



The Compliance Guide to Financial Promotions

What constitutes a financial promotion?

Why are financial promotions so heavily regulated?

Financial promotions policy standards

About LS Consultancy

LS Consultancy offers expert, practical support and guidance for your business.

With tonnes of experience and a dedicated team, we can be there as and when you need us. Our delivery teams are handpicked experts with many years of business, operations and consulting **experience**.

By leveraging in-depth industry experiences and sharing technical and operational knowledge we design and develop realistic solutions in a collaborative environment.

We provide you no-nonsense advice, to ensure you access bespoke and cost effective support so you can focus on achieving your goals. We have a range of services in our **arsenal**.

We can offer in-house or remote services that meet your needs and budget.





What Constitutes a Financial Promotion?

A Financial Promotion is an “invitation or inducement to engage in investment activity”. In the context of any firm this means anything that promotes the brand, products or anything that invites or attempts to persuade customers to buy the products marketed, including products produced by our Appointed Representatives (ARs and introducers). *

This means that almost all communications and marketing material issued by a firm (and its ARs or introducers) will be financial promotions, including communications to brokers. The only exception will be the communications to the existing policyholders providing information about the policy that they have already bought.

The Financial Conduct Authority’s (FCA) ‘Principles for Business’ place a number of high level obligations on firms and some of these are relevant in the context of financial promotions:

Principle 2

A firm must conduct its business with due skill, care and diligence.

Principle 3

A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6

A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 7

A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is fair, clear and not misleading.

In addition, the FCA’s Handbook contains prescriptive rules which set out the process a firm should follow when developing a new financial promotion.

These are contained in the Conduct of Business Sourcebook (COBS) section 4, the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOBS) section 3 for qualifying credit, home reversion plans and regulated sale and rent back agreements, the Insurance: Conduct of Business sourcebook (ICOBS) 2 for General insurance products and the Consumer Credit Sourcebook (CONC)3.

When providing information to customers a firm:

- Should pay regard to its target market, including its likely level of financial capability;
- Should take account of what information the customer needs to understand the product or service, its purpose and the risks, and communicate information in a way that is fair, clear and not misleading; and
- Should have in place systems and controls to manage effectively the risks posed by providing information to customers and ensuring fair outcomes to customers.

*The Handbook glossary further describes it as: “In relation to the Conduct of Business Sourcebook (COBS) 3.2.1R (3) (general client definition), COBS4.3.1 R (financial promotions to be identifiable as such), COBS 4.5.8R (consistent financial promotions) and COBS 4.7.1R (Direct offer financial promotions) a marketing communication within the meaning of The Markets in Financial Instruments Directive 2004/39/EC (MiFID) made by a firm in connection with its MiFID or equivalent third country business.”





What is a 'Real-Time' or 'Non-Real Time' Financial Promotion and How do They Differ?

The FCA defines essentially two types of financial promotion:

Real-time financial promotions

A real-time financial promotion is a financial promotion which is communicated in the course of a personal visit, telephone conversation or other interactive dialogue. These are regulated slightly differently, as there is recognition by the FCA that real-time conversations – whether in person, by phone or email – cannot be compliance approved in the same way as published communications.

Since real-time financial promotions cannot be pre-approved it is essential that any member of staff making such a financial promotion:

- Does so in a way which is fair, clear and not misleading;
- Does not make any untrue claims;
- Makes clear the purpose (or purposes) of the financial promotion at the initial point of communication, and identifies himself and the firm which he represents. If the time and method of communication were not previously agreed with the recipient:
- Checks that the recipient wishes him to proceed;
- Terminates the communication if the recipient does not wish him to proceed (but may ask for another appointment).

Information can take many forms including:

- Print, online, television and radio adverts
- Marketing brochures and literature
- Direct mail
- Web content
- Email marketing
- Social media
- Sales aids, such as presentations

Within this there are a couple of specific definitions of direct-offer financial promotions (a communication which specifically encourages anyone who responds to enter into a direct agreement with the firm) as well as real-time and non-real time financial promotions, which we cover in more detail in point 2.

Recognises and respects, promptly, the right of the recipient to:

- End the communication at any time;
- Refuse any request for another appointment;
- Gives any recipient with whom he arranges an appointment a contact point and does not communicate with a person:
- At an unsocial hour, unless the person has previously agreed to such a communication;
- On an unlisted telephone number, unless the person has previously agreed to such calls on that number. All staff should ensure that when soliciting business by phone that they comply with the above requirements.





Non-real time promotions

A non-real time financial promotion is “a financial promotion which does not involve any simultaneous interactive dialogue.” This includes a financial promotion made by letter, e-mail, texting by multimedia messaging service (mms), contained in a newspaper, journal, magazine, other periodical publication, website, television or radio programme, or teletext service as well as digital media.

The following guidelines must be followed. Staff must ensure that the financial promotion:

- Includes the firm’s full name and either address or contact point from which the address is available;
- Does so in a way which is fair, clear and not misleading;
- Makes clear the purpose (or purposes) of the financial promotion at the initial point of communication;
- Does not make any statement of fact, promise or prediction that is unclear, unfair or misleading and also discloses any relevant assumptions;
- Any statement of opinion must be held honestly and, unless impracticable, given with the consent of the person concerned;
- Gives no false indications regarding the firm’s resources, independence, scale of activities or to the scarcity of service;
- Does so without causing the design, content or format to obscure or diminish the significance of any statement or warning;
- Makes no references to approvals by the FCA/PRA or any government body, unless such an approval has been obtained in writing;
- Does not omit any matters that cause the promotion to be unclear, unfair or misleading;
- Is able to substantiate the accuracy of statements of facts included; and
- Is approved by the Compliance Officer.

Why are Financial Promotions so Heavily Regulated?

According to the FCA, ‘Financial promotions may be the consumers’ main or only source of information that they base their decisions on. This is a particular risk in the financial services sector because of the complex and often long-term nature of financial products.’

The FCA’s objective for financial promotions is to ensure that they are ‘fair, clear and not misleading’.

Any promotions that fail to meet these requirements can be a risk to consumers if they result in people buying the wrong product for their needs.





Is Social Media a Viable Medium?

Social media can prove a challenge – the appeal of social media from a marketing point of view is its immediacy; a lengthy compliance process can delay you posting a quick opinion to the market or responding to a query. The key is for Marketing and Compliance to work together to find a marketing plan and robust approval process that enables your firm to fulfil the compliance requirements and post your social media communications in a timely way.

However, many firms try to use Social Media as a form of advertising and should remember that there are specific rules for this.

'Advertising' for new business

What would commonly be regarded as an advertisement is referred to as a 'Financial Promotion' in the UK Regulator's terminology.

However, there are also exclusions granted under the "image advertising" rules details in the FCA Handbook.

This definition extends well beyond what might be considered an advertisement at first glance and includes:

These can be found in COBS 4.2.1R which define this as a communication that consists only of one or more of the following:

- Non-personalised and/some personalised letters, e.g. offering top-up opportunities to particular tranches of customer;
- Telephone and status disclosure scripts;
- Key features documentation (KFD);
- Any product literature;
- Business cards; and
- Shop signs
- the name of the firm;
- a logo or other image associated with the firm;
- a contact point; and
- a reference to the types of regulated activities provided by the firm, or to its fees or commissions.

All financial promotions require approval within the company before they can be used. To issue an unapproved financial promotion is a breach of the Act. This needs to be borne in mind as many firms are making increasing use of social media to promote their firm's image, as it can be an effective method of promoting your website or blog.

Financial Promotions Policy Standards

Every firm should have a clear and relevant Financial Promotions Policy written and approved by their governing body. From this policy the appropriate processes can be derived and created.





Overview of financial promotion production and approval process

'Marketing' is a term used to describe the initiator/controller of the marketing or advertising campaign or separate department if relevant. The approved person signing off the financial promotions would normally be the Compliance Oversight Control Function.

Every firm should have in place a generic business standard for financial promotions, which the Marketing department or area adopts when developing new promotions or making changes to existing promotions.

The procedure followed to meet this business standard consists of the following stages:

Recording responsibilities
Ownership of financial promotion
Sign-off responsibilities

Issue financial promotion
Create financial promotion/ briefing document
Post-issue review

5 Key Stages of the Financial Promotion Production and Approval Process

#1 Create Financial Promotion

When developing promotions, firms need to consider a number of high level design fundamentals. These ensure that new promotions are developed in accordance with the following:

- **Fair, clear and not misleading promotions** – All promotions initiated by Marketing should meet this requirement. See the section on Essential Regulatory Requirements for further details;
- **Handbook requirements** – The detailed relevant handbook requirements depending on the type of product, in relation to financial promotions should be adhered to throughout the process;
- **ASA/CAP requirements** – In addition to FCA regulations, firms must ensure financial promotions comply with The Advertising Standards Authority (ASA)/ Committees of Advertising Practice (CAP), Sales Promotions and Distance Marketing Directive throughout the process;

- Any corporate requirements – The corporate requirements, specifically the Treating Customers Fairly (TCF) and Conduct Risk standards, should be adhered to throughout the process.

At the end of this activity, the firm will have:

- Completed the requirements checklist(s) detailing all the information required to complete the promotion;
- Recorded suitable evidence of any facts, figures or options used;
- Created the draft financial promotion; and
- Completed the marketing approval form and marketing/financial promotions sign-off - checklist.

It is at this stage in the process that specific handbook requirements should be fully integrated into the design and delivery of the promotion.





#2 Ownership of Financial Promotions

The ownership of financial promotions is typically determined by type of promotion with the following categories:

- Existing product promotion;
- New product/service promotion;
- Corporate advertising (generic);
- Non-product specific press release;
- Introducer/client newsletters;
- Corporate presentations; or
- Internet advertising.

Each category may have separate “Sign-off” responsibilities.

#3 Approval

Once the draft promotion is submitted for sign-off, approval by the Financial Promotions Approved Person (or their authorised delegate) and the legal representative is needed. Non-product specific promotions only require sign-off by the Financial Promotions Approved Person.

When approving a financial promotion the business area designated official is responsible for considering the following:

- Product design;
- Sales process;
- Technical content;
- Non-financial promotion documents issued at point of sale;
- Market and consumer research undertaken.

The creator of the promotion(s) is responsible for ensuring compliance (as appropriate) with:

- Fair, clear and not misleading promotions;
- Relevant FCA Handbook requirements;
- ASA/CAP requirements;
- The firm’s corporate requirements, including Treating Customers Fairly (TCF) standards and the Conduct Risk fair outcomes for consumer’s guidelines.

- Independent Television Commission Code of Conduct
- Radio Authority Code of Conduct
- Telecommunications (Data Protection and Privacy) Regulations 1999
- Unfair Contract Terms (Now monitored by FCA)
- Consumer Credit Act
- General Data Protection Regulation (GDPR)

The review of a financial promotion may also involve a number of other key areas in order to ensure that the necessary business and regulatory requirements have been met. These may include:

- Legal (if required)
- Technical
- Compliance / Quality Assurance

The monitoring of any third party representatives should be the responsibility of the business functions and should be included in their contracts.





#4 Issue Financial Promotion

Once sign-off has been completed for the promotion, the business is then able to proceed with issuing the financial promotion.

#5 Post-Issue Review

The firm should pro-actively manage the duration and withdrawal of financial promotions to ensure that they are current and are still required by the business areas. From a TCF viewpoint this focuses on ensuring:

Communications are fair, clear and not misleading;
and

Communications are current and do not contain out-of-date information.

A promotion is to be withdrawn if it does not meet the criteria above and the following procedure is followed in this regard.

The originator should maintain a register of all approved financial promotions and assigns an appropriate review or closure date, whichever is applicable.

The originator reviews the financial promotions register/log to identify any financial promotion due for imminent review on a monthly basis, completes the review and assigns the next expiry date. Failure to comply with this will require that the financial promotions are withdrawn or categorised as expired.

Training and Competency Requirements

Whilst there are no specific FCA training and competence requirements, there is a general expectation that staff involved in financial promotions have appropriate skills to enable them to fulfil their duties and responsibilities.

See the Competent Employee Rule under (Senior Management Systems and Controls (SYSC) 5.1.1R):

“A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them”.

Management Information (MI)

Each firm should proactively create pertinent and relevant management information (MI), which enables it to monitor the performance of its promotions and ensure that the financial promotions related elements of the TCF/Conduct Risk policy are being met.

MI is produced on a weekly/quarterly basis. This MI is used to measure the performance of any campaign and to identify and remedy any recurring or systemic problems.





Record Retention

Documented records of all campaigns and individual financial promotions must be logged and a file maintained within the relevant Marketing section. The log should be retained electronically, be easily accessible and regularly backed up.

The details recorded on the log must, as a minimum, include:

- Unique log item number or identifying reference number
- Name of campaign, campaign item or Financial Promotion
- Description / product(s)
- Owner / Originator
- Date
- Media to be used
- Name of person providing Compliance sign-off
- Date of Final approval sign-off by approved person
- Name of Approved person providing final approval
- Adequate space for notes, comments or cross referencing
- Expiry date / Review date

(Additional optional information, such as date of Sponsor and Marketing sign-off, may also be included at the Compliance Officer's discretion).

In addition, copies of the following should be retained and be easily accessible:

- A copy of the final approved item bearing evidence of Compliance / Quality Assurance approval (manual or electronic signature)
- Marketing Approval form (Appendix1)
- Relevant documentation e.g.: Substantiation / rationalisation for any claims
- Suitable evidence of any facts, figures or options used
- Signed consent from anyone providing endorsements or testimonials
- Product details (if applicable)

These records can be retained either in paper form or in electronic or scanned format provided that the scanned or electronic items are easily accessible, can be printed and are regularly backed up.

As per the current FCA rules, every firm should maintain its records for a period of six years.





Specialist Areas

There are certain product areas that require special treatment and attention. Two such areas are Direct Offer Financial Promotions and 'Non-Readily Realisable Securities (NRRS)' a distinct product set that had its roots in Unregulated Collective Investment Schemes (UCIS).

COBS 4.7 Direct Offer Financial Promotions

These rules only apply to direct offer financial promotions, are effective from 1 April 2014 and have been amended to include NRRS.

A direct offer financial promotion is one that contains:

- An offer by the firm or another person to enter into a controlled agreement responds to the communication; or
- An invitation to any person who responds to the communication to make an offer to the firm or another person to enter into a controlled agreement; and which specifies the manner of response or includes a form by which any response may be made.
- A communication which simply gives marketing information about the promoter of an offer, or information about who can be invited to invest, would fall outside the scope of the rules, but an information memorandum or offer document containing an application form or even a website URL that contains such a form, will be caught.

So What are "Non-Readily Realisable Securities?"

The regulator defines NRRS as: illiquid, hard-to-price securities for which there is no, or only a limited, secondary market. The new term catches all securities that are not "readily realisable securities" (e.g. listed shares), "packaged products" (e.g. authorised funds) or "nonmainstream pooled investments" (e.g. UCIS) for which there are sufficient rules.

To better align the illiquid shares and debentures intended to be covered, the FCA have amended the text by replacing 'unlisted share and unlisted debt security' with a new defined term for 'non-readily realisable security'. This term will apply to securities that are not 'readily realisable securities', 'packaged products' or 'nonmainstream pooled investments'.

Who is specifically affected by these new rules?

Effectively this applies to all authorised persons who communicate or approve the content of a direct offer financial promotion relating to any NRRS as defined above.





Permitted Categories of Investor

Under these new rules, direct offer financial promotions for NRRS may only be made to certain types of investor. These are:

- Professional clients
- Retail clients who confirm that, in relation to the investment promoted, they will receive regulated investment advice or investment management services
- Retail clients who are venture capital contacts or corporate finance contacts from an authorised person
- Retail clients who are certified or self-certify as sophisticated investors
- Retail clients who are certified as high net worth investors
- Retail clients who certify that they have not invested, and will not invest, more than 10% of their net investible financial assets in non-readily realisable securities.

The last category of investor (called “restricted investors”) is new. There is a form of certification for such investors, which lasts for 12 months after the date of the statement.

Firms need to satisfy themselves that there is a valid statement in place at the time of communicating the promotion, but do not need to ensure that individuals who subsequently invest continue to qualify as ‘restricted investors’ on an ongoing basis.

COBS 10 Appropriateness Test

A further condition is imposed, which must be satisfied before the financial promotion can be communicated or approved.

The firm itself, or the person who will arrange or deal in relation to the NRRS, must comply with the COBS rules on appropriateness or equivalent requirements in relation to any application or order that the person is aware, or should be aware, is in response to the direct offer financial promotion.

The appropriateness requirement is, broadly, to seek information from the investors that would enable an assessment to be made whether the investor has the knowledge and experience necessary to understand the risks connected with the NRRS. This seems likely to result in all applications being channelled through an authorised person, and a firm approving an affected financial promotion will need to be satisfied that this is the case.

Impact

The rules will have a significant impact on those who advise clients on unlisted securities (including EIS and SEIS offers) as well as loan notes. It will, of course, also affect firms who approve financial promotions for such offerings. Note that the new rules only apply to authorised persons: so, if an offer document does not need to be approved under s21 FSMA (for example, because of an exemption under the Financial Promotion Order applies), the current rules will still apply.

Summary of the NRRS Rules

The regulator considers different offers will involve different risks, which need to be explained in a fair, clear and not misleading way. They also consider the firm promoting the investment, rather than any unauthorised and even totally unconnected bloggers, to be responsible for ensuring that fair, accurate, balanced and sufficient information is provided to investors





LS Consultancy



How can we help?

At LS Consultancy, we offer effective support that drives growth and keeps costs down.

Complete solution with a range of cost effective, compliance and marketing services which are uniquely suited to supporting firms.

We do have a Core Services but we are best known for, Financial Promotion Advice and FS Compliance Support.

Getting advertising right can be tricky. Firms must balance their need to communicate a clear business message.

It's one thing to drop an idea because the client doesn't like it, it's quite another to find out the idea they do really like wouldn't be allowed under various advertising rules.

Our Financial Promotion copy advice service is fast and confidential. It is designed to make your communications more effective and avoid the regulatory pitfalls.

What's legal one country may not be legal elsewhere, so rest assured that our advice is international.

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