

Policy Statement

PS23/13

Introducing a gateway for firms who
approve financial promotions

September 2023

This relates to

Consultation Paper 22/27
which is available on our website at
www.fca.org.uk/publications

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Chapter 1

Summary

- 1.1** This policy statement (PS) sets out our response to the feedback we received to our December 2022 [consultation](#) on introducing a gateway for firms who approve financial promotions (CP22/27). It sets out our final policy positions, including those on our approach to assessing applications at the gateway and the reports required of firms that approve financial promotions. These ensure that we have a robust assessment process in place and get the data we need to supervise and understand the approval market. We also include our near-final Handbook rules and guidance, and updated non-Handbook guidance on approving financial promotions. We have made several targeted changes in response to consultation feedback, to ensure that the new regime is proportionate.
- 1.2** This supports legislative changes by the Government within the [Financial Services and Markets Act 2023](#) (the Act). The Act includes an amendment to section 21 (s21) of the Financial Services and Markets Act 2000 (FSMA) to create a regulatory gateway (the s21 gateway) for all authorised persons that want to approve financial promotions for unauthorised persons (s21 approvers). Once the gateway comes into effect, all authorised persons that want to approve financial promotions will need to apply to us for permission to do so (subject to certain exemptions – see paragraph 1.33).
- 1.3** Historically, we have seen too many non-compliant promotions being approved and then communicated by unauthorised persons to consumers. Consumers have been harmed where they have relied on these financial promotions and the underlying products are inappropriate for them. The s21 gateway and our accompanying approach to firms that apply are designed to address harm and regulatory gaps where a financial promotion is within our remit, but is communicated by an unauthorised person. We expect this framework to produce a higher degree of compliance with our financial promotions rules, leading to a generally raised standard of these promotions.
- 1.4** We intend for firms to be able to submit applications for permission to approve financial promotions from 6 November 2023. The initial application period will close on 6 February 2024. On the following day, 7 February, the new legislation will come fully into force and firms that have not applied to the gateway will no longer be able to approve financial promotions (subject to exemptions).
- 1.5** We consulted on the fees for applying at the gateway in [CP22/23](#). This PS also summarises the feedback on these and sets out the near-final fees rules for applying for permission to approve financial promotions.

Who this affects

- 1.6** This new regime will affect authorised persons who approve, or intend to approve, financial promotions for unauthorised persons. It will not affect authorised persons that only approve their own financial promotions for communication by an unauthorised person, the financial promotions of their appointed representatives (ARs) for the regulated activities they have accepted responsibility for, or the financial promotions of unauthorised persons within their corporate group.
- 1.7** This policy statement will also be of interest to:
- consumers and consumer organisations
 - persons operating in the cryptoasset market
 - applicants and prospective applicants for authorisation which may wish to approve financial promotions for unauthorised persons
 - relevant trade bodies
 - unauthorised persons that get their financial promotions approved by authorised persons

The wider context of this policy statement

- 1.8** In our [Strategy](#), one of the overarching outcomes we expect from financial services is that consumers are sold suitable products and services and receive good treatment. An important focus for us to achieve this is setting and testing higher standards, in part to enable consumers to help themselves when interacting with financial services.
- 1.9** Consumers have ever-increasing exposure to financial promotions via digital services and platforms like Meta and Google, and often buy financial products and services without taking advice. As this online environment has focused on offering consumers products with as few barriers as possible, it has become faster and easier than ever to engage with financial services.
- 1.10** The cost of living is still rising, and consumers are having to make difficult decisions about their finances. These decisions can be significantly affected by financial promotions, and consumers may rely on the information within them. Consumers need good information to make good decisions, but this doesn't always happen. Consumers are often targeted with adverts that are unclear, unfair or misleading, and this can lead consumers to access products that do not suit their circumstances.
- 1.11** One of the Financial Conduct Authority's (FCA's) operational objectives under FSMA is securing an appropriate degree of protection for consumers. In considering what degree of protection may be appropriate, the FCA must have regard to the general principle that consumers should take responsibility for their decisions. But consumers' ability to take responsibility for their decisions may be limited, especially if they are in vulnerable circumstances. We aim to use our regulation to address the imbalance in knowledge about financial services between firms and consumers. We're in a stronger position to improve conduct when consumers are informed and empowered, which can drive up standards when combined with our action.

- 1.12** S21 of FSMA sets out how a person can lawfully communicate a financial promotion in the UK. Generally, they can only do so if:
- they are an authorised person,
 - an authorised person (ie a s21 approver) has approved the content of the financial promotion, or
 - an exemption applies
- 1.13** Promotions communicated or approved by authorised persons which fail to adequately identify relevant risks may breach our requirements. Last year we had 8,582 promotions by authorised persons amended or withdrawn, which is an increase of 1398% compared to 573 in 2021. We also issued 1,882 alerts about unauthorised persons in 2022, an increase of 34% from 1,410 in 2021.
- 1.14** In Q4 of 2022, 69% of financial promotions communicated or approved by authorised firms which were amended or withdrawn following our intervention involved website or social media promotions. In July 2023 we published [GC23/2](#), which consults on clarifying our expectations of firms communicating or approving financial promotions on social media in particular.
- 1.15** Currently, any authorised person can generally approve financial promotions for unauthorised persons. In recent years, we have seen too many non-compliant financial promotions being approved by authorised persons and then communicated by unauthorised persons to consumers. As a result, consumers for whom the products and services promoted are inappropriate have been harmed. We've seen evidence of consumers investing in high-risk products that do not match their risk tolerance, due to poor-quality approved financial promotions.
- 1.16** The Act received Royal Assent on 29 June 2023. The FSMA amendments will impose the new 'Financial Promotion Requirement' (FPR) on all existing and newly authorised persons, restricting them from approving financial promotions. In December 2022 we published [CP22/27](#), which set out how we proposed to implement this gateway. The s21 gateway and our accompanying approach to firms that apply are designed to improve the regulatory framework, to ensure that we can strengthen our oversight of approvals and improve the standard of approved financial promotions.
- 1.17** We have outlined some related areas of our work below, which similarly aim to ensure consumers get the information they need to make informed decisions.

Bringing cryptoassets into the financial promotions regime

- 1.18** On 8 June 2023 we published our rules ([PS23/6](#)) and a supporting guidance consultation ([GC23/1](#)) for cryptoasset financial promotions. When the financial promotions regime is extended to promotions of qualifying cryptoassets in October 2023, the following will be the routes to lawfully communicate such promotions to UK consumers:
1. The promotion is communicated by an authorised person
 2. The promotion is approved by an authorised person

3. The promotion is communicated by (or on behalf of) a cryptoasset business registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) but which is not an authorised person
4. The promotion otherwise complies with the conditions of an exemption in The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO).

Online Harms

1.19 Following ongoing engagement, most of the largest search engines and social media platforms, including Google and Meta, now only allow financial promotions that are made or, approved by firms we regulate. Online platforms will need to adapt their approach to reflect the new gateway and we will continue to engage with them on this. Additionally, the Online Safety Bill (OSB) is expected to get Royal Assent in 2023. Once passed, it will place duties on search engines and social media sites to put in place proportionate systems and processes to manage the risks to users from illegal content on their sites, including illegal financial promotions. Ofcom will oversee this new regime, and we have worked closely with them to establish a shared understanding of how platforms' obligations under the OSB interact with financial promotions legislation.

The Consumer Duty

1.20 The Consumer Duty (the Duty) came into force in July 2023. It introduces a more outcomes-focused approach to consumer protection and sets higher expectations for firms' standard of care to their customers. The Duty applies to all products and services firms sell to retail customers, and to all firms who have a material influence over customer outcomes- not just those with a direct relationship with the retail customers. Firms must act to deliver good outcomes for retail customers under the new Consumer Principle, act in good faith towards customers, avoid causing them foreseeable harm, and enable and support them to pursue their financial objectives.

1.21 Authorised firms need to consider their responsibilities under the Duty when approving promotions for unauthorised persons. 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 customers' understanding by:

- ensuring that they meet the information needs of customers
- being likely to be understood by customers intended to receive them
- equipping them to make decisions that are effective, timely and properly informed
- ensuring that the financial promotion is tailored to the characteristics of the customers intended to receive the financial promotion, including any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm.

1.22 Firms that approve financial promotions for 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 the requirements in PRIN 2A may not be relevant to their role. For example, monitoring communications

that are not financial promotions, the timing of a communication by an unauthorised person or testing communications. [FG22/5](#) and [PS22/9](#) give more detail on the Duty and authorised persons' obligations.

- 1.23** Firms should consider the potential harm to consumers from promotions of certain products and mediums of communication. Firms should consider whether agreeing to approve these financial promotions is compliant with their obligations under the Consumer Duty.

A proposed anti-greenwashing rule

- 1.24** In October 2022, we published a [consultation](#) on Sustainability Disclosure Requirements (SDR) and investment labels. The proposed measures include a general 'anti-greenwashing' rule that would apply to all regulated firms. It reinforces existing clear, fair and not misleading requirements to ensure that firms understand that they apply these requirements when making sustainability-related claims. If this rule is introduced as proposed, firms that approve financial promotions for unauthorised persons will need to ensure that these promotions comply with this rule as well as existing financial promotions rules.

The Public Offer Regime

- 1.25** The Government is legislating for a new 'Public Offers and Admission to Trading Regime'. This will allow for the regulation of public offers to be treated separately to admissions to regulated markets. Starting from a general prohibition on public offers of securities, the legislation provides certain exemptions for public offers which are made outside of public markets which will not be subject to a prospectus requirement. The FCA will have powers to create rules for these offers. For larger offers made to the public, the key exemption allows for such offers to be made via a 'Public Offer Platform'. Operating these platforms will be a new regulated activity and so have FCA authorisation, rules and oversight. In July 2023, we published an [engagement paper](#) to seek initial feedback on what the regime for these platforms should look like. On the systems and controls needed for effective due diligence, we have said that we intend to broadly mirror the expectations of the s21 gateway. We will use our expectations of s21 approvers to help to define the standards we will expect of operators of public offer platforms, in undertaking due diligence on prospective issuers before making public offers of securities.

How it links to our objectives

Consumer protection

- 1.26** Our new rules aim to advance our consumer protection objective by reducing and preventing harm to consumers from making financial decisions based on non-compliant financial promotions, and buying products that don't suit their circumstances.

Market integrity

- 1.27** Our new requirements 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

- 1.28** By amending s21 of FSMA, Parliament has deemed it appropriate to introduce a mechanism to require that financial promotions are only approved by authorised persons granted permission to do so by us. This is to ensure better protection from misleading financial promotions for consumers. When deciding how this gateway operates, we have had regard to our duty to promote effective competition in the interests of consumers. By raising the standard of financial promotions, consumers are better placed to understand the products or services being promoted. They can therefore make better informed decisions, which creates an environment within which competition can best function.

Secondary international growth and competitiveness objective (SIGCO)

- 1.29** As explained above, the approach to assessing applications and the near-final rules and guidance set out in this PS support the changes to the legislative framework for financial promotions approvals in the Act. When we consulted on our proposals that we are finalising in this PS, the secondary objective (to promote international competitiveness and growth in the medium to long term) was not yet in force. However, we did take account of the Treasury's [remit letter](#), published in December 2022. This outlined the Government's aim to encourage economic growth in the interests of consumers and businesses. This includes its commitment to secure better outcomes for all consumers, including through improved competition in the interests of consumers and having regards to the needs of different consumers who use or may use financial services.
- 1.30** The secondary objective is now in force and we have considered it when finalising the rules, noting that Parliament already deems it is appropriate to introduce a new gateway.
- 1.31** We have seen evidence of financial products being promoted to retail consumers inappropriately, despite the approval of the financial promotion by an authorised person. Our rules are designed to set and test higher standards to meet the intention of the new legislation, whilst ensuring firms with high conduct standards still apply for permission to approve financial promotions. By ensuring that promotions clearly set out the risks of financial products, we aim to secure better outcomes for all consumers in line with the remit letter and our primary objective to protect consumers. Misleading financial promotions could ultimately hinder medium to long term economic growth if consumers lose money they didn't expect to, or lose trust in the UK's financial services sector. The intended outcome of the s21 gateway is that fewer inappropriate financial promotions are communicated to consumers (including those in vulnerable circumstances), which could both enhance consumer confidence in UK financial services and improve the quality of competition for business.

What we are changing

- 1.32** Since we published CP22/27, the Act- which contains the provisions to create the new gateway – has received Royal Assent. The Treasury has also made regulations to specify the implementation schedule for the new gateway and exemptions from the requirement to obtain permission to approve a financial promotion. The legislative package provides for an initial application period for firms that want to apply for permission to approve financial promotions. The legislation also allows for a transition period for existing authorised persons which approve financial promotions, so that they can continue doing so until we have decided on their applications for permission to approve. Paragraph 1.46 below gives further details on the application and transition periods.
- 1.33** The Treasury has made the Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023 ('Exemptions SI'). Subject to Parliamentary procedure, the Exemptions SI is intended to come into force on 27 September 2023. The Exemptions SI specifies when an authorised person will not require permission to approve a financial promotion. The intention is that an authorised person should not require approval permission to approve:
- financial promotions prepared by their appointed representatives, where the promotion relates to a regulated activity for which the authorised person has agreed to accept responsibility
 - financial promotions prepared by unauthorised persons within the same corporate group
 - their own promotions (for communication by unauthorised persons)
- 1.34** Table 1 includes details of the changes we have made in response to consultation feedback. Our finalised approach to implementing the gateway, outlined in this PS, includes:
- how we assess applicants at the gateway
 - the basis for our granting or refusing applications
 - a bi-annual reporting requirement for firms we give permission to approve financial promotions
 - a requirement that firms that are granted permission to approve financial promotions must notify us when they approve a financial promotion of a product subject to a mass-marketing ban or a qualifying cryptoasset, within 7 days of doing so
 - a requirement that firms that are granted permission to approve financial promotions must notify us when they approve amendments to, or withdraw approval of, a financial promotion due to a 'notifiable concern'
 - not extending the compulsory jurisdiction of the Financial Ombudsman Service to the approval of financial promotions
 - consequential changes made to our non-Handbook guidance for firms that approve financial promotions for investments, and additional text on the Consumer Duty
 - confirmation of our intention to conduct a review of our approach within 24 months of the rules coming into force

Outcome we are seeking

- 1.35** Our rules are designed to ensure that firms approving financial promotions do so to a high standard, ensuring consumers receive high-quality financial promotions that enable them to make effective, well-informed financial decisions.
- 1.36** We want to reduce the number of consumers buying financial products that are not appropriate for their circumstances, due to unclear, unfair or misleading advertising. By ensuring that financial promotions clearly state the risks involved in buying the promoted product or service, we hope to reduce the frequency of a mismatch between consumers' financial decisions and their needs. A mismatch has the potential to cause financial difficulty or loss that cannot easily be absorbed, and can have knock-on effects of further financial difficulty and poorer wellbeing.
- 1.37** Our required reporting for firms that approve financial promotions will help us to supervise s21 approvers more proactively, aiming to prevent harm to consumers from poor quality promotions. It will also give us new data on the approvals market, to improve our market oversight and ability to spot potentially harmful trends. Our robust gateway assessment will ensure that only firms that have the necessary competence and expertise to effectively assess whether promotions for particular products comply with our rules, can approve financial promotions for unauthorised persons.

Measuring success

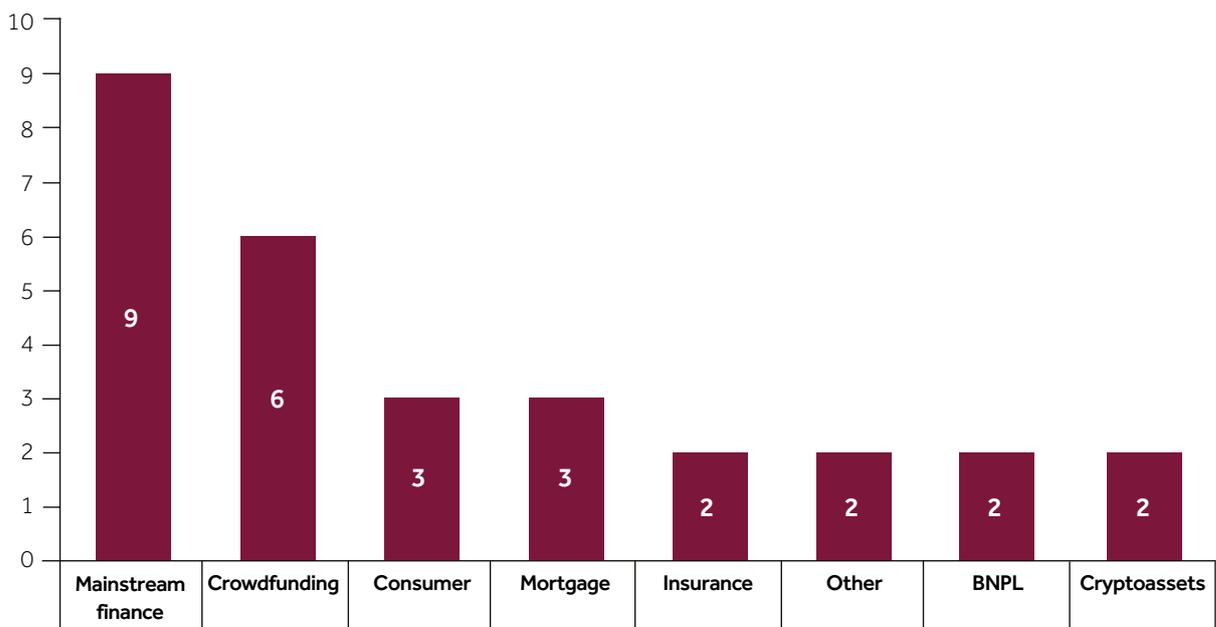
- 1.38** We will measure the effectiveness of the gateway using metrics on:
- gateway admissions, eg the number of applications received and the ratio of successful to unsuccessful applications
 - instances of supervisory investigation, and intervention, involving s21 approval activity
 - instances of enforcement action involving s21 approval activity
 - the data we collect from s21 approvers, such as complaints about approved financial promotions
- 1.39** The gateway will 'set and test higher standards', which is one of the areas of focus in our 2022-2025 [Strategy](#). The gateway supports the outcomes of our commitment to enable consumers to help themselves, which aims to make sure consumers are accessing products that reflect their risk appetite and get appropriate information that supports their decision-making.
- 1.40** As we have seen the most approval activity and harm in the high-risk investment market, these rules also form part of our Consumer Investments Strategy. The s21 gateway, together with our other work on high-risk investments (such as [PS22/10](#)) aims to reduce the number of consumers investing in high-risk investments who indicate a low risk tolerance or demonstrate characteristics of vulnerability. We will use consumer research, such as our Financial Lives Survey, to monitor progress.

Summary of feedback and our response

1.41 We received 29 responses to CP22/27. The respondents included firms and trade bodies from the mortgage, insurance, crowdfunding, cryptoasset, buy now pay later (BNPL), corporate finance and mainstream finance sectors (see Figure 1 below). There were also 3 responses from consumers and consumer groups, including the Financial Services Consumer Panel. We have engaged with the Financial Services Consumer Panel on several occasions since the consultation was published. Most of the responses received were from:

- firms and trade bodies in the mainstream finance sector, such as asset managers, banks, financial advisors and compliance firms
- firms and trade bodies in the investment-based crowdfunding (IBCF) sector
- firms in the mortgage sector

Figure 1: CP22/27 respondents by sector



1.42 Respondents generally agreed with our proposals. Where they disagreed, the main concern was disagreement with taking a 'blanket approach' to approvals of financial promotions in all sectors, with our proposals being disproportionate to the harm in some areas.

1.43 Based on this feedback, we are making some targeted changes to our proposals. Table 1 summarises these changes.

Table 1: Summary of key changes from CP22/27 proposals

Topic	Change
Notification reports	<p>We have narrowed the circumstances in which we will require a notification. An approver will only be required to submit a notification to us within 7 days if approving a promotion for a qualifying cryptoasset, or a product subject to a retail mass marketing ban (ie non-mass market investments such as speculative illiquid securities).</p> <p>Where we identify concerns with a firm's approvals, we may invite or require the firm to submit notifications to us in circumstances beyond those set out in our rules (eg for approvals of promotions for products other than qualifying cryptoassets or non-mass market investments).</p> <p>We have added 2 additional metrics to the notification report: (i) whether the approver's 'client' is an overseas person (and if so, what country), and (ii) the Companies House number (or international equivalent) of the approver's 'client'. Approvers will also be required to attach the promotional material which they have approved to the notification via an upload to the report.</p> <p>We have removed the proposed requirement for notifications to include the name of the person(s) that communicate the financial promotion, if they are not the approver's 'client'.</p> <p>We will no longer require a notification for the approval of every material amendment to a financial promotion or withdrawal of approval of a promotion. Instead, we will only require a notification for the amendment or withdrawal of approval for reasons relating to 'notifiable concerns'. We explain what we mean by this.</p>
Bi-annual reports	<p>We have added 2 metrics to the report: (i) Type of products being promoted, and (ii) the 'marketing restriction' category that applies to the promoted products (if any). This is to increase the usefulness of the biannual report in the absence of a universal notification requirement.</p>
Implementation and rule review	<p>We will conduct a review of our approach within 24 months of the regime coming into force, once we have built an evidence base through implementation of our reporting and notification requirements and our supervisory strategy.</p>

Equality and diversity considerations

- 1.44** We have considered the equality and diversity issues that may arise from the new rules in this PS and have had due regard to the public sector equality duty. Overall, we do not consider that the rules materially negatively impact any of the groups with protected characteristics under the Equality Act 2010. Respondents to CP22/27 did not identify any equality or diversity issues with our proposals.

Next steps

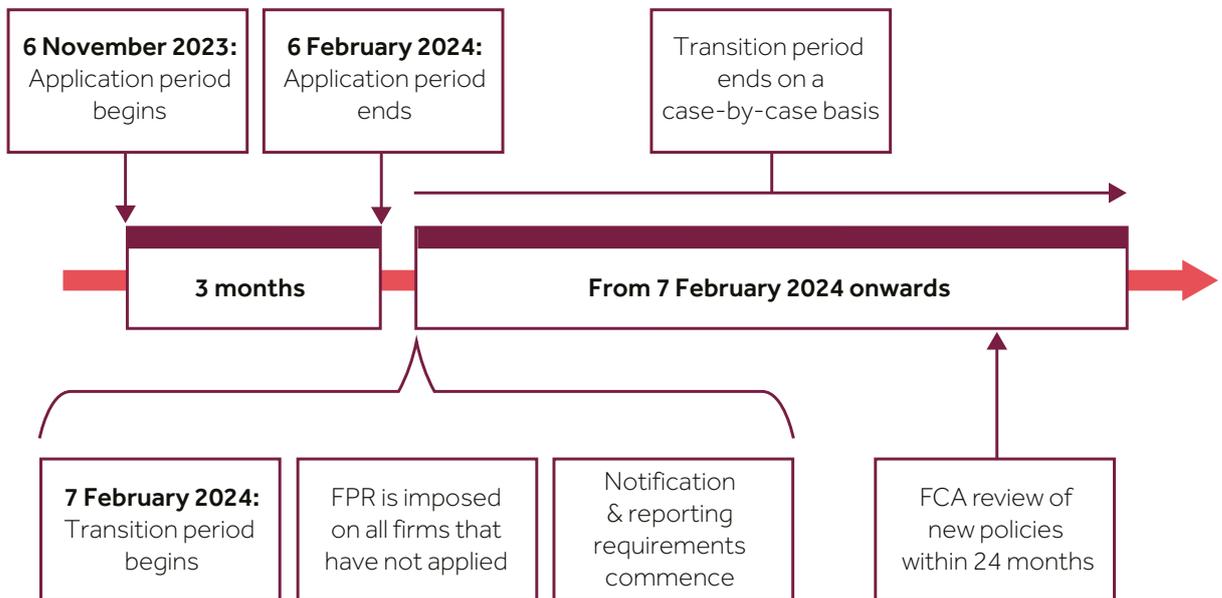
- 1.45** All authorised firms that approve financial promotions (subject to exemptions outlined in 1.33), must apply for permission to approve financial promotions during the initial application window if they want to continue doing so. To apply, authorised firms will be required to submit a variation of permission (VOP) application to seek permission to approve financial promotions. Firms will need to specify on their application, among other things, product types they want to approve financial promotions for, and tailor it accordingly.
- 1.46** We expect the initial 'application period' and 'transitional period' to operate as follows:
- Existing authorised persons will be able to apply to us for permission to approve financial promotions during an initial 'application period'. That period is expected to run from 6 November 2023 to 6 February 2024 inclusive.
 - Existing authorised persons that apply for permission during this period will be able to continue approving financial promotions for unauthorised persons while we determine their application (the 'transitional period').
 - The transitional period will start on 7 February 2024 and end on a firm-by-firm basis when we have determined a firm's application. If a firm's application is successful, they will see no interruption to their ability to approve financial promotions. If we refuse their application or the permission granted does not cover approvals for certain types of product for which they have applied for permission, the firm will need to cease the relevant s21 approval activity once we have determined their application.
 - The statutory deadline under FSMA for determining applications is 6 months for a complete application and 12 months for an incomplete application.
 - If a firm approves a financial promotion during the transitional period, this will remain valid after we determine the firm's application. This will be the case even if we refuse the application or the permission granted does not cover the relevant type of product. Any continuing obligations of the firm for the approved promotion (eg ongoing monitoring) continue to apply even if the firm is no longer entitled to approve the relevant financial promotion, for example, because we refuse its application for approval permission. The same principle applies to firms that do not apply to the s21 gateway, but have approved financial promotions in the past, that are still being communicated. In such a scenario, if the firm became aware that the financial promotion no longer complied with the financial promotion rules, it should withdraw its approval (as it could not approve amendments to the financial promotion).
- 1.47** From 7 February 2024, any authorised person which has not applied for permission to approve during the application period will be subject to the new FPR and will be unable to approve financial promotions, other than in the circumstances specified in the exemptions. If they want to approve financial promotions in the future, they can apply for permission to approve using a VOP form in the usual way. However, as with the existing VOP process, they will not be able to approve financial promotions until we have determined their application as successful (ie they will not benefit from a transitional regime). See table 2 below.

- 1.48** Applicants for Part 4A permission will also be able to apply for approver permission once the gateway opens. Where an application for Part 4A permission is determined before 6 February 2024, the newly authorised firm will benefit from the transitional period if it applies for approver permission (once authorised) by way of a VOP application submitted on or before 6 February 2024.
- 1.49** Applicants whose applications for Part 4A permission are not determined during the initial application period will be able to begin applying for permission to approve financial promotions from 6 November 2023, but will not benefit from the transitional regime. Where an application for Part 4A permission is 'in train' and the applicant then applies additionally for approver permission, we will treat these as separate applications subject to their own statutory deadlines.
- 1.50** Applicants applying for authorisation from 6 November 2023 will be able to apply for permission to approve financial promotions at the same time as applying for Part 4A permission. The new application for authorisation will include an option to apply for permission to approve financial promotions with associated financial promotion-related questions.
- 1.51** In CP22/27 we suggested it would be possible for any European Economic Area (EEA) firms which still had temporary permissions when the gateway opened to apply for permission to approve financial promotions. The temporary permissions regime ends on 31 December 2023. Since the application period will only begin on 6 November 2023, we do not expect any firms with temporary permission to apply for permission to approve financial promotions. However, of course, EEA firms which are subsequently granted Part 4A permission may apply for approver permission. Further, due to the limited scope of activities which they are permitted to carry on, the s21 gateway will not be relevant to EEA firms in the supervised run-off regime.
- 1.52** Gibraltar-based firms exercising passport rights in the UK will be able to apply for permission to approve financial promotions and should submit an application during the application period if they want to continue approving financial promotions (other than in circumstances where the exemptions apply).
- 1.53** We expect to make information about firms' permission to approve financial promotions publicly available on the Register, from 7 February 2024.

Table 2: Authorised firms that will be able to approve financial promotions within the scope of the gateway during and after the application period

Firm type	Able to approve financial promotions (other than within the scope of exemptions)		
	6 November 2023 to 6 February 2024 (‘application period’)	From 7 February 2024	
		While application for permission to approve is being considered (‘transition period’)	Following determination of application for permission to approve
Authorised person that applies during the application period	✓	✓	If granted permission to approve financial promotions, in accordance with the terms of that permission
Authorised person that does not apply for permission to approve	✓	✗	
Authorised person that applies following the end of the application period	✓	✗	If granted permission to approve financial promotions, in accordance with the terms of that permission
Applicant for Part 4A permission	Only once authorised and granted permission to approve financial promotions, in accordance with the terms of that permission		

Figure 2: The s21 gateway timeline



What you need to do next

- 1.54** Firms need to consider whether there is a need for them to apply at the s21 gateway, to continue to approve financial promotions. Applicants for authorisation whose applications are yet to be determined when the s21 gateway opens and who want to approve financial promotions should discuss this with their Case Officer. Applicants for authorisation who apply on or after 6 November 2023 should ensure that they complete the section of the application about permission to approve financial promotions.
- 1.55** Prospective applicants for permission to approve should start preparing the information needed as part of an application as soon as is practicable. The list of questions that applicants will need to answer on the application form are listed in Annex 1 and Annex 2. Applicants should refer to [CP22/27](#), this PS (including the updated non-Handbook guidance, see Annex 3) and our web page '[Applying to approve financial promotions for unauthorised persons](#)', for information on what is required for applications.
- 1.56** We remind prospective applicants that our reporting requirements take effect from 7 February 2024 (the beginning of the transition period). This includes for firms approving financial promotions who benefit from the transitional period. From this date, firms will need to submit notifications to us where their approval activity triggers this requirement. This will also mark the date from which approvals will count towards firms' first biannual report submission. Prospective applicants should ensure they are ready to comply with these from this date.

What we will we do next

- 1.57** From 6 November 2023, existing authorised persons will be able to complete a variation of permission form (VOP) via the Connect portal, to apply for permission to approve financial promotions. Firms that have already applied for authorisation will be able to add an application for permission to approve promotions to their 'in-train' authorisation application through their Case Officer. This will be treated as a separate application to the application for Part 4A authorisation and so will be subject to its own statutory deadline. Firms that apply for Part 4A authorisation once the application period has begun, will be able to apply to approve financial promotions within their authorisation application form. These will have the same statutory deadline.
- 1.58** Appendix 1 contains our near-final rules and guidance relating to the gateway. These have been approved by the Board. We expect to confirm the final rules and guidance before the initial application period opens and will update our website once the instrument has been made. Subject to exceptional circumstances, no further changes are expected to what has been published.

Implementation and rule review

- 1.59** We will conduct a review of our approach to the new s21 approver regime within 24 months of our rules coming into force. This will give us time to build an evidence base to inform such a review through the implementation of our reporting requirements and our supervisory strategy.
- 1.60** A review will enable us to re-calibrate our approach if our findings suggest that we should do so (eg if we are getting more or less data than is desirable in any areas, or if there is evidence that the regime is not adequately managing key harms). This will allow us to continue to future-proof the regime, and ensure that we use it to most effectively reduce harm.

Chapter 2

Proposals to operationalise the s21 gateway

2.1 This chapter summarises the feedback to our CP22/27 proposals:

- Our approach to assessing applications (questions 1 and 2)
- Our proposal not to amend the Financial Ombudsman Service's compulsory jurisdiction to include the approval of financial promotions (question 3)
- Required reporting– notifications (question 4)
- Required reporting– the bi-annual report (questions 5 and 6)
- Updates to our non-Handbook guidance on approving financial promotions (Annex 3 of the CP)

2.2 We also include feedback received to [CP22/23](#), on the proposed fees for s21 gateway applications.

Our approach to the application process

Consultation

2.3 Under section 55NA(7) FSMA, we may refuse an application for permission to approve financial promotions if it appears to us that it is desirable to do so to advance one or more of our operational objectives. Further, by section 55NA(4), we may grant permission to approve financial promotions on the terms sought in the application or subject to such other terms as we consider appropriate. Our approach to assessing applications will therefore be framed by our operational objectives. Our objective of securing an appropriate degree of protection for consumers will be particularly relevant for these purposes. We also said we would need to ensure that applicants have adequate systems, controls and processes in place to satisfy, and continue to satisfy, the Threshold Conditions.

2.4 We proposed that an applicant will need to state the product types for which they seek permission to approve financial promotions. As financial promotions in different sectors are subject to different rules, applicants would be assessed by reference to the rules that are relevant to the type of promotions that they wish to approve. For example, firms applying to approve financial promotions for investments would be asked to demonstrate how they plan to monitor financial promotions they have approved, given that this is required in the relevant rules for those approvals.

2.5 We also proposed that applicant firms would need to demonstrate:

- That they have processes in place for maintaining adequate records of the financial promotions they approve
- How they will satisfy themselves that a service will be provided where the financial promotion relates to a service to be provided by the issuer of the promotion

- How they will ensure that the propositions described in promotions are commercially viable
- That they have adequate systems, controls and processes in place to ensure that the promotions which they approve comply with our rules
- The steps they have taken to identify whether by approving financial promotions there are any additional risks presented to them, and confirmation of how those will be mitigated
- That they have the individuals they need to approve financial promotions of the type(s) in relation to which they are seeking permission, including individuals with appropriate competence and expertise
- That they have sufficient resources to undertake their proposed approvals, and that they have considered the volume of promotions they intend to approve and the revenue they intend to generate from this
- That they have a process in place should they decide to withdraw an approval of a promotion.

2.6 Where we are not minded to grant permission to approve financial promotions on the terms for which an applicant has applied, we said that that we would consider granting permission on different terms. In these circumstances we might grant an applicant permission to approve financial promotions in relation to a narrower range of investment types than that for which they had applied.

2.7 If we refuse an application to approve financial promotions or grant permission on terms which are different to those for which the firm has applied, we will follow the process set out in the relevant legislation and described in the Decision Procedure and Penalties Manual (DEPP). An applicant will be 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.

Feedback received

Assessing applications

2.8 We received 22 responses relating to our proposed approach to assessing applications. Respondents were generally supportive of our proposals (59% agreed, 14% neutral), 27% disagreed). Respondents that agreed were most commonly from the mainstream finance and mortgage sectors. Of those respondents who agreed with the proposals, a frequent reason for support was an understanding of the need to raise the governance standards of firms approving financial promotions.

2.9 Most disagreement came from the crowdfunding and BNPL sectors. Of those who disagreed, the most common rationale for disagreement was that we had taken a 'blanket approach' to assessing applications. Six respondents described our approach as disproportionate for significantly lower risk firms and firms approving promotions relating to lower risk financial products.

- 2.10** One respondent noted that firms involved in primary market activity are already subject to a significant amount of regulation to ensure proper disclosure to the market of all information necessary to enable investors to assess the relevant offering. They requested that we apply a proportionate approach to these firms when assessing whether to grant them permission to approve financial promotions.
- 2.11** Two respondents raised concerns that we proposed to collect details about individual employees who approve financial promotions on behalf of unauthorised persons, and said that the authorised person is responsible (and not individual employees) for the approval of financial promotions. They also stated that it was not clear whether consideration of the experience of relevant individuals would be a one-time assessment or whether firms with permission to approve financial promotions would need to have individuals re-assessed where they changed, which would add to the regulatory burden being placed on approvers. Another respondent said that it was unclear how we would determine 'competent individuals', and what qualifications or competencies we would expect them to have.
- 2.12** Some respondents said that it is unlikely to be commercially viable for a firm to apply for permission to approve financial promotions. One reason given was that our proposed application process requirements were too extensive. They warned of a situation where a small number of firms are responsible for approving promotions, spanning multiple financial services sectors.
- 2.13** One respondent raised concerns with our expectation that firms applying for permission to approve financial promotions are able to demonstrate how they will assess the commercial viability of the proposition described in a promotion. They did not view this as an appropriate matter for an approver to consider. They were also concerned that approving a promotion on the basis that a promoted product is commercially viable could produce a halo effect, where the approving firm could be seen as endorsing the product concerned (ie that the approval would be tantamount to a recommendation to buy or invest).

Determining applications

- 2.14** We received 21 responses relating to our proposed approach to determining whether to refuse an application or to grant permission on terms which are different from those for which an application has been made (52% agreed, 34% were neutral, 14% disagreed). Where respondents agreed with our approach, they indicated that the approach is proportionate, and thought that permissions granted to approve promotions should be narrow to ensure accurate alignment with a firm's area(s) of expertise.
- 2.15** Most of the respondents who disagreed were from the cryptoasset and BNPL sectors. Of those respondents that disagreed, several viewed the information we provided as to what may incline us to refuse an application as too broad. They argued that additional detail would likely help prospective s21 approvers assess their own capabilities and provide good quality applications. A respondent also said that the reasons why we might grant permission to approve financial promotions in a narrower set of circumstances

than those for which the application was made, and the process to be followed in reaching such a decision, should be clarified. They also thought that in these cases, reasons for our determination should be provided to the applicant.

2.16 One respondent requested clarity on whether the warning notice and decision notice issued as part of a refusal would be published, and said that this is an important consideration due to the potential reputational impact on the firm.

2.17 One respondent in the corporate finance sector noted that under the new legislation, we will have the discretion to cancel a firm's permission if it has not approved (or refused to approve) a financial promotion in the previous 12 months. They said that this could be problematic during market cycles when UK initial public offering (IPO) activity is slow.

Our response

While some respondents perceived that we were proposing to take a blanket approach to assessing applications and that our expectations of applicants were too demanding, we had stated in CP22/27 that applicants will be assessed by reference to the relevant rules that apply to the promotions of the type they had indicated that they wish to approve. Promotions of some financial products have more comprehensive rules for approving promotions than others (eg investments and other products where COBS 4 applies have more extensive rules regulating the approval of financial promotions).

Whilst we acknowledge that firms operating in wholesale capital markets are subject to other regulation about how information is disclosed to the market, we do not consider this to be duplicative of the requirements in the financial promotions regime. We will therefore assess firms in this sector against the same criteria as other applicants subject to the same rules.

Applications will undergo a proportionate and robust assessment based on the types of promotions the applicant intends to approve. The assessment process for applications that pose the highest risk of causing harm will include conducting more extensive due diligence on the applicant, and may involve conducting interviews with key individuals. We will publish information on our website on our expectations of firms looking to approve promotions.

We do not intend to require that firms update us when the individuals fulfilling the role of approving promotions are replaced by other employees. We will also not expect to be supplied with the new employees' details. We do expect firms to maintain their in-house expertise upon which the permission we have granted them is based, eg by replacing relevant employees if they move on with staff who have the requisite competence and expertise to approve the relevant types of financial promotion. If a firm loses access to this expertise, they should cease approving promotions for products related to this expertise, notify us in good time and consider varying their permission in response.

Whilst we do require that firms possess the necessary competence and expertise relating to the products for which they approve financial promotions, our approach is not prescriptive as to how that knowledge or experience might be manifested or evidenced. As the expertise required to assess promotions of various types and for various financial products may differ substantially, the knowledge and experience required will vary on a case-by-case basis. We expect firms to apply their discretion to this, and to maintain what would reasonably be considered as an acceptable level of competence in relation to the types of financial product for which they apply for, or have been granted, permission to approve financial promotions. This is in line with the approach taken in other areas of regulated business.

Just because a firm applies for, and obtains, permission to approve financial promotions relating to investments of a particular type, does not mean that the firm should thereafter consider that it should or could approve any and every financial promotion relating to an investment of that type. Investments take a wide variety of structures which significantly affect their risk profiles. The medium of communication used may also add to the risk or complexity of a particular campaign. A firm should not consider that it is equipped to approve promotions of any and all investments of a particular type simply because we have granted it permission to approve promotions of that type. We would expect a firm to consider carefully whether it has the competence and expertise to approve a promotion of any investment which it is approached to approve and should refuse to provide an approval if it does not consider itself equipped to provide that approval in a compliant way. A firm should also consider its obligations under the Consumer Duty as discussed in Chapter 1.

To assess whether a promotion of a financial product fairly represents the product being promoted in a way that is not misleading, it is necessary for the approver to establish whether the promoted product is commercially feasible and reasonably capable of achieving what is being promoted. We do not view such an assessment as equivalent to the type of suitability assessment that must be undertaken to provide a personal recommendation. Approving a financial promotion is not to be regarded as constituting a recommendation to purchase a product on the part of the approver. Rather this is an assessment that the claims made in a promotion are reasonably capable of being attained (ie not exaggerated or implausible). For example, an approver of a promotion of a managed investment product should be in a position to establish whether high rates of return referenced in such a promotion are likely to be achieved (having regard to factors such as the fee structure). This is a core part of assessing whether a promotion is clear, fair and not misleading. Weak, or non-existent, assessments of this in the past have led to unrealistic performance targets being widely promoted, and significant consumer harm.

To clarify, we do not intend to withdraw a firm's permission to approve financial promotions as a result of underuse of the permission before engaging with them. We will attempt to establish the rationale for the lack of use of their permission to approve before taking steps to remove the permission, in line with our existing 'Use It or Lose It' approach. For example, we will seek to understand whether the lack of use of the permission is because of the firm's particular business model or the prevailing commercial environment. We have sought to clarify this in guidance.

The circumstances in which we may grant permission to approve promotions on terms which are different to those for which a firm has applied are generally likely to be where the firm has been unable to demonstrate the requisite competence and expertise to approve the full range of promotions for which it has sought permission, or where the firm has failed to demonstrate that it has the systems and controls necessary to approve promotions of all of the types for which it sought permission. We may engage with a firm to provide it with an opportunity to amend the scope of the permission to approve for which it has applied. Alternatively, where an application proceeds to a decision and we consider it appropriate to exercise the power under section 55NA(4)(b) FSMA, we will first issue a warning notice.

We may publish Decision Notices and Final Notices on our website in accordance with the applicable legal framework regarding publication. We have recently published details on our [Authorisations refusals process](#).

The Financial Ombudsman Service (ombudsman service)

Consultation

- 2.18** The ombudsman service can consider a complaint under its compulsory jurisdiction (CJ) if it relates to an act or omission by a firm carrying out a regulated activity or any ancillary activity, including advice, in connection with such an activity. Complaints about the approval of a financial promotion are generally not covered by the ombudsman service, as such complaints do not relate to a regulated activity, unless the approval is ancillary to a regulated activity.
- 2.19** In our consultation, we proposed not to make any changes that would extend the ombudsman service's CJ, to create a general right to complain to it about the approval of financial promotions. However, in line with the above, we proposed that the ombudsman service continues to be able to consider a complaint where the financial promotion is ancillary to a regulated activity.

- 2.20** In summary, whilst needing to ensure approvers are subject to an appropriate level of regulation to adequately protect consumers, we felt that our proposed approach was proportionate. Extending the ombudsman's CJ in this instance would not provide significant additional protections and may raise an unrealistic expectation for consumers about what redress might be available. We also considered that our proposed approach would help to ensure a viable market of approvers would exist.
- 2.21** While we did not propose to extend the ombudsman service's jurisdiction, we noted that we would be able to exercise supervisory and enforcement powers in relation to authorised firms to secure redress in appropriate cases.

Feedback received

- 2.22** We received 19 responses to our proposal not to make changes to the ombudsman service's CJ. The vast majority of respondents were supportive of our proposal (90% agreed, 5% neutral, 5% disagreed). Most respondents who agreed with the proposal thought we had adopted a pragmatic approach. Some of those who agreed highlighted their expectation that our existing supervisory and enforcement powers are exercised when necessary to provide a strong incentive for firms engaged in the activity to comply with our Handbook requirements.
- 2.23** The Financial Services Consumer Panel strongly disagreed with our position. They said that consumers should not be denied the opportunity to seek redress through the ombudsman service for a valid complaint where the authorised firm is responsible for some, or all of, a consumer's losses.

Our response

We have decided not to make any changes to our proposals and will therefore not be extending the ombudsman service's CJ to cover the approval of a financial promotion. We are satisfied that our proposals are proportionate whilst not undermining the need to secure an appropriate degree of protection for consumers.

We believe that the strengthening of the financial promotions regime from the incoming gateway will increase consumer protection, as well as our ability to supervise the approvals of financial promotions. However, we will consider our position further in light of the broader review referred to in 1.59.

As is currently the case, the ombudsman service will continue to be able to consider a complaint where the financial promotion is ancillary to a regulated activity.

If significant consumer harm occurs, and that harm can be shown to be causally linked to the approval of a financial promotion, we will consider whether it is appropriate to exercise any of our regulatory powers to deliver redress to affected consumers.

Required reporting: Notifications

Consultation

- 2.24** We proposed to require that firms that approve financial promotions (other than within the scope of the exemptions) submit a notification to us for every financial promotion they approve, within one week of the approval being granted. Receiving notifications would improve our ability to proactively monitor the standard of approved promotions whilst they are live, potentially triggering intervention at an earlier stage and before harm is caused to consumers.
- 2.25** We proposed to require the following information in approval notifications:
- Product name
 - Product type
 - Name of client, ie the name(s) of the unauthorised person(s) that prepared the financial promotion and/or will be communicating the financial promotion.
 - Size of issuance (if applicable)
 - Advertised rate of return (if applicable)
 - Date of approval
 - Medium of communication
- 2.26** We also proposed to require that firms submit a notification to us within one week of withdrawing approval of a promotion. Required information for this notification included the date of withdrawal, the mediums the withdrawn promotion was communicated over and the reason for withdrawal. We proposed that the s21 approver would need to notify us each time the promotion is approved and withdrawn, if this happens on multiple occasions.
- 2.27** We proposed that the s21 approver would also need to notify us each time it approves amendments to the financial promotion. These notifications would include the reason for the amendment, the date the amendment was implemented, and the amended promotion's mediums of communication. We proposed that only material changes to a promotion would require an approver to submit a notification.
- 2.28** We said what we consider to be '1 approved financial promotion' for our reporting requirements (ie both the notification report and the biannual report). We consider '1 approved financial promotion' to be one set of promotional content for a campaign for a particular product. For example, the same promotional content displayed across three different media (eg webpage, email and banner) is considered to be 'one approved financial promotion' rather than three. For an approved 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 sought to clarify this in guidance.

Feedback received

- 2.29** We received 23 responses to this question. More respondents disagreed with our proposal than agreed (39% agreed, 18% neutral, 43% disagreed). Where respondents agreed with our proposal, they emphasised that the requirement to notify us will only be effective if we take appropriate action as a result of this information. One respondent who agreed with our proposal indicated that a more robust approach to regulating approvals of financial promotions is necessary to bring about higher standards of conduct.
- 2.30** Most of the respondents who disagreed were from the crowdfunding and BNPL sectors. Where respondents disagreed with our proposal, a common theme was that the requirement would be overly burdensome for firms, and several suggested that the proposed notification should therefore only be applied proportionately to high-risk approvals. Three respondents said that we had not made a distinction between investments and other sectors within financial services, in which promotions often pose a lower risk of causing harm than promotions of investment products.
- 2.31** A respondent said that the proposed notification requirement is not necessary for firms approving promotions within capital markets, because of the other regulation these firms must comply with when conducting corporate finance activities. They said that we should not require the same notification for these approvals, as approvals for promotions of high-risk investments specifically targeted at retail investors.
- 2.32** Several firms that approve high numbers of promotions said that for the purpose of completing notification reports, we should not conflate having information 'readily available' with having it 'ready for reporting'. They said that in many cases various data is kept on multiple systems, and that the data is not grouped in the time periods and categories that would be required for our proposed notification report. They raised that for them to complete notifications for each promotion approved would be cumbersome and may require either expensive IT upgrades, or increased resources.
- 2.33** One respondent said that on average they approve about 60 promotional items a week, and another said they can approve as many as 10 per week for sustained periods. They believed that the onus on sectors that generate large volumes of approvals would be disproportionately higher than we may have anticipated. They noted that during these busy periods the volume of notifications they would need to submit would create a very significant burden if notifications were required within one week of approval. Several other respondents said that depending on the volume of promotions being approved and the process to submit a notification, a longer time frame may need to be considered.
- 2.34** Five respondents raised that it is unclear how we would be able to review notifications at the same rate they are received, given the likely volume of submissions. They said that our one-week requirement for firms to submit notifications seemed disproportionate, as they believed it to be unlikely that the data would be assessed during this window.

- 2.35** A respondent said that because of the disproportionate administrative burden of our proposed notifications, firms will be disincentivised from obtaining permission to approve promotions, reducing the number of firms offering this service and reducing competition in the market.

Our response

As a supervisory tool, the notification report will give us access to up-to-date transactional information on approval activity, and potentially enable us to act to prevent consumer harm at an earlier stage. However, if we had proceeded with the proposed notification report as consulted, some lower risk sectors where there are high volumes of approvals would have incurred a disproportionate impact on resources relative to the benefits such reports would be likely to deliver. Following consideration of the responses to our consultation, we recognise the need to distinguish between higher risk and lower risk financial promotions which have less potential to cause harm. We have therefore taken steps to narrow the circumstances in which we will require a notification.

Upon approving a financial promotion, we will only require a notification from the approver when the promotion relates to a product subject to a retail mass-marketing ban (non-mass market investments, ie non-mainstream pooled investments and speculative illiquid securities) or a qualifying cryptoasset investment. Approvers will need to ensure that they conduct the necessary analysis on whether a product meets one of these definitions, as part of their assessment of whether the promotion complies with the relevant rules. We will require such a notification whether or not the financial promotion is intended to be communicated to retail clients. We will not require a notification of approval of a promotion of any other financial product under our rules. Promotions of cryptoassets have not previously been subject to a conduct regime in the UK, and so data collection on how these products are promoted is crucial at this early stage of regulation of this sector. We will review our approach to receiving notifications of approvals within 24 months as outlined in paragraph 1.59. Promotions of products that are under a mass-marketing ban have the most potential to cause harm if their financial promotions don't comply with our rules. This is why we have prioritised checking the compliance of promotions for these products by requiring notifications on all approvals of promotions for them. We think this approach ensures we will still get notifications about approvals of the potentially highest risk promotions. These are the promotions that would have been prioritised for review under a universal notification requirement.

Although we are taking a more focused approach to requiring notifications of approvals under our rules, we may nevertheless request that individual firms submit notifications when approving promotions for other financial products or services. All approvers will have access to the notification submission system on our online portal, Connect. We may request a firm to submit notifications beyond those required by our rules where we consider

that this is appropriate for the purposes of our supervisory work, eg if we have any concern about the firm's approvals, or their ability to comply with the financial promotions rules more generally. This will provide us with the flexibility to require notifications where enhanced monitoring is needed and tailor the terms upon which a firm must submit them. In appropriate circumstances we may use our powers to require the provision of such information (eg through imposition of a requirement, or through our information gathering powers).

We have also amended our proposed requirement for firms to submit a notification upon the approval of amendments to, or withdrawal of approval of, a promotion. Following consideration of the responses received, we agree that the burden of requiring notifications to be submitted for all withdrawals and approvals of amendments may be disproportionate to the potential benefits of doing so. We will therefore only require the submission of a notification when a firm either approves amendments to, or withdraws an approval of, a promotion due to a 'notifiable concern'. This will apply in relation to approvals of any financial promotion, regardless of the type of product or service to which it relates.

A 'notifiable concern' is a concern that relates to an element of an approved financial promotion that could cause harm to consumers. It may also relate to the integrity or propriety of an unauthorised person for whom a firm has approved a promotion. Such a concern may arise when a firm responsible for approving a promotion becomes aware that the promotion does not comply with applicable rules in such a way that it poses a risk of harm to consumers. It may also arise where a firm that has approved a financial promotion becomes aware that the unauthorised person associated with the approved promotion has provided misleading information in connection with that approval, or has engaged in other deceptive or even fraudulent activities. 'Notifiable concern' has been defined in the near-final Handbook rules.

Even where a firm is not required to make a notification to us, they should consider whether a particular matter is one of which we would reasonably expect notice (Principle 11). For example, where a firm is approached to approve a financial promotion but they refuse to approve it due to concerns about the legitimacy of the underlying product. Firms should also consider their wider obligations for reporting any suspected criminal activity.

For all approvals, amendments or withdrawals of approval where we will still require a notification through rules, we will still require submission of the notification within 7 days of the event occurring. This will enhance our ability to prevent potential harm. If we were to extend the period within which a notification is required to be submitted, execution of our proactive approach to supervision would be more difficult and may result in a lower success rate in terms of mitigating the risks associated with non-compliant financial promotions.

We have added a requirement to the notification report, that a copy of the approved promotional material is to be attached (uploaded) to the report. We have also added two metrics to the report, to improve our ability to effectively identify unauthorised persons and potential risk. These are:

- whether the unauthorised person is based overseas (and if so, the country they are based in)
- the Companies House number (or equivalent) of the unauthorised person

We have also made a change to the proposed notification metric that would have required the name of the unauthorised person that prepared the financial promotion and/or would be communicating the financial promotion to be reported. We will now only require the name of the unauthorised person that prepared the promotion, and not the name of the person that will be communicating it if different. The reason for this change is because the metric as proposed may have resulted in unintended consequences, eg requiring the name of every retail outlet communicating the promotion of a BNPL product, which would be disproportionate to the value of this information in most cases. We may request details of who has communicated the financial promotion in appropriate situations.

Bi-annual reporting

Consultation

- 2.36** We proposed to require firms to submit the following information for the last reporting period, as part of half yearly aggregate reporting using our Regdata collection platform:
- Total number of approvals
 - Total number of consumer complaints for approved promotions
 - Revenue from s21 approval activity
 - Total revenue, regulated and unregulated
- 2.37** For firms that apply during the application period, we proposed to require the first biannual 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.
- 2.38** We said that 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.

2.39 For firms that apply to approve financial promotions any time after the application period, we proposed to apply the same principle. Firms will need to submit their first report 30 business days following whichever comes first of the firm's ARD or 6 months following their ARD after the firm has been granted permission to approve financial promotions. This will cover the period between this point and when they were granted permission to approve financial promotions. Firms' second and subsequent reports would cover the preceding 6 months and be submitted within 30 business days of the firm's ARD and within 30 business days of the interim reporting day, that is, every six months thereafter, as part of their half-yearly aggregate reporting using our Regdata collection platform.

Feedback received

2.40 We received 19 responses to the question on our proposal for s21 approvers to submit bi-annual reports to us. None of the respondents disagreed with our proposal (58% agreed, 42% neutral).

2.41 We received 20 responses to the question on our proposed metrics and reporting frequency for the proposed bi-annual report (50% agreed, 15% neutral, 35% disagreed). Most of those who disagreed with our proposals were from the mainstream finance and mortgage sectors.

2.42 Some respondents who agreed with these proposals thought that the proposed report would help ensure that we have adequate data to implement higher standards of conduct and increase the efficiency of our regulatory oversight of the approvals market. They added that the proposed report would help us in holding s21 approvers accountable for promotions they approve on behalf of unauthorised persons, and should result in a reduction in consumer harm arising from non-compliant promotions.

2.43 Of those who held a negative view of the bi-annual report proposals, the most common rationale was that the reporting process would be too onerous. Respondents said that to comply, firms will incur additional costs from having to maintain adequate records of s21 approvals using manual processes or using specific software. Some respondents claimed that the proposed report would be overly burdensome given that it is in addition to a proposed notification requirement. Some firms expressed concern that the metrics were too detailed and that the report was required too frequently.

2.44 A respondent said that the metric relating to complaints would be difficult to ascertain. They said that consumer complaints would generally be made to the unauthorised entity and not to the authorised firm.

2.45 Some respondents noted that approving financial promotions is not a standalone part of the execution of deals and is not individually priced by them. As a result, they do not have a separate charge specifically for approving financial promotions. They contended that it would be difficult for them to quantify the portion of revenue attributable to the approval service provided.

- 2.46** Some respondents were confused about what revenue figures we proposed to require. They were unsure if we were referring to revenue generated from the product being promoted, or revenue from the fee charged for approving the promotion for that product. One respondent requested more clarity on the objective or rationale behind the revenue data request, and how this data will be used.
- 2.47** Some respondents were concerned about duplicative data collection. These respondents said that some metrics (e.g., number of complaints, total revenue generated) are already reported to us in other reporting that we require from firms. They said that having to report to us more than once on the same data is inefficient and burdensome.
- 2.48** Several respondents thought that we should take a risk-based approach when implementing the bi-annual reporting requirements, to account for sectors with lower risks.
- 2.49** Some respondents were unsure if there was an option to submit a nil return for numbers of promotions approved, if no in-scope financial promotions were approved in the preceding six months. They asked the same question about complaints received relating to approvals, if no complaints were received in the preceding six months.

Our response

Our requirements for the bi-annual report remain largely unchanged from the report as proposed. We have slightly increased the required information in the report, because of our changes to the notification requirements. As we will be receiving less data from approvers due to these changes, we need to ensure that we obtain enough information from the bi-annual reports to enable us to effectively monitor the approvals market. We need data to, for example, detect trends in products being promoted by unauthorised persons, identify instances where firms approve promotions for products that are out of the ordinary for them or the market, or even to identify if a firm has approved a promotion for a product type for which we did not grant them permission.

To provide us with sufficient information for supervisory purposes, we will require firms' total approved promotions in the period to be broken down by:

- Type of products being promoted
- 'Marketing restriction' categories that apply to the promoted products (if applicable)

In addition, firms must give us reasonable notice if they intend to begin or cease approving financial promotions for products subject to marketing restrictions (using a SUP15 notification form).

Our changes to the type of promotions for which we will require submission of a notification upon approval will result in a reduction in the overall burden of the regime for most firms. We believe that the combination of our notification requirement and our biannual report create a proportionate and risk-based regime for the supervision of approving firms. We believe that much of the information we require for our reports should be readily

available in the normal course of approvers' business. Much of the required data should be on hand as part of a firm's existing record keeping requirements. We have updated our cost benefit analysis to account for IT costs to medium and large firms, as well as known s21 approvers that are small firms but operate crowdfunding platforms, from updating their systems to record this data in a way that can be reported. We consider the IT costs for other small firms to be negligible.

While we have adjusted our requirement for notifications so that it is more risk-based, all firms that are granted permission to approve financial promotions will be required to submit bi-annual reports. This is the minimum that we expect from any firm that wishes to engage in approval activity for unauthorised persons. Without the information that we intend to gather from the report, we will not be able to effectively oversee this market. More effective oversight and supervision of approvals of financial promotions was a key driver of the Treasury's decision to legislate for the s21 gateway.

Difficulty in ascertaining complaints metrics relating to approvals of promotions should be mitigated by establishing ongoing communication between the s21 approver and the unauthorised person for whom promotions have been approved. Such communication between the two firms should ensure the authorised person is made aware of any complaints received by the unauthorised person about the approved promotion. We have sought to clarify this in guidance. If firms receive material complaints relating to an approved financial promotion, this may make it necessary to withdraw approval of the relevant promotion or to seek its amendment.

While some firms may not specifically itemise revenue generated from the activity of approving promotions for unauthorised persons, any standard business model should be able to account for revenue generated from each source. If a firm does not currently charge for this service, we would expect them to be able to adequately attribute an appropriate proportion of their revenue to this activity. To clarify, by requesting 'revenue from s21 approval activity', we are referring to revenue received as a result of the fee charged for approving a promotion, and not revenue generated from sales of the product being promoted. Our rationale for requiring data on revenue earned by firms is to provide us with information that helps us to understand a firm's reliance on income from financial promotion approval activity for the purposes of its business.

We acknowledge that reports completed by firms in some sectors may contain overlapping metrics with those required in our bi-annual report. We require this information over specific time periods and split between income from regulated and unregulated activities for the purposes of monitoring activity in this market as described above. Other reports may include complaints received overall, but this bi-annual report only requires complaints pertaining to approved promotions. This level of granularity is

not catered for in other reports. The figure for total number of approved promotions in the period is now of more importance given the lack of a blanket notification requirement.

To confirm, a firm must submit a return even if it has not approved any financial promotions or received any relevant complaints during a reporting period.

Fees

Consultation

2.50 In our November 2022 fees policy consultation, we consulted on a Category 5 application fee (currently £5,000) for applications to the s21 gateway ([CP22/23](#) paragraphs 4.2-4.4). For annual fees, we proposed in our April 2023 consultation on fee-rates for 2023/24 (paragraph 2.6) that the costs of the new regime should be distributed among the full population of fee-payers since all part 4A authorised persons are potentially affected.

Feedback received

2.51 We received no comments on our proposed annual fees and we confirmed our position in our policy statement in July 2023 (paragraph 2.2).

2.52 We received 6 consultation responses on the application fee. One welcomed the charge and none objected in principle, though several asked for further justification of the amount. Two proposed scaling the fee according to the size of the applicant or the level of risk of consumer harm in particular markets. Another proposed a discount for platforms approving financial promotions relating to restricted mass market investments, as they argued that they already meet many of the requirements for permission to approve financial promotions.

2.53 Other respondents asked for confirmation that:

- firms will apply to approve promotions of types of investment, not every individual investment;
- the fee will only be charged when an authorised firm seeks to approve the financial promotions of a person who is not already authorised;
- it will not be charged when principal firms approve promotions on behalf of their ARs; and
- only one fee is payable when several applications are made together.

Our response

Our response to the feedback received on the application fee is that we do not wish to complicate the charge. Having reviewed our estimates of the resources required for processing applications, and recognising that some applications will inevitably be more or less complicated than others, we remain satisfied that £5,000 represents a reasonable average contribution towards our costs.

In response to the various requests from respondents for the confirmations listed above, we broadly confirm all of these points. The exemptions from the need to apply at the s21 gateway, and therefore the need to pay the application fee, are outlined in 1.33.

Non-handbook guidance

Consultation

- 2.54** We proposed to make consequential updates to the non-Handbook guidance for the approval of financial promotions for unauthorised persons, as a result of our consultation proposals and the introduction of the Consumer Duty.

Feedback received

- 2.55** We received 11 responses to this question. Most of the respondents agreed with our proposals, but 1 respondent disagreed. Several respondents said that our approach to the non-Handbook guidance provided clarity, and another respondent remarked that the guidance was comprehensive.
- 2.56** A respondent referred to our guidance on approvers ensuring that headline rates of return stated on a financial promotion are "reasonably capable of being achieved" on an ongoing basis. They asked for clarification on the frequency with which a s21 approver would be expected to assess this point and what "reasonably" might consist of in practice when it comes to testing the 'commercial viability' of firms' products and offerings.
- 2.57** Another respondent asked for clarity on our expectation that an approver should monitor each financial promotion it has approved periodically to assess whether any changes have taken place which affect the promotion's compliance with our rules. They remarked that the term 'periodically' is too vague and needs further qualification.

Our response

Firms which approve financial promotions must ensure that those promotions comply with our rules. This will generally mean ensuring that they are at least fair, clear and not misleading. Our guidance that firms consider the reasonableness of advertised rates in investment-related promotions is borne out of past concerns with approved promotions which carried claims of returns which the relevant issuer was unlikely to be able to deliver. This may be because of the issuer's business model, financial position or the levels of fees associated with a particular investment. The guidance does not convey an expectation that a firm will only approve a promotion where it has complete confidence that advertised returns will be achieved. Financial products vary widely in their objectives and complexity, their related risks and the factors on which their performance depends. It is therefore for firms to consider, on a case-by-case basis, whether an advertised rate of return is reasonably capable of being achieved, having regard to these various factors.

A similar explanation applies to why we refer to our expectation that approvers of promotions where COBS 4.10.2 R applies should monitor such promotions 'periodically', as the frequency at which approved promotions should be revisited will differ on a case-by-case basis, depending on the type of product being promoted.

Chapter 3

Cost benefit analysis

Introduction

- 3.1** In CP22/27, we provided an analysis of the costs and benefits we expected from our proposed reporting requirements for firms that approve financial promotions. These requirements were:
- To submit a notification to us within 7 days of approving, withdrawing approval of, or approving amendments to, a financial promotion
 - To submit a bi-annual report on their approval activity
- 3.2** Historically we have had very little oversight of financial promotion approvals, affected markets and their participants. We therefore lack the required data to make clear observations on the prevalence of harms in the market due to approved non-compliant financial promotions. However, there have been instances of harm that provide clear anecdotal evidence from our supervisory and enforcement activities. 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 conduct s21 approval activity. There are also currently 9 live enforcement investigations regarding s21 approval activity. These cases provide clear indication to us that our rules are proportionate to the harm caused by unclear, unfair and misleading financial promotions. This intervention will help us to proactively understand the market and potentially prevent harms before they materialise.
- 3.3** Following our consultation and the feedback received, we have made changes to our proposed requirements to be more proportionate, based on the type of approval activity a firm conducts. We have also made changes to the costs we estimated for our proposals, to account for new information regarding potential applicants at the gateway, changes in our standardised assumptions and additional IT costs. Because of this, we have also updated our breakeven analysis from our original CBA.

Feedback received

- 3.4** We received feedback to our cost benefit analysis (CBA) from only one respondent, claiming that while approvers are required to maintain records of the approvals they provide, this practice does not require the collection of approval (nor amendments or withdrawals of approval) numbers for any particular timeframe. The respondent said that our proposed reporting requirements would result in a need for additional resources within firms to maintain and report the required data.

- 3.5** Three respondents said in response to question 4 (regarding our proposal to require notifications) that firms would need to implement software solutions to comply with our proposed reporting requirements. They made a distinction between data on approvals of financial promotions being made 'readily available' by firms versus their data being 'ready to report'. We did not account for IT costs in our CBA, as we viewed the data requirements for our proposed reporting rules as relatively straightforward to comply with and considered this cost to be negligible.
- 3.6** In our consultation paper (CP), we utilised a range of potential numbers of s21 approvers given that applying to the s21 gateway is optional. It is uncertain how many firms will be interested in applying to the gateway, and of these how many will have their application approved. To address this uncertainty, we assumed a lower bound number of applicants of 39, and an upper bound of 100 applicants. The lower bound number of 39 firms was based on the number of active firms that we knew had approved a promotion for an unauthorised person and could still feasibly do so. The upper bound of 100 was based on supervisory expectations and judgement and assumed the same firm size profile as the 39 active firms included in our lower bound estimate. In response to question 7 in the CP (asking applicants if they intended to apply at the gateway), some respondents outside of the 39 firms in our lower bound estimate answered that they do intend to apply. We take account of this in our updates to the CBA covered in the following section.

Our response

Changes to our proposed requirements

- 3.7** We will now only require a notification within 7 days of an approval of a promotion for products subject to a retail mass-marketing ban (such as speculative mini bonds), or for qualifying cryptoasset investments. We will no longer require firms approving promotions relating to any other type of financial product or service to submit such a notification under our rules. As explained in our response to the feedback received to our notification proposals, we have adopted a more risk-based approach to avoid a disproportionate impact on firms approving relatively low risk financial promotions, which may have required the submission of high volumes of notifications.
- 3.8** We may request a firm to submit notifications beyond the circumstances required by our rules where we consider that this is appropriate for the purposes of our supervisory work (eg if we have any concerns about the firm's approvals). All approvers will have access to the notification submission system on Connect. In appropriate circumstances we may use our powers to require the provision of such information (eg through imposition of a requirement, or our information gathering powers).
- 3.9** We have also amended our proposed requirement for firms to submit a notification upon the approval of amendments, or the withdrawal of approval of, a financial promotion. We will now only require submission of a notification when a firm approves amendments to, or withdraws approval of, a financial promotion when this is due to a 'notifiable concern'. This will apply for approvals of financial promotions of all financial

products. We have provided details on what we consider to be a 'notifiable concern' in our response to the feedback received on our notification proposals, and have defined this term in our near-final Handbook rules.

- 3.10** We have also added some additional metrics to both the notification report and bi-annual report, and we have withdrawn a proposed element of the notification report. We do not anticipate that these changes will have a material effect on the cost of completing either report. See 'our response' in the notifications and bi-annual report sections of this PS respectively for more detail on these metrics.

Adjustments to our CBA

- 3.11** While we expect these changes to result in lower costs for firms overall compared to the requirements proposed in CP22/27, we do not believe it warrants also adjusting our ongoing costs estimates. Given that we could require firms to submit notifications of approvals beyond those required by our rules as part of our supervisory work, we prefer to take a conservative approach to our estimation of the costs of our approval notification requirement. We include costs of these for all expected applicants, not just those we consider likely to approve promotions for products where approval notifications are required in the rules. Furthermore, despite our narrowing of the circumstances in which the rules will require a notification, we believe it remains appropriate to retain our existing estimate of 10-100 notifications per year per s21 approver. We believe this is a sensible approach to take considering the lack of data we have on the approvals that take place in the market. This means that our costs and breakeven point as reflected in the table below are likely to be overstated, which would mean that the cost of our measures may be lower than we have estimated.

Changes to number and size of firms

- 3.12** Our lower bound estimate of firms that may apply at the gateway has increased to 47 from 39 to account for additional firms that have stated their intention to apply, and changes to the existing pool of known approvers since consultation. Of these 47 firms, 41 are small firms, 5 are medium firms and 1 is a large firm. 10 of these firms are known to be crowdfunding firms. We have also updated the profile of firms under our upper bound estimate which remains at 100. We expect a similar ratio of small to medium and large firms to the 47 firms in the lower bound estimate, under our upper bound estimate. Based on this, we now assume that we would have 88 small firms, 10 medium firms and 2 large firms in our upper bound estimate. The updated lower bound and upper bound assumptions are summarised in table 1 below.

Table 1: Our updated assumptions on the number and size of firms

	Small	Medium	Large	Total
Lower bound	41	5	1	47
Upper bound	88	10	2	100

Additional IT costs

- 3.13** We have also adjusted our one-off costs estimate to account for firms that will require IT upgrades to their systems in response to our requirements. We now anticipate that large and medium firms, as well as small firms in our lower bound that operate a crowdfunding platform, will also incur IT costs. We acknowledge that these firms are likely to have central software that will need updating for our reporting requirements, as opposed to this being managed locally with existing software. Crowdfunding firms in particular are likely to approve higher numbers of promotions, meaning management of this information is more likely to require bespoke costs. As a result of these changes, our costs and break-even calculations are updated below.

Changes in our standardised assumptions

- 3.14** We have estimated the costs of the new requirements for firms based on similar assumptions to those in our CP22/27 CBA. Since our CP, we have updated our standardised assumptions used to estimate compliance costs across our CBAs. This is to take account of more recent data on salaries and other assumptions which form our Standardised Cost Model (see annex 1 of our [CBA approach document](#) for more information). In our CP, we calculated an estimated cost of submitting a notification based on one hour of a compliance officer's time, using data on professional salaries. We previously used an hourly rate of £47.27 for a compliance officer in our CBA. We did not use a range for this rate because we did not account for any large firms, as we did not expect any large s21 approvers at the time and the rate was similar for both small and medium firms. Due to the updates in our standardised assumptions and now that we anticipate that large firms may apply, our hourly rate (including a 30% overhead) for a compliance officer now ranges from £47.67 to £53.49 depending on the size of the firm.
- 3.15** We used a range of possible notifications to be submitted per annum per firm based on data received from firms, and applied this to our range of possible numbers of applicants at the gateway. We then calculated an estimated cost of submitting a bi-annual report based on an estimate of 3 hours of a compliance officer's time, for a small firm. For medium sized firms, we added an estimated cost of 2 hours of a senior manager's time in addition to the compliance officer's time. We now also estimate 3 hours of a senior compliance manager's time for large firms. These estimates are based on our internal supervisory judgement. In our CBA, we used an hourly rate of £99.26 for a senior compliance manager's time. For the same reasons stated in the paragraph above, we did not use a range for this hourly rate. We have now also amended the hourly cost of senior compliance managers due to recent updates in our standardised assumptions, which now ranges from £97.01 to £105.74 depending on the size of the firm. These costs do not apply to small firms, however.

Our updated CBA estimates and breakeven analysis

- 3.16** We have now updated our cost estimates to account for the increased number of firms we expect to apply at the gateway under the lower bound. We have also updated our upper bound assumptions on firm size, changed our standardised assumptions and added IT costs for firms to update their software using our standardised assumptions. We previously estimated a total year 1 cost of approximately £51k – £557k. We now

estimate a total quantifiable year one cost (one-off and ongoing) of approximately £144k – £705k. If we consider the present value of both one-off and ongoing costs over a 10-year appraisal period, we estimate total costs of our policy to be £0.45m – £4.68m depending on the number of notifications and approving firms. To calculate the present value, we use a discount factor of 3.5% in line with the Government's Green Book guidance.

- 3.17** For our breakeven analysis, we used the population of consumers invested in speculative illiquid securities, as well as consumers who have invested in products via investment-based crowdfunding platforms. Due to incomplete data on consumers affected, this only represents a subset of the population of consumers affected and doesn't account for consumers of other products for which promotions are often approved. We have assumed that our rules will have an impact on the total population of these consumers, which we have quantified. In practice, we know that our measures will also impact new consumers of these products, as well as consumers who decide not to purchase the product after engaging with the promotion (eg through gaining an understanding of the risks). However, we still do not have any robust evidence on the additional inflow of consumers or number of consumers of other relevant products. We will therefore maintain the total number of affected consumers that we used in our CP. We believe that on balance this is a sensible approach given the lack of data, and is a conservative estimate as we would expect breakeven levels to be even lower if we accounted for the additional inflow of potential consumers and consumers of other relevant products.
- 3.18** In addition to the above, we also caveat that whilst we assume all current consumers will benefit from our measures, they may not all be exposed to financial promotions of these products (eg by looking into investing more) in the future. We also cannot precisely determine how much consumers base their decision to purchase a financial product on a financial promotion. In practice, we accept that some consumers will place a higher/lower weight on financial promotions in their financial decisions than others, in which case not each and every consumer will benefit from these rules. Nevertheless, this is difficult to practicably estimate and on balance we think that the number of consumers we have used provides a reasonable reference for the number of consumers that will benefit from our policies. In updating the costs of complying with our new rules and break-even analysis, we have therefore maintained the assumptions on the number of consumers upon which our CBA estimates were initially based.
- 3.19** As explained in our CP, we assumed that the consumer population most likely to be affected by our interventions are current holders of certain high-risk investments, namely those who have invested using investment-based crowdfunding platforms and holders of speculative illiquid securities. We expect the main benefit of these policies to be financial savings resulting from better quality financial promotions, which are likely to reduce the risk of financial harm from unexpected losses. Given that we were unable to quantify the benefits, we provided a breakeven analysis to illustrate the savings needed for this policy to become net beneficial. We previously estimated that a saving of 5p to 51p per consumer would be needed for our policy to breakeven based on year 1 costs. To calculate this break-even figure, we have summed the total quantified year one costs (one-off and ongoing), and divided this by the total number of consumers we expect to benefit (1,100,000 per year). Taking the changes above into account, the updated breakeven figure is now estimated to be 13p to 64p based on year 1 costs.

The 10-year present value of costs provides a more holistic indication of costs over a longer time span compared to the year 1 costs. We would therefore prefer to use the 10-year present value of costs for our breakeven analysis. If we consider all costs over a 10-year appraisal period, our breakeven figure (which indicates the monetary benefit that would be needed for our policy to be beneficial) rises from a range of 5p–51p to a range of £0.41–£4.25 on average over a 10-year period. This also accounts for the revisions made on the number and size of firms, IT costs and standardised assumptions (explained above).

3.20 As stated in paragraph 3.2, we have a range of internal evidence which indicate harms caused by unclear, unfair and misleading financial promotions. Based on this evidence, we believe that our policy is proportionate and that the benefits will likely outweigh the costs incurred. We therefore maintain the position that our breakeven figures are realistically achievable and believe that a net beneficial outcome will materialise.

3.21 Table 2 below provides an updated summary of the total costs and benefits of our policies, accounting for the revisions stated above.

Table 2: Summary of costs and benefits

	Costs	Benefits
Firms	<p>Quantified one off familiarisation costs: £40k – £84k</p> <p>Quantified one-off IT costs: £63k-£98k</p> <p>Quantified ongoing compliance costs of submitting notifications: £23k- £486k depending on the number of notifications and approving firms</p> <p>Quantified ongoing compliance costs of bi-annual reporting: £17k-£36k depending on the number of approving firms</p> <p>Potential indirect increase in costs for unauthorised persons that require approval of their promotions</p> <p>Potential loss of revenue for unauthorised persons from not being able to promote their products, if approval fees charged by s21 approvers rise</p> <p>Loss of revenue for firms who choose not to continue approving financial promotions due at least in part to our reporting requirements for approvers of financial promotions</p>	<p>Improved consumer trust in the financial services market, potentially leading to higher demand for firms' products</p>

	Costs	Benefits
Consumers	<p>Potentially higher costs when purchasing products where the promotions have been approved</p> <p>Potentially fewer product options available</p>	<p>Reduced risk of financial difficulty due to purchasing inappropriate products, leading to better financial well-being</p> <p>Reduced risk of knock-on difficulties as a result of financial difficulty such as psychological stress, leading to improved consumer welfare</p> <p>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</p>
FCA	Absorbed as business as usual	
Total quantified	<p>One-off: £103k -£182k</p> <p>Ongoing: £40k to £523k</p> <p>Total costs in present value terms over 10 years: £0.45m to £4.68m</p>	
Breakeven analysis	Average monetary benefit on average per consumer needed to break even: £0.41 to £4.25	

Annex 1

Application for permission to approve financial promotions (new authorisation form)

Questions and requirements

1. Is the applicant firm applying for permission to approve financial promotions for unauthorised persons (other than its group entities or appointed representatives) under section 21 of FSMA?
2. Give details below of the type of investments the applicant firm wants to apply for permission to approve financial promotions for.
3. Dependent on which investment types are selected in question 2: Give details of the categories of investment which have marketing restrictions which the applicant firm expects to approve financial promotions for.
4. How will the applicant firm ensure that the financial promotion is fair, clear and not misleading and otherwise complies with applicable financial promotion rules, both before approving it and, where relevant, during continued monitoring of its compliance with applicable financial promotion rules?
5. How will the applicant firm ensure the authenticity of the propositions described in the promotions it is asked to approve?
6. How will the applicant firm mitigate the particular risks which it has identified for approving financial promotions for unauthorised persons? How will the applicant firm maintain adequate records of the financial promotions which it will approve?
7. How will the applicant firm ensure the commercial viability of the propositions described in the promotions it is asked to approve?
8. What process will the applicant firm follow for withdrawing an approval of a financial promotion, where this is required?
9. Is the applicant firm seeking permission to approve financial promotions for designated investments? If so:
 - a. How will the applicant firm assess whether relevant investments are reasonably capable of delivering advertised or headline rates of return?
 - b. How will the applicant firm assess whether there are any fees, commissions or other charges within a relevant investment's structure or elsewhere that could materially affect the investment's ability to deliver advertised or headline rates of return?
12. Will the applicant firm be approving financial promotions that retail customers can access?

- 13.** Approximately how many financial promotions does the applicant firm expect to approve if it is granted permission to do so?
- 14.** Explain what fees the applicant firm intends to charge for approving and (where applicable) ongoing monitoring of financial promotions?
- 15.** Give details of the:
 - revenue the applicant firm estimates it will make from approving financial promotions
 - percentage of the applicant firm's estimated revenue from approving financial promotions.
- 16.** Give details of the experience of relevant individuals to approve financial promotions.

Annex 2

Application for permission to approve financial promotions (variation of permission form)

1. Is the applicant firm applying for permission to approve financial promotions for unauthorised persons (other than its group entities or appointed representatives) under section 21 of FSMA?
2. Is the applicant firm applying to cancel its permission to approve financial promotions for unauthorised persons (other than its group entities or appointed representatives) under section 21 of FSMA?
3. Is the applicant firm applying to vary its permission to approve financial promotions for unauthorised persons under section 21 of FSMA?
4. Give details below of the type of investments the applicant firm wants to apply, or remove, permission to approve financial promotions for.
5. Dependent on which investment types are selected in question 4: Give details of the categories of investment which have marketing restrictions which the applicant firm expects to approve financial promotions for.
6. Explain how the applicant firm has updated its policies and procedures for approving financial promotions for the new investment types this application involves. You must include how the applicant firm has mitigated any additional risks it has identified from approving financial promotions for unauthorised persons.
7. Provide a summary of the experience of the applicant firm and individuals at the applicant firm to approve the promotions for the investment types in this application.
8. How will the applicant firm ensure that the financial promotion is fair, clear and not misleading and otherwise complies with applicable financial promotion rules, both before approving it and, where relevant, during continued monitoring of its compliance with applicable financial promotion rules?
9. How will the applicant firm ensure the authenticity of the propositions described in the promotions it is asked to approve?
10. How will the applicant firm maintain adequate records of the financial promotions which it will approve?
11. How will the applicant firm ensure the commercial viability of the propositions described in the promotions it is asked to approve?
12. What process will the applicant firm follow for withdrawing an approval of a financial promotion, where this is required?

- 13.** Is the applicant firm seeking permission to approve financial promotions for designated investments? If so:
- a.** How will the applicant firm assess whether relevant investments are reasonably capable of delivering advertised or headline rates of return?
 - b.** How will the applicant firm assess whether there are any fees, commissions or other charges within a relevant investment's structure or elsewhere that could materially affect the investment's ability to deliver advertised or headline rates of return?
- 16.** Will the applicant firm be approving financial promotions that retail customers can access?
- a.** In light of the Consumer Duty you must explain how the applicant firm has satisfied itself that approving financial promotions will deliver good outcomes to retail customers. You must also explain the policies and procedures the applicant firm has in place to ensure that it complies with relevant elements of the Consumer Duty.
- 17.** Has the applicant firm approved any financial promotions in the last 12 months?
- a.** Provide the number of financial promotions approved for unauthorised persons in the last 12 months.
 - b.** You must give details of the financial promotions in this spreadsheet and attach it to your application.
- 18.** Approximately how many financial promotions does the applicant firm expect to approve if it is granted permission to do so?
- 19.** Explain what fees the applicant firm intends to charge for approving and (where applicable) ongoing monitoring of financial promotions?
- 20.** Give details of the:
- a.** revenue the applicant firm estimates it will make from approving financial promotions
 - b.** percentage of the applicant firm's estimated revenue from approving financial promotions.
- 21.** Give details of the experience of relevant individuals to approve financial promotions.

Annex 3

Updated non-Handbook guidance for s21 approvals for investments

1. Read our guidance on approving the financial promotions of unauthorised persons. 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. A key part of our strategy in consumer investments 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. Financial promotions 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, ie 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 person, ie 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 person approving a financial promotion of, and for communication by, an unauthorised person. 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 persons, then you may need to apply for permission to do so. SUP 6A in the FCA Handbook contains guidance on applying for permission to approve financial promotions.
- 10.** FCA permission is not required to approve the financial promotions of unauthorised persons in the following circumstances:
- Approvals of financial promotions prepared by a firm's Appointed Representatives (ARs), where the financial promotions relate to the regulated activities the AR is permitted to undertake under the responsibility of the firm.
 - Approvals of financial promotions prepared by unauthorised persons within a firm's 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 persons (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 16.31).
- 12.** We have permanently banned the mass marketing of speculative minibonds 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 persons. 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 person or to test communications with the unauthorised person's investors. More detail on the Duty and the obligations for authorised firms can be found in [FG22/5](#) and [PS22/9](#).
- 16.** Firms should consider the potential harm to consumers from promotions of certain products and mediums of communication. Firms should consider whether agreeing to approve these financial promotions is compliant with their obligations under the Consumer Duty.

Ensuring that a promotion is fair, clear and not misleading

- 17.** Before a firm approves a financial promotion for communication by an unauthorised person, 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 persons (see PERG 8.9.3 G).
- 18.** 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 person, unless you are satisfied that the promotion is fair, clear and not misleading.
- 19.** 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)
- 20.** You should therefore analyse, and carry out due diligence regarding, the substance of a promotion before approving its content for communication by an unauthorised person. 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.
- 21.** 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).
- 22.** 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
- 23.** 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
- 24.** This may involve taking steps to ascertain the likelihood of any security being sufficient to cover investors' investments (eg, capital repayments, interest payments).

25. 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.
26. 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).
27. On the need to ensure that risk warnings are afforded sufficient prominence within financial promotions, firms are reminded of our [guidance](#).
28. 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.
29. 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

30. 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 person 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.
31. 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.
32. 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

- 33.** When approving a financial promotion of, and for communication by, an unauthorised person, it is unlikely to be appropriate to accept at face value information provided by the unauthorised person. You should form your own view as to whether the promotion complies with our financial promotion rules.
- 34.** 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 person. You should consider the appropriateness of relying on this type of information on a case by case basis.

Social media and digital communications

- 35.** 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](#)), and our recent guidance consultation ([GC23/2](#)).

Systems and controls

- 36.** 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.
- 37.** 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

- 38.** 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), ie 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, ie that have come into force post-approval, are being complied with.

- 39.** 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)).
- 40.** As part of the ongoing monitoring requirements, firms that have approved promotions for unauthorised persons are also required to collect quarterly attestations of 'no material change' from the unauthorised persons 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.
- 41.** The ongoing monitoring requirement applies to a firm for the lifetime of the approved promotion, so it is in a better position to withdraw its approval if necessary.

High-risk investments

- 42.** 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

- 43.** 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 whether 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).

44. 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

45. Firms approving financial promotions for non-mass market investments (NMMI) must conduct a preliminary assessment of suitability before an unauthorised person 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.9 G 2(c).

46. 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

47. 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

48. When a firm applies for permission to approve financial promotions for unauthorised persons, 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.

49. 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.
- 50.** 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).
- 51.** We require that the firm self-assesses that it has 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 farming or mining business for example, if the underlying business to which the share offer relates is in these sectors.
- 52.** Where the promotion is related to a regulated activity for which the firm has a Part 4A permission (eg 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.
- 53.** Just because a firm applies for, and obtains, permission to approve financial promotions relating to investments of a particular type, does not mean that the firm should thereafter consider that it should or could approve any and every financial promotion relating to an investment of that type. Investments take a wide variety of structures which significantly affect their risk profiles. The medium of communication used may also add to the risk or complexity of a particular campaign. A firm should not consider that it is equipped to approve promotions of any and all investments of a particular type simply because we have granted it permission to approve promotions of that type. We would expect a firm to consider carefully whether it has the competence and expertise to approve a promotion of any investment which it is approached to approve and should refuse to provide an approval if it does not consider itself equipped to provide that approval in a compliant way.
- 54.** 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

- 55.** 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

- 56.** 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.
- 57.** 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.
 - Varying or cancelling the firm's permission to approve financial promotions.
 - Opening an Enforcement investigation which, if we find serious misconduct, may lead to Enforcement action such as a financial penalty.

Annex 4

List of non-confidential respondents

Abundance Investment

AFME

Age Partnership

Chris Eyett

Disha Singh

Equity Release Associates Limited

Financial Services Compensation Scheme

Financial Services Consumer Panel

Irish League of Credit Unions

Klarna Bank AB (publ)

MCBorrelli Advisors Limited

Payward Limited

PrimaryBid Limited

Prosper Capital LLP

SimplyBiz Services Limited

Sturgeon Ventures LLP

The Financial Services Consumer Panel

Triodos Bank

UK Crowdfunding Association

Willis Towers Watson Investment Management Limited

Annex 5

Abbreviations used in this paper

Abbreviation	Description
AR	Appointed representative
ARD	Accounting reference date
BNPL	Buy now pay later
C&E	Competence and expertise
CBA	Cost benefit analysis
CJ	Compulsory jurisdiction
CP	Consultation paper
DEPP	Decision Procedure and Penalties Manual
EEA	European Economic Area
Exemptions SI	Financial Services and Markets Act 2000 (Exemption from Financial Promotion General Requirement) Regulations 2023
FCA	Financial Conduct Authority
FPO	Financial Promotion Order
FPR	Financial promotion requirement
FRN	Firm reference number
FSMA	Financial Services and Markets Act 2000
IBCF	Investment-based crowdfunding
IPO	Initial public offering
MLRs	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
NMMI	Non-mass market investment
OIREQ	Own initiative requirement

Abbreviation	Description
Ombudsman	Financial Ombudsman Service
OSB	Online Safety Bill
PRA	Prudential Regulation Authority
PS	Policy statement
RMMI	Restricted mass market investment
s21	Section 21
SDR	Sustainability disclosure requirements
SI	Statutory instrument
SIGCO	Secondary international growth and competitiveness objective
The Act	Financial Services and Markets Act 2023
The Duty	The Consumer Duty
UK	United Kingdom
VOP	Variation of permission
VREQ	Voluntary requirement

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Appendix 1

Near final rules – Legal instrument

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);
 - (6) section 395 (The FCA’s and PRA’s procedures); and
 - (7) paragraph 23 (Fees) in Part 3 (Penalties and fees) of Schedule 1ZA (The Financial Conduct Authority).
- 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 [6 November 2023].

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

- 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 L to this instrument.

Notes

- G. In the 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 entitles 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 Requirement Exemption Regulations</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 general 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 Requirement Exemption Regulations</i>	the Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023 (SI 2023/966).
<i>notifiable concern</i>	has the meaning in <i>SUP</i> 16.30.7R.
<i>permitted approver</i>	in relation to a <i>financial promotion</i> , a <i>firm</i> that is entitled to <i>approve</i> that <i>financial promotion</i> under the terms of its <i>approver permission</i> .

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

Method of payment

...

3.2.5 G (1) (a) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part 4A permission or approver permission*, authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*, registration under article 8(1) of the *MCD Order*, authorisation under regulation 7 of the *DRS Regulations* or verification under regulation 8 of the *DRS Regulations* or notification or registration under the *AIFMD UK regulation*, registration or certification under the *CRA Regulation*, registration or recognition under *EMIR* or the *Securities Financing Transactions Regulation*, or registration under the *Securitisation Regulation*.

...

...

...

**3 Annex Other FCA application fees
14R**

	Application type		Pricing category in FEES 3 Annex 1AR	Due date
...				
(8)	(a)	<u>An application for approver permission for the purposes of:</u>	<u>5</u>	<u>On the date the application is made</u>

	(i)	<u>section 55NA(3)(a) of the Act (where that application is made by an authorised person);</u> or	
	(ii)	<u>section 55NA(3)(b) of the Act (where that application is made by an applicant for Part 4A permission that has yet to be determined).</u>	<u>In respect of both the application for Part 4A permission and the application for approver permission, one fee is payable being the higher of:</u>
			(i) <u>5; and</u>
			(ii) <u>the tariff applicable to the application for Part 4A permission set out in FEES 3 Annex 1AR.</u>
(b)		<u>An application to vary an approver permission already granted under section 55NA of the Act, by way of an extension to the scope of that permission for the purposes of section 55NA(5)(a) of the Act.</u>	<u>50% of 5</u>
(c)		<u>An application to:</u>	<u>No charge</u>
	(i)	<u>vary an approver permission by way of a reduction in the scope of that permission; or</u>	
	(ii)	<u>cancel an approver</u>	

		<u>permission,</u>		
		<u>for the purposes of section 55NA(5)(a) of the Act.</u>		

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

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 unless:
- (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.
- (3) The requirements in this section that apply to a firm after it has approved a financial promotion continue to apply even where the firm ceases to be entitled to approve that financial promotion, for example because it ceases to be a permitted approver in respect of that financial promotion. This includes the requirement to monitor continuing compliance of the financial promotion. In such a scenario, if the firm became aware that the financial promotion no longer complied with the financial promotion rules, it could withdraw its approval but could not approve amendments to the financial promotion.

...

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 D

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

In this Annex, underlining indicates new 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* unless:

(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 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 unless:*

(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 Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new 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* unless:

(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 Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, underlining indicates new 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 unless:

(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 Funeral Plan: Conduct of Business sourcebook (FPCOB)

In this Annex, underlining indicates new 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 unless:
- (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 I

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* entitling it to *approve that 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 a 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 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, on its own initiative, to vary the terms of a *firm*'s *approver permission* or to cancel it.
- 6A.1.7 G This chapter also includes a *rule* that requires a *firm* to keep the *FCA* informed of its plans to *approve financial promotions* of *investments* subject to marketing restrictions (*SUP* 6A.2.19R).

Interaction with other powers

- 6A.1.8 G Apart from the *FCA*'s power to grant, vary 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* is likely to 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 entitled 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 vary 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* if 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*.

[Note: for the *FCA's* guidance on *approving financial promotions* see: <https://www.fca.org.uk/firms/financial-promotions-and-adverts/approving-financial-promotions>]

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 can 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 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) *approver permission*;
- (2) a variation of its *approver permission*; or
- (3) cancellation of its *approver permission*,
- should, consistent with *Principle 11* (Relations with regulators), discuss its plans with its supervisory contact at the *FCA* as early as possible before making an application. 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 Annex 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*.

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 variation 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 varying 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, if the applicant or *firm* is a Gibraltar-based person (in each case within the meaning of Schedule 2A of the *Act*).

[**Note:** section 55NA(9) and (10) 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 applicant or *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*.

Approvals of financial promotions of investments subject to marketing restrictions

- 6A.2.18 G (1) A *firm* that applies for permission to *approve financial promotions* relating to certain types of *investment* will be asked whether it expects to *approve financial promotions* relating to:
- (a) *restricted mass market investments*; and

- (b) *non-mass market investments*.
 - (2) Reference to these categories of *investment* subject to marketing restrictions is unlikely to form part of a *firm's approver permission*.
 - (3) Nevertheless, the *FCA* expects *firms* to keep it informed of changes to their plans to *approve financial promotions* relating to *restricted mass market investments* and *non-mass market investments*.
- 6A.2.19 R (1) A *firm* must give the *FCA*:
- (a) reasonable advance notice if it intends to begin *approving financial promotions* relating to *restricted mass market investments* or *non-mass market investments* for the first time; or
 - (b) notice if it ceases *approving financial promotions* relating to *restricted mass market investments* or *non-mass market investments*.
- (2) A notification in accordance with (1) must be made in the manner set out in *SUP 15.7*.

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 vary the terms of that permission, or cancel it:
- (1) on the application of the *firm* to whom it was given; or
 - (2) on the *FCA's* own initiative, if it appears to the *FCA* that:
 - (a) the *firm* has failed, during a period of at least 12 months, to give, or to refuse to give, any *approvals* in accordance with its *approver permission*. In practice, this might arise where:
 - (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 In deciding whether to vary or cancel a *firm's approver permission* on its own initiative, the *FCA* will take into account all relevant factors in relation

to the *firm's* business. This may include its business model, the commercial environment and any legitimate explanation for the manner in which the *firm* has used its *approver permission* or for its failure to use its *approver permission*.

- 6A.3.3 G (1) The *FCA* will consult the *PRA* before varying or cancelling, on the *FCA's* own initiative, the terms of the *approver permission* of a *PRA-authorised person* or a member of a *group* which includes a *PRA-authorised person*.
- (2) Where the *FCA* varies the terms of, or cancels, the *approver permission* of a Gibraltar-based person on 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.3.4 G (1) If the *FCA* exercises its power to vary the terms of a *firm's approver permission* on its own initiative, it will do so by issuing a *supervisory notice*.
- (2) If the *FCA* proposes to cancel a *firm's approver permission* on 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.3.5 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* on 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 16.28</i>
	to the extent that the <i>firm</i> and its business falls within the scope of <i>SUP 16.28.8R</i> .	
<u><i>SUP 16.29</i></u>	<u><i>A MIFIDPRU investment firm other than in the circumstances specified in SUP 16.29.1R.</i></u>	<u>Entire section</u>
<u><i>SUP 16.30</i></u>	<u><i>A firm with 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~~ home insurance and *motor insurance* pricing reporting (*SUP 16.28*);

(24) MIFIDPRU remuneration reporting (*SUP 16.29*); and

(25) 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* in relation to its *approval of financial promotions* 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 in relation 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 details of, 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* unless:
- (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* (other than in reliance on an *approver permission exemption*).
- (3) The purpose of these requirements is to enable the *FCA* to:
- (a) effectively monitor the compliance of *approved financial promotions* with its *financial promotion rules*;
 - (b) identify where *firms* which have *approved financial promotions* *approve* amendments to, or withdraw *approvals* of, *financial promotions* for reasons which might give rise to a risk of harm to *consumers*; and
 - (c) 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:
 - (i) *approval of a financial promotion* relating to a *qualifying cryptoasset* or *non-mass market investment*; or
 - (ii) amendment or withdrawal of a prior *approval of any financial promotion* by reason of a *notifiable concern*; 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 (1) A *firm* must submit the information in (3) to the *FCA* within 7 days of *approving a financial promotion* relating to:
- (a) a *qualifying cryptoasset*; or
 - (b) a *non-mass market investment*.
- (2) A *firm* must submit the information in (3)(a) to the *FCA* within 7 days of:
- (a) *approving* amendments to a *financial promotion* made because of a *notifiable concern*; or
 - (b) withdrawing *approval* of a *financial promotion* because of a *notifiable concern*.
- (3) The information is:
- (a) the information in the table at *SUP* 16.30.6R; and
 - (b) a copy of each of the communications comprising the *financial promotion* (see *SUP* 16.30.12G(1)) that is the subject of the *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 reason for making the notification.		
(2)		The reference number for any previous notification submitted pursuant to <i>SUP</i> 16.30.5R relating to the <i>approval</i> of the <i>financial promotion</i> .	
(3)	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.		
(4)	The kind of <i>investment</i> (or <i>controlled claims management activity</i>) to which the <i>financial promotion</i> relates (selected from the list in <i>SUP</i> 16 Annex 53R).		

(5)	Whether the <i>investment</i> that is the subject of the <i>financial promotion</i> is subject to a restriction on its promotion as a <i>restricted mass market investment</i> or <i>non-mass market investment</i> .		
(6)	The name of the <i>unauthorised person</i> or <i>persons</i> who has or have prepared the content of the <i>financial promotion</i> for which <i>approval</i> is sought.		
(7)	Whether the <i>unauthorised person</i> or <i>persons</i> in (6) carry on their business from a place of business outside the <i>UK</i> and, if so, the primary country from which that business is carried on.		
(8)	Where the <i>unauthorised person</i> or <i>persons</i> in (6) is or are <i>bodies corporate</i> , their Companies House number(s) (or international equivalent(s)).		
(9)	Where the <i>financial promotion</i> may be addressed to, or disseminated in such a way that it is likely to be received by, <i>retail clients</i> and where relevant: (a) the size, or potential size, of the offer (expressed in sterling); and (b) the maximum rate of return included in the <i>financial promotion</i> (expressed as a percentage).		
(10)	The date of the <i>approval</i> .		The date of the withdrawal of the <i>approval</i> .
(11)	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.
(12)		The reason(s) for the amendments to the <i>financial promotion</i> .	The reason(s) for the withdrawal of the <i>approval</i> .

Definition of notifiable concern

16.30.7 R

A notifiable concern is a concern:

- (1) that an element of an *approved financial promotion* risks causing harm to *consumers*; or
- (2) relating to the integrity or propriety of an *unauthorised person* or *persons* for whom a *firm* has *approved a financial promotion*.

- 16.30.8 G (1) A notifiable concern may arise, for example, where a *firm* that has *approved a financial promotion*:
- (a) becomes aware that the *financial promotion* does not comply, or no longer complies, with applicable *financial promotion rules* such that it risks causing harm to *consumers*; or
 - (b) receives information which suggests that the *unauthorised person* or *persons* for whom the *financial promotion* was *approved* have provided misleading information in connection with that *approval*.
- (2) In deciding whether to notify the *FCA* of *approval* of amendments to, or withdrawal of *approval* of, a *financial promotion*, a *firm* should consider the purpose of the notification *rule* (*SUP* 16.30.4G(3)).

Bi-annual reporting requirement

- 16.30.9 R (1) A *firm* must submit the information in *SUP* 16.30.10R 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 *approval* 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 return even if it has not *approved* any *financial promotions* or received any relevant complaints during a reporting period.
- 16.30.1 R The information in *SUP* 16.30.9R(1) is, for the relevant reporting period:
- 0
- (1) the total number of *financial promotions approved*;

- (2) the number of *financial promotions* relating to each of the *investment* types in *SUP 16 Annex 53R approved*;
- (3) the number of *financial promotions approved* relating to:
 - (a) *restricted mass market investments*; and
 - (b) *non-mass market investments*;
- (4) the number of complaints received relating to the *firm's approval* of *financial promotions*;
- (5) the total revenue (expressed in sterling) generated by the *firm's* activity of *approving financial promotions*;
- (6) unless the *firm* has reported no revenue for the purpose of (5), the total revenue (expressed in sterling) generated by the *firm's regulated activities*;
- (7) unless the *firm* has reported no revenue for the purpose of (5), the *firm's* total revenue.

16.30.1 R 1 Reference in *SUP 16.30.10R* 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

- 16.30.1 G 2
- (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 16.30.10R*.
 - (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)(a), 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) Even where a *firm* is not required to make a notification to the *FCA* under the *rules* in this section, the *firm* should consider whether a particular matter is one of which the *FCA* would reasonably expect notice (*Principle* 11), having regard to the purpose of the *rules* in this section (*SUP* 16.30.4G(3)). For example, where a *firm* is approached to *approve* a *financial promotion* relating to an *investment* which risks causing harm to *consumers*.
- (8) *SUP* 16.3.10R(4) refers to the number of complaints received relating to a *firm's approval* of *financial promotions*. This figure should include complaints received directly by the *firm* about *financial promotions* which it has *approved* and any complaints about *approved financial promotions* received by *persons* for whom it has *approved* such *financial promotions*. To this end, a *firm* should maintain arrangements for those *unauthorised persons* for whom it *approves financial promotions* to forward any complaints, or relevant parts of complaints, relating to *approved financial promotions* to the *firm*.

Method of submission

- | | | |
|--------------|---|---|
| 16.30.1
3 | R | <ol style="list-style-type: none"> (1) A <i>firm</i> must submit the notifications and reports required by this section to the <i>FCA</i> online through the appropriate systems accessible from the <i>FCA's</i> website. (2) If the <i>FCA's</i> 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 <i>firm</i> must submit the relevant notification or report in the way set out in <i>SUP</i> 16.3.9R (Method of submission of reports). |
| 16.30.1
4 | G | If the <i>FCA's</i> information technology systems fail and online submission is unavailable for 24 hours or more, the <i>FCA</i> 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.

Record-keeping

- 16.30.1 G *Firms* are reminded of the need to maintain adequate records which are sufficient to enable the *FCA* to monitor compliance with requirements under the *regulatory system* (*SYSC* 9). *Firms* should therefore maintain appropriate records of *approvals*, *withdrawals of approvals* and *approvals of amendments to financial promotions* even where formal notification to the *FCA* (pursuant to *SUP* 16.30.5R) is not required. *Firms* subject to the *rules* in *COBS* 4 should also refer to *COBS* 4.11.

After *SUP* 16 Annex 52 (Guidance notes for the MIF008), insert the following new Annex 53. The text is not underlined.

16 Annex 53R **Categories of investment for notifications and reports relating to approvals of financial promotions**

This Annex belongs to *SUP* 16.30.6R and *SUP* 16.30.10R.

Type of investment
Deposit
Life policy
Non-investment insurance contract
Listed share
Unlisted share promoted on an investment-based crowdfunding platform
Unlisted share (not including those promoted on an investment-based crowdfunding platform)
Debenture promoted on an investment-based crowdfunding platform
Debenture (not including those promoted on an investment-based crowdfunding platform)
Alternative debenture
Government and public security
Warrant
Certificate representing certain security

Unit
Pension (personal or stakeholder pension scheme)
Option
Future
Contract for differences
Emissions allowance
Funeral plan contract
Regulated mortgage contract
Home reversion plan
Home purchase plan
Regulated sale and rent back agreement
Credit agreement (buy now pay later)
Credit agreement (not including buy now pay later)
Consumer hire agreement
Qualifying cryptoasset
Peer-to-peer agreement
Claims management activity
Other

Insert the following new transitional provision, SUP TP 14, after SUP TP 13 (Transitional provisions relating to appointed representatives). The text is not underlined.

TP 14 Transitional provisions relating to financial promotion notifications and 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

14.1	SUP 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 [6 February 2024] 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 SUP 16.30.5R applies to a <i>firm</i> in (1).</p>	From [7 February 2024]	[6 November 2023]
14.2	SUP 16.30.5R	G	<p>The effect of the transitional provision in 14.1 is that a <i>firm</i> that applies for <i>approver permission</i> on or before [6 February 2024] must begin complying with the notification requirements in SUP 16.30.5R from [7 February 2024]. 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>.</p>	From [7 February 2024]	[6 November 2023]
14.3	SUP 16.30.9R	R	<p>(1) This transitional provision applies to a <i>firm</i> that applies for <i>approver permission</i> on or before [6 February 2024] 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 SUP 16.30.9R applies to a</p>	From [7 February 2024]	[6 November 2023]

			<p><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 SUP 16.30.9R in respect of the reporting period beginning on [7 February 2024] and ending on the earlier of:</p> <p>(a) the <i>firm</i>'s <i>accounting reference date</i>; or</p> <p>(b) the date falling 6 months after the <i>firm</i>'s <i>accounting reference date</i>.</p>		
14.4	SUP 16.30.9R	G	<p>The effect of the transitional provision in 14.3 is that a <i>firm</i> that applies for <i>approver permission</i> on or before [6 February 2024] 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 [7 February 2024] 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>	From [7 February 2024]	[6 November 2023]

Annex J

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

...

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>	<u>when the <i>FCA</i> is proposing 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(1)(g)</u>	<u>when the <i>FCA</i> is proposing to grant an application to vary the terms of a <i>firm's approver permission</i> but 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 <i>approver permission</i> otherwise than at its <u>the <i>firm's</i> request</u> *		<i>Executive procedures</i>
...			

2 Annex Supervisory notices
2G

Section of the Act	Description	Handbook reference	Decision maker
...			
55XA(1)(f)	...		
55Y(4) 55Y(7) 55Y(8)(b)	<p>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 <i>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</i></u></p>	<p><i>SUP 6A</i> <i>SUP 7</i></p>	<p><i>Executive procedures</i> See <i>DEPP 2.5.7G</i></p>
...			

Annex K

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new 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 unless:

(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 L

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 of the *Act* unless:

(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 unless:

- (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 Requirement Exemption Regulations* allow an *authorised person (A)* to *approve* the content of a *financial promotion* where the content has been prepared by:
 - (a) A (for the purposes of communication by an *unauthorised person*) (see PERG 8.9.3G);
 - (b) an *unauthorised person (U)*, where both A and U are members of the same group;

(c) an appointed representative of A, in relation to any regulated activity comprised in the carrying on of the business for which A has accepted responsibility.

(3) In relation to PERG 8.9.1AG(2)(c), the relevant exemption allows a firm to approve a financial promotion prepared 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~~ Act 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.

...

...

...

