

6 May 2022

Dear CEO

Action needed to ensure your financial promotions are clear, fair and not misleading

The FCA regulates the communication and approval of financial promotions. That is, an invitation or inducement to enter into an agreement, the entry into or performance of which would constitute credit broking activity or providing relevant consumer credit, including high-cost lending.

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

We expect authorised firms issuing and/or approving financial promotions in relation to consumer credit to ensure that all communications of financial promotions are clear, fair and not misleading and otherwise comply with the rules set out at CONC 3. This includes ensuring that those to whom a financial promotion is addressed, or at whom it is directed, understand the nature of the firm's regulated activities.

Who this letter applies to

This letter is addressed to **credit brokers** and **firms providing high-cost lending products** but may be relevant to other firms involved in these activities.

Our concerns

Millions of people are facing the biggest cost of living crisis in more than a decade with bills expected to rise considerably. We can expect to see greater demand for credit, including short-term credit, particularly impacting consumers in vulnerable circumstances. We need to keep the sector under close review to ensure that demand does not result in unsustainable and often unaffordable lending. Firms have a responsibility to ensure they do not exploit the cost of living crisis to promote their

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

services. Firms should focus on their customers' needs, delivering the right information, at the right time, and in accordance with our rules:

- We have identified a number of financial promotions whereby firms include phrases such as 'no credit check loans', 'loan guaranteed', 'pre-approved' or 'no credit checks'.
- Whilst a credit broker may not conduct a creditworthiness assessment itself, we are concerned that consumers could be led to believe the lender will make no checks on credit status, whether with a credit reference agency or by other means.
- CONC 3.3.1R imposes a requirement to ensure that a communication or a financial promotion is 'clear, fair and not misleading' and CONC 3.3.3R states '*a firm must not in a financial promotion or a communication to a customer state or imply that credit is available regardless of the customer's financial circumstances or status*'. Guidance in CONC 3.3.4G(2) explains a statement or an implication that credit is guaranteed or pre-approved, or is not subject to any credit checks or other assessment of creditworthiness, may contravene CONC 3.3.3R. Firms are also reminded of the requirements of CONC 5 (Responsible lending).
- We have also identified promotions offering brokerage/direct lending services for high-cost short-term credit which fail to specify the required risk warning '*Warning: Late repayment can cause you serious money problems. For help go to moneyhelper.org.uk*'.
- Where such a risk warning is triggered under our rules then its omission will render the promotion in breach of CONC 3.4.1R. This risk warning was included in our rules to signpost the sources of help available to those consumers who might be at risk of increasing levels of indebtedness. We remind firms of the exclusion in CONC 3.1.7R where an advert would not trigger the need for a risk warning.
- We are aware that some advertising media might appear to pose challenges for firms in meeting our requirements. However, our rules are in general media neutral, and we do consider it is possible to comply, despite character limitations. Therefore, we expect firms to include the warning, using the MoneyHelper logo if necessary. However, on platforms which do not accept the use of logos, it would be unlikely to be a supervisory priority for us if the text omitted 'you' or replaced 'go to' with 'see'.
- Some promotions fail to include the Representative APR (RAPR). The circumstances where the RAPR is required are explained in CONC 3.5.7R and CONC 3.5.8G. An RAPR is triggered when a promotion states or implies that credit is available to individuals who might otherwise consider their access to credit restricted, includes a favourable comparison relating to the credit with another person, product or service or an incentive to apply for credit or enter into a credit agreement (for example, speed or ease of access). You are reminded that the RAPR is defined in our rules as an '*APR at or below which the*

firm communicating or approving the financial promotion reasonably expects, at the date on which the promotion is communicated or approved, that credit would be provided under at least 51% of the credit agreements which will be entered into as a result of the promotion’.

- We have identified promotions by credit brokers which fail to state that they are brokers and not lenders as required by CONC 3.7.7R. All credit brokers need to make clear in their advertising that they are brokers and not lenders; if they are both a broker and a lender and the advertising is solely promoting credit broking services, the advertising will need to make clear that it is promoting the firm's broking services, not its lending services.

We are continuing to engage with the platforms to better understand their requirements for advertising and the extent to which this results in constraints on the information firms are expected to provide and display. We will communicate any developments in due course.

We would also remind firms of the need to comply with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) administered by the Advertising Standards Authority (ASA). The ASA previously published advice² about short-term and payday loans. They stated that *‘because short-term loans are often aimed at potentially vulnerable consumers, marketers should be particularly careful to ensure that marketing for high-interest, short-term loans is socially responsible. When assessing ads, the ASA is likely to consider issues such as the undue emphasis on speed and ease of access, the targeting of vulnerable groups and whether the ad could be seen to trivialise taking out a loan’.*

What you need to do

- If you have issued or approved any financial promotions (for unauthorised firms under S.21 FSMA) which are currently in use, please ensure you are satisfied that they comply with our relevant financial promotions requirements in CONC 3.
- You should consider conducting a review of your processes and systems and controls for financial promotions, to determine whether they are sufficiently robust in order to comply with CONC 3. This includes oversight of your appointed representatives/introducer appointed representatives and marketing across all media platforms such as: websites, paid for Google ads and social media sites such as TikTok and Instagram. We recommend a record of this review is retained.
- Finally, we ask that you draw this letter to the attention of your Board. We expect the Board to have considered the issues we have raised and to have approved the action taken in response and retain evidence that this action has taken place, including the outcomes of any subsequent actions.

We remind firms that any form of communication (including through paid for Google ads and social media) is capable of being a financial promotion, depending on whether it includes an invitation or inducement to engage in financial activity.

² <https://www.asa.org.uk/advice-online/short-term-and-payday-loans.html>

Next steps

This letter should not be viewed as a list of all relevant rules within CONC 3. It is up to individual firms to ensure that their promotions (and other customer communications) are fully compliant. We intend to proactively monitor the market to assess compliance. If we identify non-compliant financial promotions, we will consider what further action may be appropriate to take. For example, we have the power under section 137S of FSMA to direct a firm to withdraw an advert (or its approval of an advert), or to prevent it from being used in the first place. You can find out more about this power on our website: www.fca.org.uk/firms/financial-promotions-adverts/powers-ban.

We expect firms to be putting their customers' interests at the heart of their business, and this includes when they draft, publish and review financial promotions. It is especially important that firms consider the potential harm for consumers should they be mis-sold products via misleading, unfair or unclear promotions.

Later this year, we will confirm final rules in relation to the New Consumer Duty, but we are not waiting for the Duty to come in before we act to improve consumer outcomes. We are applying our rules to ensure that firms act in their customers' interests and get their products and services right. We remind you of the importance of having a healthy culture at your firm that promotes fair outcomes for consumers.

Yours faithfully

Sheldon Mills
Executive Director