considering what degree of protection may be appropriate we are required to have regard to the 7 matters listed in FSMA s.1C(2)(a)-(h).

the differing degrees of risk involved in different kinds of investment or other transaction

9. The proposals in this CP are designed to reduce/ prevent harm to consumers from purchasing products that are unlikely to meet their needs. This includes reducing/ preventing harm to consumers from investing in products that do not match their risk tolerance. As we explain in chapter 2, good quality financial promotions are key to ensuring that consumers have the information they need to make effective financial decisions, including on the risks of the transaction. Having a stronger framework for supervising firms that approve financial promotions will help us to ensure financial promotions that are communicated to consumers by unauthorised firms and approved by authorised firms are compliant with our rules, and enable consumers to assess the risks effectively.

the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question, and the differing degrees of experience and expertise that different consumers may have

10. Having a strong framework from which to supervise the approvers of financial promotions for unauthorised firms, allows us to better ensure that the financial promotions they approve support consumers to make effective decisions.
11. Under the Consumer Duty, S21 approvers will need to ensure that the financial promotions they approve support retail consumers' understanding by ensuring that they meet the information needs of customers, are likely to be understood by customers intended to receive them, and equip them to make decisions that are effective, timely and properly informed. They should also ensure that the financial promotion is tailored to the characteristics of the customers intended to receive the financial promotion, including by reference to any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm. A robust assessment at the gateway for firms that wish to undertake approvals of financial promotions, in tandem with reporting requirements to help us monitor their compliance with our requirements, will help us to ensure that the intended outcomes of the Consumer Duty are delivered.

the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose

12. As above, approvers of financial promotions need to ensure that the promotions they approve provide consumers with the information they need to make informed decisions. This includes ensuring that the content of the financial promotion is fair, clear and not misleading. The reporting we are proposing better equips us to ensure that these requirements are being met.

the general principle that consumers should take responsibility for their decisions

13. Our proposals do not inhibit consumers' ability to purchase the products they wish to purchase, nor do they seek to remove from consumers the need to take responsibility for their own decisions. These proposals aim to improve the quality of financial promotions, including those that are communicated to retail consumers, to facilitate their own decision making.

the differing expectations that consumers may have in relation to different kinds of investment or other transaction

14. Financial promotions are an important link in the chain that leads to consumers engaging with financial products and services. Consumers therefore have a reasonable expectation, and our rules require, that the information with which they are presented is clear, fair and not misleading. Having a strong framework from which to supervise firms which approve financial promotions for unauthorised persons helps us to ensure that approved financial promotions are meeting our expectations

any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A

15. The jurisdiction of the Financial Ombudsman Service does not extend to complaints relating purely to the approval of a financial promotion. In determining the degree of consumer protection that may be appropriate in this case, we have been informed in large part by our own supervisory and enforcement work..

The FCA's operational objective to protect and enhance the integrity of the UK financial system

16. We have had regard for the matters listed in FSMA s.1D(2)(a)-(e) with regards to our objective to protect and enhance the integrity of the UK financial system. Our measures support this as unexpected losses and financial difficulty for consumers that have purchased products which are not appropriate for their circumstances may undermine confidence in UK financial markets and impact the soundness, stability and resilience of the UK financial system.

The FCA's strategic objective of ensuring that the relevant markets function well

17. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they aim to reduce/prevent harm from consumers relying on financial promotions that do not meet our requirements. They aim to improve the quality of financial promotions to enable consumers to make informed decisions about any given product. We explain in our cost benefit analysis how our proposals aim to address the harm caused by two market failures- asymmetric information and regulatory failure. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA.
18. We have also considered the most recent recommendations from the Treasury on aspects of the economic policy of the Government, which we should have regard to when acting to advance our objectives and meet our duties (s1JA of FSMA). We think our proposals are consistent with the economic policy of the Government. Our rules are

designed to secure better outcomes for consumers such that consumers are better able to align their needs with the products they purchase. They help consumers receive higher quality financial promotions to help them make more informed financial decisions.

19. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

20. These proposals are designed to make our supervisory processes relating to approvers of financial promotions more efficient. They are designed to reduce the need for a case-by-case approach to obtaining information on approved financial promotions. The reporting requirements we are proposing will allow us to focus supervisory resources where they are most needed. They also allow us to identify concerns at an earlier stage, and a proactive approach to prevent harm tends to require less resources than acting reactively to harms that have already occurred. More detail can be found in chapter 4 of the CP and the benefits section of our cost benefit analysis.

The principle that a burden or restriction should be proportionate to the benefits

21. We think the regulatory burden these reporting requirements represent is proportionate to the benefits they would bring. Approving financial promotions for unauthorised firms is a high-risk activity with historically low levels of compliance, so we think it is right that we receive regular reports from firms on this activity. Our cost benefit analysis includes a breakeven analysis to estimate the benefits that will need to be realised for the proposed package to be 'net beneficial', given the compliance costs incurred by firms. We consider these benefits to be realistically achievable given the consumer harms that can and have occurred as a result of poor-quality financial promotions. We have proposed only that the notification and reporting requirements would apply in relation to approvals of financial promotions falling within the scope of the legislative gateway regime. In this way, our proposals are intended to be proportionate in applying only in relation to those approvals of financial promotions which are considered to give rise to greater levels of risk

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

22. We consider our measures will enhance confidence in UK markets, and encourage inward investment and growth, by reducing the likelihood of future mis-selling cases linked to the marketing of products through financial promotions that do not accurately represent the underlying product and related risks. This is positive for the wider economy and sustainable growth if consumers instead purchase products that are more suitable for their circumstances, and have increased trust in the UK financial system.

The general principle that consumers should take responsibility for their decisions

23. Our proposals do not inhibit consumers' ability to purchase the products they wish to purchase, nor do they stop consumers from being responsible for their own decisions nor do they seek to remove from consumers the need to take responsibility for their

own decisions. These proposals aim to improve the quality of financial promotions, including those that are communicated to retail consumers, to facilitate their own decision making.

The responsibilities of senior management

24. Relevant senior management will need to ensure that their firm complies with our proposed rules, having regard to their responsibilities under the senior managers and certification regime (SMCR), which has applied to most authorised firms since 9 December 2019.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

25. Only authorised firms with part 4A permissions can approve financial promotions for unauthorised firms.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

26. We explain in chapter 4 that we do not propose to publish the information that firms submit to us in their notifications.

The principle that we should exercise of our functions as transparently as possible

27. The legislation on which this consultation depends is in the draft FS Bill that was published in July 2022. The Treasury's intention to create a gateway for authorised firms approving financial promotions, and the broad shape of that gateway, have been in the public domain for some time (this was consulted on in July 2020 and the Treasury's proposals were confirmed in its consultation response in June 2021). We are publishing this consultation to seek views on how we plan to operationalise this gateway. We are publishing this consultation now in the interests of transparency and to ensure that affected firms are given adequate time to prepare for the implementation of the gateway. However, we are also mindful that the FS Bill is still in the process of being considered by Parliament and has not received Royal Assent. Our proposals do not, and are not intended, in any way to anticipate the outcome of the legislative process and remain subject to the completion of that process. We will publish a policy statement that outlines the final rules, as well as our response to the feedback we receive in the consultation phase.
28. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised firm or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). The notification and reporting requirements which we propose will increase transparency around the approval of financial promotions and thereby better enable the FCA to identify risks relating to financial crime.

Expected effect on mutual societies

29. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility with the duty to promote effective competition in the interests of consumers

30. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.
31. We expect there to be costs to s21 approvers from having to adopt the new proposals. These costs may be passed on to unauthorised firms seeking approval of financial promotions by way of an increase in the financial promotion approval fee, or some firms may potentially choose not to continue approving financial promotions due to the extra burden (increasing the search costs for unauthorised firms to find an approver). This may drive unauthorised firms to use FPO exemptions to lawfully communicate their financial promotions instead of having their promotions approved within the scope of our rules. However, the outcome of the Treasury's consultation on changes to the high net worth and sophisticated person exemptions may drive some of these firms' promotions back inside the perimeter through s21 approvals in the future. Unauthorised firms may also decide to use an authorised intermediary, such as a crowdfunding platform, to promote on their behalf rather than seek a s21 approval or fall within an exemption. This will again bring them within our regulatory perimeter and subject to our financial promotion rules.
32. We do not consider it to be in consumers' interests for authorised firms to approve financial promotions for unauthorised firms unless they have been assessed as suitable to do so, and are required to provide the FCA with the data needed to assess this on an ongoing basis. We recognise that the implementation of the gateway itself could lead to a decline in the number of active s21 approvers, and potentially restrict the ability of unauthorised firms to promote to consumers. Our approach to assessing applications and our proposed reporting requirements will influence how significant the possible contraction will be. We have tried to strike the right balance between creating a regime that holds firms to high standards, and ensuring approving financial promotions is a commercially viable activity for firms to undertake.

Equality and diversity

33. We are required under the Equality Act 2010 in exercising our functions 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, to and foster good relations between people who share a protected characteristic and those who do not.
34. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in Chapter 2 of this CP.

Legislative and Regulatory Reform Act 2006 (LRRRA)

- 35.** We have had regard to the principles in the LRRRA for the proposals on our approach to assessment of applications at the gateway as well as our proposals for notifications and bi-annual reporting, that consist of general policies, principles or guidance and consider that our proposals are:
- Transparent: As set out above
 - Accountable: we are consulting on these changes and will publish final rules after considering all feedback received
 - Proportionate: As set out above
 - Consistent: Our approach would apply in a consistent manner to all firms approving financial promotions for unauthorised firms in scope of the incoming s21 gateway, following implementation of this gateway
 - Targeted only at cases in which action is needed: we consider that these proposals are needed given the significant evidence of poor quality approved financial promotions through our supervisory and enforcement work.
- 36.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are proportionate to the potential harm to consumers or risks to our statutory objectives identified.

Annex 5

Abbreviations used in this paper

Abbreviation	Description
AR	Appointed Representative
ARD	Accounting Reference Date
BNPL	Buy Now Pay Later
CBA	Cost Benefit Analysis
C&E	Competence and Expertise
CJ	Compulsory Jurisdiction
CP	Consultation Paper
ESG	Environmental Social and Governance
FCA	Financial Conduct Authority
FPO	Financial Promotion Order
FPR	Financial Promotion Requirement
FRN	Firm Reference Number
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
LRRA	Legislative and Regulatory Reform Act 2006
NMMI	Non Mass-Market Investment
OIREQ	Own Initiative Requirement
PRA	Prudential Regulation Authority
SDR	Sustainability Disclosure Requirements

Abbreviation	Description
VOP	Variation of Permission
VREQ	Voluntary Requirement

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.

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Appendix 1

Draft Handbook text

FINANCIAL PROMOTION (APPROVER PERMISSION) INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 55U (Applications under this Part);
 - (2) section 137A (The FCA’s general rules);
 - (3) section 137R (Financial promotion rules);
 - (4) section 137T (General supplementary powers);
 - (5) section 139A (Power of the FCA to give guidance); and
 - (6) section 395 (The FCA’s procedures).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Insurance: Conduct of Business sourcebook (ICOBS)	Annex C
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex D
Banking: Conduct of Business sourcebook (BCOBS)	Annex E
Claims Management: Conduct of Business sourcebook (CMCOB)	Annex F
Funeral Plan: Conduct of Business sourcebook (FPCOB)	Annex G
Supervision manual (SUP)	Annex H
Decision Procedure and Penalties manual (DEPP)	Annex I
Consumer Credit sourcebook (CONC)	Annex J

- E. The FCA confirms and remakes in the Glossary of definitions the defined expression ‘Act’.

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex K to this instrument.

Notes

- G. In Annexes to this instrument, the “notes” (indicated by “**Note:**” and “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Financial Promotion (Approver Permission) Instrument 2023.

By order of the Board

[*date*]

Annex A

Amendments to the Glossary of definitions

In this Annex, all of the text is new and is not underlined.

Insert the following new definitions in the appropriate alphabetical position.

<i>approver permission</i>	a permission given by the <i>FCA</i> following determination of a <i>firm's</i> application under section 55NA of the <i>Act</i> , which empowers that <i>firm</i> to <i>approve</i> certain <i>financial promotions</i> for the purposes of section 21 of the <i>Act</i> , whether generally or subject to terms set by the <i>FCA</i> .
<i>approver permission exemption</i>	an exemption from the <i>approver permission requirement</i> , provided under the <i>Financial Promotion Approvals Order</i> , which enables a <i>firm</i> to <i>approve</i> a <i>financial promotion</i> in prescribed circumstances without the need for <i>approver permission</i> .
<i>approver permission requirement</i>	the requirement imposed on a <i>firm</i> by section 55NA(1) of the <i>Act</i> not to <i>approve</i> (or purport to <i>approve</i>) the content of a <i>financial promotion</i> for the purposes of section 21 of the <i>Act</i> without <i>approver permission</i> .
<i>Financial Promotion Approvals Order</i>	the [name of statutory instrument containing the exemptions made under section 55NB of the <i>Act</i>].
<i>permitted approver</i>	in relation to a <i>financial promotion</i> , a <i>firm</i> that is empowered to <i>approve</i> that <i>financial promotion</i> under the terms of its <i>approver permission</i> .

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

[*Editor's note:* this Annex takes into account the changes introduced by the Financial Promotions and High-Risk Investments Instrument 2022 (FCA 2022/33).]

4 Communicating with clients, including financial promotions

...

4.10 Approving and confirming compliance of financial promotions

...

Approving financial promotions

4.10.1A G ...

4.10.1B G (1) The effect of section 55NA of the Act is that a firm is unable to approve a financial promotion except if:

(a) the firm is a permitted approver in relation to the financial promotion; or

(b) an approver permission exemption applies.

(2) SUP 6A contains guidance on applying for approver permission.

...

Relying on another firm's confirmation of compliance

4.10.10 R (1) A firm (A) will not contravene any of the financial promotion rules if it communicates a financial promotion which has been produced by another person and:

(a) A takes reasonable care to establish that another firm (B) has confirmed that the financial promotion complies with the financial promotion rules;

(b) A takes reasonable care to establish that it communicates the financial promotion only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise; ~~and~~

(c) so far as A is, or ought reasonably to be, aware:

(i) the financial promotion has not ceased to be fair, clear

and not misleading since that time; and

(ii) B has not withdrawn the *financial promotion*; and

(d) A takes reasonable care to establish that B did not breach the *approver permission requirement* in the context of confirming compliance.

...

...

Annex C

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 General matters

...

2.2 Communications to clients and financial promotions

...

Approving financial promotions

2.2.3 R ...

2.2.3A G (1) The effect of section 55NA of the Act is that a firm is unable to approve a financial promotion except if:

(a) the firm is a permitted approver in relation to the financial promotion; or

(b) an approver permission exemption applies.

(2) SUP 6A contains guidance on applying for approver permission.

...

Annex D

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3A Financial promotions and communications with customers

3A.1 Application and purpose

...

Other relevant ~~handbook rules~~ provisions

3A.1.11 G ...

3A.1.11 G (1) *Firms are also reminded that the effect of section 55NA of the Act is that a firm is unable to approve a financial promotion except if:*

(a) *the firm is a permitted approver in relation to the financial promotion; or*

(b) *an approver permission exemption applies.*

(2) *SUP 6A contains guidance on applying for approver permission.*

...

Annex E

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 **Communications and financial promotions**

2.1 **Purpose and Application: Who and what?**

...

2.1.4 G ...

Approving financial promotions: permission

2.1.5 G (1) The effect of section 55NA of the Act is that a firm is unable to approve a financial promotion except if:

(a) the firm is a permitted approver in relation to the financial promotion; or

(b) an approver permission exemption applies.

(2) SUP 6A contains guidance on applying for approver permission.

...

Annex F

Amendments to the Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Financial promotions, and communications with customers

...

3.2 Financial promotions and communications – general standards

The fair, clear and not misleading rule

3.2.1 R ...

3.2.1A G (1) The effect of section 55NA of the Act is that a firm is unable to approve a financial promotion except if:

(a) the firm is a permitted approver in relation to the financial promotion; or

(b) an approver permission exemption applies.

(2) SUP 6A contains guidance on applying for approver permission.

...

Annex G

Amendments to the Funeral Plan: Conduct of Business sourcebook (FPCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4 **Communications and financial promotions**

...

4.2 **Communications and financial promotions: the obligations**

...

Approving financial promotions

...

4.2.9 R ...

- 4.2.9A G (1) The effect of section 55NA of the *Act* is that a *firm* is unable to approve a *financial promotion* except if:
- (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
- (b) an *approver permission exemption* applies.
- (2) *SUP 6A* contains *guidance on applying for approver permission*.

...

Annex H

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new chapter, SUP 6A, after SUP 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements). The text is not underlined.

6A Permission to approve financial promotions

6A.1 Application and purpose

Application

- 6A.1.1 G This chapter applies to a *firm*:
- (1) that wishes to apply to the *FCA* for *approver permission*; or
 - (2) with *approver permission*.

- 6A.1.2 G This chapter will also be of interest to a *person* who is applying, or is considering applying, for *Part 4A permission* and who may also wish to apply for *approver permission*.

Purpose

- 6A.1.3 G Under section 55NA of the *Act*, a *firm* is unable to *approve a financial promotion* for the purposes of section 21 of the *Act* unless:
- (1) the *firm* has obtained *approver permission* empowering it to *approve the financial promotion*; or
 - (2) an *approver permission exemption* applies.

- 6A.1.4 G A *firm* that *approves*, or purports to *approve*, a *financial promotion* other than:

- (1) in accordance with the terms of its *approver permission*, if it has such permission; or
- (2) within the scope of an *approver permission exemption*,

is taken to have contravened a requirement imposed on the *firm* under the *Act*.

[**Note:** section 55NA(2) and (11) of the *Act*]

- 6A.1.5 G This chapter explains how:

- (1) a *firm* can apply for *approver permission*;
- (2) a *firm* with *approver permission* can apply to the *FCA* to change (vary) the terms of that *approver permission* or to cancel it; and
- (3) the *FCA* assesses and determines those applications.

- 6A.1.6 G This chapter also outlines the *FCA*'s power, of its own initiative, to change (vary) the terms of a *firm*'s *approver permission* or to cancel it.

Interaction with other powers

- 6A.1.7 G Apart from the *FCA*'s power to grant, vary the terms of, or cancel *approver permission*, section 55NA(12) of the *Act* confirms that the *FCA* may exercise other powers under the *Act* to restrict a *firm*'s ability to *approve financial promotions* beyond the restriction imposed by section 55NA. For example, the *FCA* may exercise its power to impose requirements under section 55L of the *Act* to restrict a *firm*'s ability to *approve financial promotions* for which it would not otherwise require *approver permission* (see *SUP* 6.3 and *SUP* 7).

6A.2 Applications relating to approver permission

Applying for approver permission

- 6A.2.1 G (1) The following *persons* may apply to the *FCA* for the grant of *approver permission*:
- (a) a *firm*; or
 - (b) a *person* whose application for *Part 4A permission* has yet to be determined.
- (2) In the case of an applicant for *Part 4A permission*, the *FCA* will consider the application for *approver permission* alongside the application for *Part 4A permission*.

Determination of applications for approver permission

- 6A.2.2 G (1) The *FCA* may grant *approver permission* to a *firm* enabling it to *approve*:
- (a) any *financial promotions*; or
 - (b) only certain *financial promotions*.
- (2) In relation to (1)(b), the *FCA* may grant *approver permission* subject to any terms the *FCA* considers appropriate. This may, in particular, provide for the *approver permission* to cover only *financial promotions* relating to certain kinds of *controlled investment*.

- (3) Where the *FCA* grants *approver permission* only in relation to certain *financial promotions* this may be:
- (a) in accordance with the *firm's* own application; or
 - (b) because the *FCA* determines that it is appropriate to grant *approver permission* on terms which are different to those applied for.

[**Note:** section 55NA(4) of the *Act*]

- 6A.2.3 G If the *FCA* grants or varies *approver permission*, the *FCA* will set out the terms on which the permission is granted, in particular by describing what kinds of *financial promotion* the *firm* is empowered to *approve* and any conditions applicable to the exercise of the *approver permission*.

[**Note:** section 55NA(6) of the *Act*]

- 6A.2.4 G (1) The *FCA* may refuse to grant an application for *approver permission* under section 55NA of the *Act*, or refuse an application to change (vary) the terms of, or cancel an existing, *approver permission* if it appears to the *FCA* that it is desirable to do so in order to advance one or more of its *operational objectives*.
- (2) The *FCA* can only grant an application for *approver permission* made by an applicant for *Part 4A permission* in the event that the applicant obtains *authorisation*.

[**Note:** section 55NA(7) of the *Act*]

- 6A.2.5 G The *FCA* will assess an application for *approver permission* by reference to its *operational objectives*. In making this assessment, the *FCA* is likely to have particular regard to:
- (1) the applicant's systems, controls and resources (including relevant personnel) relating to the *approval* of *financial promotions*;
 - (2) the competence and expertise of relevant individuals;
 - (3) the applicant's processes (or intended processes) for *approving financial promotions*; and
 - (4) the applicant's readiness to comply with the relevant *financial promotion rules*.

Applicant's competence and expertise to approve financial promotions

- 6A.2.6 G (1) The *FCA* ordinarily expects to grant permission only to *approve financial promotions* relating to *controlled investments* (or, where relevant, *controlled claims management activity*) of a kind in relation to which the applicant is able to demonstrate that it has appropriate competence and expertise to assess compliance with the applicable

financial promotion rules.

- (2) In assessing an applicant's expertise in (1), the *FCA* will have regard, among other factors, to the *regulated activities* for which the applicant has applied for, or for which the applicant currently has, *Part 4A permission*.
- 6A.2.7 G (1) The *FCA* expects a *person* applying for *approver permission* to apply only for permission to *approve financial promotions*:
- (a) of a kind which the *person* anticipates they will, in fact, assess for the purposes of giving, or refusing to give, *approval* (if *approver permission* is granted); and
- (b) relating to *controlled investments* (or, where relevant, *controlled claims management activity*) of a kind in relation to which the *person* reasonably believes they have appropriate competence and expertise to assess compliance with the applicable *financial promotion rules*.
- (2) In accordance with (1), the *FCA* discourages applicants from applying for blanket *approver permission* in respect of *financial promotions* generally.

Preparing for an application

- 6A.2.8 G A *firm* that intends to apply for:
- (1) a grant of *approver permission*;
- (2) a change to the terms (variation) of its *approver permission*; or
- (3) cancellation of its *approver permission*,

should discuss its plans with its supervisory contact at the *FCA* as early as possible before making an application in order to comply with *Principle 11* (see *SUP 15.3.7G*). These discussions will help the *FCA* and the *firm* to agree the correct approach for the *firm*'s application.

Making an application

- 6A.2.9 D (1) A *firm* wishing to apply for *approver permission*, or for a variation or cancellation of its *approver permission*, must apply online using the relevant form specified on the *online notification and application system*.
- (2) Until the application has been determined, a *firm* which submits an application must inform the *FCA* of any significant change to the information given in the application immediately after it becomes aware of the change.
- (3) If the *online notification and application system* fails and online

submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit the relevant form in SUP 6 Ann 5D in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

- 6A.2.10 G (1) If the *online notification and application system* fails and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification) should be used.
- (2) Where SUP 6A.2.9D(3) applies to a *firm*, GEN 1.3.2R (Emergency) does not apply.
- 6A.2.11 G An applicant for *Part 4A permission* that also wishes to apply for *approver permission* should refer to the *FCA*'s website for information on how to make this application.
- 6A.2.12 G As soon as possible after receipt of an application for *approver permission*, the *FCA* will advise the applicant of any additional information which is required as part of its application. The amount of information required will vary depending on the type of *financial promotions* in relation to which the applicant is seeking *approver permission* and the related risk profile of the application.
- 6A.2.13 G The fees payable by a *person* applying for *approver permission*, or an extension of *approver permission*, are set out in [FEES 3 Annex 14R].
- [*Editor's note*: changes to FEES 3 Annex 14R are being consulted on in CP22/23.]

How long will an application take?

- 6A.2.14 G (1) Under section 55V(1) of the *Act* (Determination of applications), the *FCA* has 6 months to consider a completed application from the date of receipt.
- (2) If the *FCA* receives an application which is incomplete (that is, if information or a document required as part of the application is not provided), section 55V(2) of the *Act* requires the *FCA* to determine that incomplete application within 12 months of the initial receipt of the application.
- (3) If the *FCA* fails to determine an application within the time period specified in section 55V of the *Act*, this does not mean that *approver permission* is deemed to be granted.

How will an application be determined?

- 6A.2.15 G (1) A decision to grant an application will be taken by appropriately experienced staff at the *FCA*. However, if the staff dealing with the

application recommend that a *firm's* application for *approver permission*, or for a change (variation) to the terms of its *approver permission*, be either refused or granted on terms other than those applied for, the decision will be subject to the *FCA's* formal decision-making process.

- (2) *DEPP* gives guidance on the *FCA's* decision-making procedures, including the procedures it will follow if it proposes to refuse an application for *approver permission* either in whole or in part.

Consultation with other regulators

6A.2.16 G Before granting *approver permission*, or changing the terms of or cancelling a *firm's approver permission* in response to an application under section 55NA of the *Act*, the *FCA* will consult:

- (1) the *PRA*, if the applicant is a *person*:
- (a) who is, or on the granting of an application for *Part 4A permission* will be, a *PRA-authorised person*; or
 - (b) who is a member of a group which includes a *PRA-authorised person*;
- (2) the Gibraltar regulator (within the meaning of Schedule 2A of the *Act*), if the applicant or *firm* is a *Gibraltar-based firm*.

[**Note:** section 55NA(9) of the *Act*]

Threshold conditions

6A.2.17 G In granting *approver permission*, the *FCA* is required by section 55B(3) of the *Act* to ensure that the *firm* satisfies, and will continue to satisfy, the *threshold conditions* for which the *FCA* is responsible in relation to all the *regulated activities* for which the applicant or *firm* has, or will have, *Part 4A permission*.

6A.3 FCA's own-initiative power

6A.3.1 G Where the *FCA* grants *approver permission* to a *firm* under section 55NA of the *Act*, the *FCA* may change (vary) the terms of that permission, or cancel it:

- (1) on the application of the *firm* to whom it was given; or
- (2) of the *FCA's* own initiative, if it appears to the *FCA* that:
- (a) the *firm's approver permission* may have been obtained on a speculative basis, for example if:
 - (i) the *firm* does not appear to have assessed any *financial promotions* for the purposes of potential

approval for a period of at least 12 months; or

- (ii) the *firm* has only *approved* (or refused to *approve*) *financial promotions* of a substantially narrower description than the kinds for which it has *approver permission*; or

- (b) it is desirable to do so in order to advance one or more of its *operational objectives*.

[**Note:** section 55NA(8) of the *Act*]

- 6A.3.2 G (1) The *FCA* will consult the *PRA* before changing (varying) or cancelling, of the *FCA*'s own initiative, the terms of the *approver permission* of a *PRA-authorized person* or a member of a group which includes a *PRA-authorized person*.
- (2) Where the *FCA* changes (varies) the terms of, or cancels, the *approver permission* of a *Gibraltar-based firm* of its own initiative, the *FCA* is not obliged to consult with the Gibraltar regulator but the *FCA* will inform the Gibraltar regulator in writing of the variation or cancellation.

[**Note:** section 55NA(9) and (10) of the *Act*]

- 6A.3.3 G (1) If the *FCA* exercises its power to change (vary) the terms of a *firm's approver permission* of its own initiative, it will do so by issuing a *supervisory notice*.
- (2) If the *FCA* proposes to cancel a *firm's approver permission* of its own initiative, it will give the *firm* a *warning notice* and, where the *FCA* decides to cancel, it will give the *firm* a *decision notice*.
- (3) The procedure that will be followed in each case is set out in *DEPP 2*.
- 6A.3.4 G A *firm* has a right of referral to the *Tribunal* in respect of the *FCA* exercising its power to vary or cancel a *firm's approver permission* of its own initiative.

Amend the following text as shown.

16 Reporting requirements

16.1 Application

...

- 16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.22 and SUP 16.26)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<i>SUP</i> 16.28
	to the extent that the <i>firm</i> and its business falls within the scope of <i>SUP</i> 16.28.8R.	
<u><i>SUP</i> 16.30</u>	<u>A firm with <i>approver permission</i></u>	<u>Entire section</u>
...		

...

16.3 General provisions on reporting

...

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

...

(22) value measures data reporting (*SUP* 16.27); ~~and~~

(23) *Home insurance and motor insurance* pricing reporting (*SUP* 16.28);
and

(24) *financial promotion approval* reporting (*SUP* 16.30).

...

Insert the following new section, *SUP* 16.30, after *SUP* 16.29 (MIFIDPRU Remuneration Report). The text is not underlined.

16.30 Financial promotion approval reporting

Application – who?

16.30.1 R This section applies to a *firm* (including a *Gibraltar-based firm*) with *approver permission*.

Application – what?

- 16.30.2 R This section applies to a *firm* when it *approves a financial promotion* for which it requires *approver permission*.
- 16.30.3 G The effect of SUP 16.30.2R is that the *rules* in this section do not:
- (1) apply to any *financial promotions* which a *firm* *approves* within the scope of an *approver permission exemption*;
 - (2) require a *firm* to notify, or include within a bi-annual report, such *financial promotions*.

Purpose

- 16.30.4 G (1) The effect of section 55NA of the *Act* is that a *firm* is unable to *approve a financial promotion* except if:
- (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
 - (b) an *approver permission exemption* applies.
- (2) The *rules* in this section impose requirements on *firms* with *approver permission* to provide the *FCA* with information about their *approval of financial promotions*.
- (3) The purpose of these requirements is to enable the *FCA* to effectively monitor the compliance of *approved financial promotions* with its *financial promotion rules* and to identify any emerging risks to *consumers*.
- (4) The *rules* in this section include requirements to:
- (a) notify the *FCA* in a timely manner of each *approval* of a *financial promotion*, or amendment or withdrawal of a prior *approval*; and
 - (b) provide a report to the *FCA* on a 6-monthly basis relating to the *firm's* activity of *approving financial promotions*.

Approval notification requirement

- 16.30.5 R A *firm* must submit the information in the table in SUP 16.30.6R to the *FCA* within 7 days of:
- (1) *approving a financial promotion*;
 - (2) *approving* amendments to a *financial promotion*; or
 - (3) *withdrawing approval* of a *financial promotion*.

16.30.6 R This is the table referred to in SUP 16.30.5R.

	Approving a financial promotion	Approving amendments to a financial promotion	Withdrawing approval of a financial promotion
(1)	The name of the <i>controlled investment</i> (or <i>person</i> engaging in <i>controlled claims management activity</i>) to which the <i>financial promotion</i> relates.		
(2)	The kind of <i>controlled investment</i> (or <i>controlled claims management activity</i>) to which the <i>financial promotion</i> relates.		
(3)	The name of the <i>unauthorised person</i> or persons who: (a) has or have produced the content of the <i>financial promotion</i> for which <i>approval</i> is sought; and (b) if different, is or are intended to <i>communicate</i> the <i>financial promotion</i> (if it is <i>approved</i>).		
(4)	Where the <i>financial promotion</i> relates to an offer of <i>securities</i> and may be addressed to, or disseminated in such a way that it is likely to be received by, <i>retail clients</i> : (a) the size, or potential size, of the offer (expressed in Sterling); and (b) any rate of return included in the <i>financial promotion</i> (expressed as a percentage).		
(5)	The date of the <i>approval</i> .		The date of the withdrawal of the <i>approval</i> .
(6)	The medium (or media) by which the <i>financial promotion</i> will, or is intended to, be <i>communicated</i> .	The medium (or media) by which the amended <i>financial promotion</i> will, or is intended to, be <i>communicated</i> .	The medium (or media) in relation to which <i>approval</i> of the <i>financial promotion</i> has been withdrawn.
(7)		The reason(s) for the amendments to the <i>financial promotion</i> .	The reason(s) for the withdrawal of the <i>approval</i> .

Bi-annual reporting requirement

16.30.7 R (1) A *firm* must submit the information in SUP 16.30.8R to the FCA half yearly within 30 *business days* of the end of each reporting period.

- (2) Except as specified in (3), the reporting periods for the purpose of (1) are:
- (a) the 6 *months* immediately following a *firm's accounting reference date*; and
 - (b) the 6 *months* immediately preceding and including a *firm's accounting reference date*.
- (3) A *firm* must submit its first report for the purpose of (1) in respect of the reporting period beginning on the date on which *approver permission* is granted to the *firm* and ending on the earlier of:
- (a) the *firm's accounting reference date*; and
 - (b) the date falling 6 *months* after the *firm's accounting reference date*.
- (4) A *firm* must submit a nil return if it has not *approved any financial promotions* or received any relevant complaints during a reporting period.

- 16.30.8 R The information in *SUP 16.30.7R(1)* is, for the relevant reporting period:
- (1) the number of *financial promotions approved*;
 - (2) the number of complaints received relating to the *firm's approval of financial promotions*;
 - (3) the total revenue (expressed in sterling) generated by the *firm's activity of approving financial promotions*; and
 - (4) unless the *firm* has reported no revenue for the purposes of (3), the *firm's total revenue*.

- 16.30.9 R Reference in *SUP 16.30.8R* to a *firm's revenue* is to a *firm's income* (before expenses). Total revenue refers to all income received across a *firm's entire business*, both regulated and unregulated.

Guidance

- 16.30.10 G (1) For the purposes of this section, reference to a *firm approving*, or *withdrawing approval of*, a '*financial promotion*' is to a *firm approving*, or *withdrawing approval of*, one or more communications which can together be considered to form part of a single invitation or inducement to *engage in investment activity* or to *engage in claims management activity*.
- (2) This means that where a *firm approves* the content of more than one communication, including across multiple media, in respect of the same investment activity and conveying a consistent message, the

FCA would only expect:

- (a) to receive one notification in respect of those communications for the purposes of *SUP* 16.30.5R; and
 - (b) the *firm* to report one *approval* for the purposes of *SUP* 16.30.8R(1).
- (3) An example of the scenario in (2) would be where a *firm* *approves* a number of communications relating to the same product or service as part of a single marketing campaign.
 - (4) Where a *firm* has *approved* one or more communications comprising a single '*financial promotion*' relating to a particular product or service as described in (2) and is later approached to *approve* a substantively different communication or communications relating to the same product or service, this should be considered as a new '*financial promotion*' for the purposes of this section.
 - (5) For the purposes of *SUP* 16.30.5R(2), the *FCA* considers that amendments to an *approved financial promotion* are likely to require further *approval* where those amendments relate to the communication's substance as an invitation or inducement to *engage in investment activity* or *engage in claims management activity*.
 - (6) This means that changes to administrative information, such as contact details, within a communication are unlikely to require *approval*. However, changes to information which may affect a recipient's assessment of whether to respond to, or act upon, the communication are likely to require further *approval*.
 - (7) The *FCA* would also expect to be notified of *approval* of a change to a *financial promotion* for the purpose of *SUP* 16.30.5R(2) in circumstances where the *firm* *approves* a *financial promotion* for *communication* by way of a medium not previously notified to the *FCA*.

Method of submission

- 16.30.11 R (1) A *firm* must submit the notifications and reports required by this section to the *FCA* online through the appropriate systems accessible from the *FCA*'s website.
- (2) If the *FCA*'s information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit the relevant notification or report in the way set out in *SUP* 16.3.9R (Method of submission of reports).
- 16.30.12 G If the *FCA*'s information technology systems fail and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that online submission is unavailable and

that the alternative methods of submission set out in *SUP* 16.3.9R (Method of submission of reports) should be used.

Insert the following new transitional provision, TP 13, after SUP TP 12 (Transitional provisions relating to tied agents). The text is not underlined.

TP 13 Transitional provisions relating to bi-annual financial promotion reports

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
13.1	<i>SUP</i> 16.30.5R	R	<p>(1) This transitional provision applies to a <i>firm</i> that applies for <i>approver permission</i> on or before [end of application period] and whose application has yet to be determined.</p> <p>(2) The requirement to submit notifications to the <i>FCA</i> for the purposes of <i>SUP</i> 16.30.5R applies to a <i>firm</i> in (1).</p>	From [date]	[date]
13.2	<i>SUP</i> 16.30.5R	G	The effect of the transitional provision in 13.1 is that a <i>firm</i> that applies for <i>approver permission</i> during the application period [provided by the <i>Financial Promotion Approvals Order</i>] must begin complying with the notification requirements in <i>SUP</i> 16.30.5R from [date] (the start of the transition period [provided by the <i>Financial Promotion</i>	From [date]	[date]

			<i>Approvals Order</i>). Ordinarily, a <i>firm</i> applying for <i>approver permission</i> would only begin submitting such notifications following the grant of its <i>approver permission</i> .		
13.3	<i>SUP</i> 16.30.7R	R	<p>(1) This transitional provision applies to a <i>firm</i> that applies for <i>approver permission</i> on or before [end of application period] and whose application has yet to be determined.</p> <p>(2) The requirement to submit bi-annual reports to the <i>FCA</i> for the purposes of <i>SUP</i> 16.30.7R applies to a <i>firm</i> in (1).</p> <p>(3) A <i>firm</i> in (1) must submit its first bi-annual report for the purpose of <i>SUP</i> 16.30.7R in respect of the reporting period beginning on [date on which transition period commences] and ending on the earlier of:</p> <p>(a) the <i>firm's</i> <i>accounting reference date</i>; or</p> <p>(b) the date falling 6 <i>months</i> after the <i>firm's</i> <i>accounting reference date</i>.</p>	From [date]	[date]
13.4	<i>SUP</i> 16.30.7R	G	The effect of the transitional provision in 13.3 is that a <i>firm</i> that applies for	From [date]	[date]

			<p><i>approver permission</i> during the application period [provided by the <i>Financial Promotion Approvals Order</i>] must comply with the bi-annual reporting requirement while its application is being determined. The <i>firm</i> must submit its first bi-annual report to cover the period from [date] (the start of the transition period [provided by the <i>Financial Promotion Approvals Order</i>]) to the date that would otherwise mark the end of a reporting period. Ordinarily, a <i>firm</i> applying for <i>approver permission</i> would be required to submit its first bi-annual report only following the grant of its <i>approver permission</i>.</p>	
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Annex I

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Statutory notices and the allocation of decision making

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2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk * (see *DEPP* 2.4)

Section of the Act	Description	Handbook reference	Decision maker
...			
55X(1)(e)
<u>55X(1)(f)</u>	when the <i>FCA</i> is <u>proposing to grant an application for <i>approver</i> permission</u> but <u>subject to terms which were not sought in the application</u>	<u>SUP 6A</u>	<u><i>Executive procedures</i></u>
<u>55X(1)(g)</u>	when the <i>FCA</i> is <u>proposing to grant an application to vary the terms of a <i>firm's approver</i> permission</u> but <u>making different changes to those sought in the application</u>		<u><i>Executive procedures</i></u>
...			

55X(2)	when the <i>FCA</i> is proposing to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i>		<i>Executive procedures</i>
<u>55X(2)</u>	<u>when the <i>FCA</i> is proposing to refuse an application for <i>approver permission</i></u>	<u>SUP 6A</u>	<u><i>Executive procedures</i></u>
<u>55X(2)</u>	<u>when the <i>FCA</i> is proposing to refuse an application for the variation or cancellation of a <i>firm's approver permission</i></u>		<u><i>Executive procedures</i></u>
...			
55X(4)(e)
<u>55X(4)(ea)</u>	<u>when the <i>FCA</i> is deciding to grant an application for <i>approver permission</i> but subject to terms which were not sought in the application</u>	<u>SUP 6A</u>	<u><i>Executive procedures</i></u>
<u>55X(4)(eb)</u>	<u>when the <i>FCA</i> is deciding to grant an application to vary the terms of a <i>firm's approver permission</i> but</u>		<u><i>Executive procedures</i></u>

	<u>making different changes to those sought in the application</u>		
...			
55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i>		<i>Executive procedures</i>
<u>55X(4)(f)</u>	<u>when the <i>FCA</i> is deciding to refuse an application for <i>approver permission</i></u>	<u>SUP 6A</u>	<u><i>Executive procedures</i></u>
<u>55X(4)(f)</u>	<u>when the <i>FCA</i> is deciding to refuse an application for the variation or cancellation of a <i>firm's approver permission</i></u>		<u><i>Executive procedures</i></u>
...			
55Z(1) 55Z(2)	when the <i>FCA</i> is proposing or deciding to cancel a <i>firm's Part 4A permission</i> or <u><i>approver permission</i></u> otherwise than at its <u><i>the firm's</i></u> request *		<i>Executive procedures</i>

...			
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2 Annex Supervisory notices
2G

Section of the Act	Description	Handbook reference	Decision maker
...			
55Y(4) <u>55Y(4A)</u> 55Y(7) 55Y(8)(b)	when the <i>FCA</i> is <u>proposing to exercise, is deciding to exercise or is, with immediate effect exercising its own-initiative variation power to vary a firm's firm's Part 4A permission or its power to vary the terms of a firm's approver permission or is deciding, after considering any representations made by the firm, not to rescind a variation of either sort</u>	<i>SUP 7</i>	<i>Executive procedures</i> See <i>DEPP 2.5.7G</i>
...			

Annex J

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Financial promotions and communications with customers

...

3.2 Financial promotion general guidance

...

3.2.3 G ...

Approving financial promotions: permission

3.2.4 G (1) The effect of section 55NA of the *Act* is that a *firm* is unable to approve a financial promotion except if:

(a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or

(b) an *approver permission exemption* applies.

(2) *SUP 6A* contains *guidance on applying for approver permission*.

...

Annex K

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8 Financial promotion and related activities

...

8.2 Introduction

8.2.1 G (1) The effect of section 21 of the *Act* (Restrictions on financial promotion) is that in the course of business, an *unauthorised person* must not *communicate* an invitation or inducement to *engage in investment activity* or to *engage in claims management activity* unless either the content of the communication is *approved* for the purposes of section 21 by an *authorised person* or it is exempt.

(2) By virtue of section 21(2A) of the *Act*, an *authorised person* is unable to *approve* the content of a communication for the purposes of section 21 except if:

(a) *the firm* is a *permitted approver* in relation to the *financial promotion*; or

(b) *an approver permission exemption* applies.

(3) References in this chapter to *financial promotions* being *approved* by an *authorised person* should be read as referring to *approval* by an *authorised person* who is either a *permitted approver* in relation to that *financial promotion* or where the *approval* falls within the scope of an *approver permission exemption*.

(4) Under section 25 of the *Act* (Contravention of section 21), a *person* commits a criminal offence if ~~he carries~~ they carry on activities in breach of the restriction in section 21 of the *Act*. A *person* who commits this criminal offence is subject to a maximum of two years imprisonment and an unlimited fine. However, it is a defence for a *person* to show that ~~he~~ they took all reasonable precautions and used all due diligence to avoid committing the offence.

...

8.2.5 G (1) If the answer to *PERG* 8.2.4G(8) is yes, then the appropriate *financial promotion rules* will potentially apply (subject to the relevant application provisions ~~in *COBS* 1 and *COBS* 4~~).

(2) If the answer to *PERG* 8.2.4G(8) is no, then the promotion must be *approved* by an *authorised person* if it is a *non-real time financial*

promotion. Authorised persons are not allowed to approve:

- (a) *financial promotions other than within the scope of:*
 - (i) *approver permission given by the FCA under section 55NA of the Act; or*
 - (ii) *an approver permission exemption (see PERG 8.9.1AG);*
- (b) *real time financial promotions (see COBS 4.10.4R).*
- (3) *PERG 8.36.1G contains a flowchart explaining these steps.*

...

8.3 Financial promotion

8.3.1 G ...

8.3.1A G The effect of section 21(2A) of the Act is that an *authorised person* is unable to *approve* the content of a communication for the purposes of section 21 except if:

- (1) *the firm is a permitted approver in relation to the financial promotion; or*
- (2) *an approver permission exemption applies.*

...

8.9 Circumstances where the restriction in section 21 does not apply

8.9.1 G ...

8.9.1A G (1) Section 21(2A) of the Act specifies that the content of a *financial promotion* can only be *approved* for the purposes of section 21 by an *authorised person*:

- (a) *who is a permitted approver in relation to the financial promotion; or*
- (b) *within the scope of an approver permission exemption.*
- (2) Exemptions in the *Financial Promotion Approvals Order* allow an *authorised person* to *approve*:
 - (a) *its own financial promotions (see PERG 8.9.3G);*
 - (b) *financial promotions issued by:*
 - (i) *members of the firm's group; and*

(ii) the firm's appointed representatives,

for the purposes of section 21 of the *Act*.

(3) In relation to PERG 8.9.1A(2)(b)(ii), the relevant exemption allows a firm to approve a financial promotion issued by its appointed representative where that financial promotion is made for the purposes of the appointed representative's exempt activities.

...

8.9.3 G An *unauthorised person* may wish to pass on a *financial promotion* made to ~~him~~ them by an *authorised person*. In this case, the fact that the *financial promotion* was made to ~~him~~ them by an *authorised person* will not be enough for the restriction in section 21 not to apply to ~~him~~ them. The *authorised person* must also both have *approved* its content and have done so for the purpose of section 21 of the *Act*. If an *authorised person* wishes to ensure that an *unauthorised person* can *communicate* a *financial promotion* made by the *authorised person* to third parties, it may *approve* its own *financial promotion* for the purposes of section 21 of the *Act* (see COBS 4.10.3G(2)). An approver permission exemption allows an authorised person to approve its own financial promotion without requiring approver permission.

...

10 Guidance on activities related to pension schemes

...

10.5 Employers and affinity groups (such as trade unions)

...

Q47. As an employer, are there restrictions on my providing staff with details of pension schemes?

Yes, but in most circumstances you should be able to make use of an exemption.

If you make an invitation or inducement to your staff to join a *personal pension scheme* or a *nominated stakeholder pension scheme*, you are likely to be making a *financial promotion*. This is prohibited under section 21 of the Financial Services and Markets Act 2000 unless:

- you are an ~~authorised person~~ authorised person; or
- its contents are ~~approved~~ approved by an *authorised person* with the necessary approver permission or within an approver permission exemption; or
- it falls within a relevant exemption.

...

...

...

