



Marketing Guide to Compliance



What Marketing needs to know about Financial Promotions

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The Financial Conduct Authority (FCA) authorises and regulates almost all financial services firms in the UK.

In these regulated businesses, the Marketing team needs to take account of compliance requirements when producing marketing communications, or 'financial promotions', as the FCA calls them.

Here, we have outlined nine key areas that Marketing needs to know about financial promotions and compliance. Hopefully they will help you to ensure your financial promotions meet the FCA's requirements.

1. What constitutes a financial promotion?

The FCA defines a financial promotion as 'an invitation or inducement to engage in investment activity that is communicated in the course of business'¹

In practice, this means any form of advertising or communications with prospective customers by regulated financial services firms.

It includes:

- 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) and real-time financial promotions, which we cover in more detail in point 3.

2. 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.'²

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.

¹ Financial Authority Handbook, <http://www.fshandbook.info/FS/html/FCA/Glossary>

² <http://www.fca.org.uk/firms/being-regulated/financial-promotions>





3. What is a 'real time financial promotion' and how does the compliance process differ?

According to the FCA handbook³, a real time financial promotion is 'a financial promotion made 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.

Is social media a real time financial promotion?

There has been some debate about whether social media – Twitter, Facebook, and LinkedIn, for example – is classed as a real time financial promotion. The FCA takes the view that social media is not interactive: it is therefore regulated in the same way as other financial promotions, and requires the same compliance checks and approval.

This 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 getting a quick opinion out to the market or responding to a query.

The key is for Marketing and Compliance to work together to find an approvals process that enables you to fulfil your compliance requirements and get your social media communications out in a timely way.

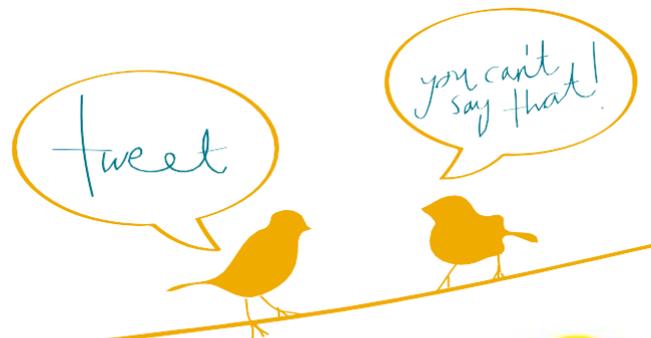
³ <http://fshandbook.info/FS/glossary.html/handbook/Glossary/R?definition=G949>

4. How does the FCA assess financial promotions?

The FCA carries out dozens of audits per year of regulated firms, checking, amongst other things, to make sure that their promotions are 'fair, clear and not misleading'. They will also check that the firms' compliance processes and audit trails meet their requirements.

For television advertising, the FCA uses a media and advertising tracking service to review adverts. To check online advertising campaigns, the FCA has previously reviewed a sample of internet advertising and assessed how many meet their financial promotions regulations. In addition, if the FCA has concerns about a specific firm's promotions, they will check the firm's website for compliance.

The FCA also has a telephone line and online reporting form that consumers and FCA-regulated firms can use to complain about a financial promotion or report misleading promotions.





5. What is the FCA looking for in financial promotions?

The FCA's main objective is that financial promotions are 'fair, clear and not misleading'. Products and services need to be promoted in a balanced way, which means that their claims must be realistic and information on key risks needs to be fair and prominently displayed.

Promotions need to give sufficient information on the product to enable consumers to make an informed choice.

Information on past performance needs to be representative and not overly prominent, so that consumers' expectations of the product are realistic.

Also central to the FCA's expectations is that firms are 'treating customers fairly', a key tenet of which is that customers receive clear information about products and services marketed to them.



6. What is the role of your Compliance team in ensuring your financial promotions comply with the FCA?

As a firm, you need to be able to demonstrate that your financial promotions have been reviewed, approved and signed off, and that they meet FCA guidance in terms of being fair, clear and not misleading.

There needs to be an audit trail of approval, and evidence of any changes that have been requested by the Compliance team, with documented comments, amendments and approvals.

In most firms, this process will be managed jointly by the Marketing team, who produce the financial promotions, and the Compliance team, who approve them and ensure they meet the requirements. Your Compliance team will know whether your promotion breaches any of the FCA's regulations, and will advise on any changes that need to be made.

It can be a challenge to keep track of suggested amendments and documenting the approvals process, particularly when there are a number of people involved or numerous versions of a promotion. Clear processes and documentation are essential.





7. What are the common Compliance pitfalls for Marketing to look out for when producing financial promotions?

To ensure that financial promotions are fair, clear and not misleading, you need to make sure they don't feature any of the below:

- Unclear statements: the FCA is very keen on clarity. Any claims will need to be clear and able to be demonstrated. Acronyms and jargon that may not be obvious to the reader should be explained
- Over-optimistic projections of the product in question: anything that could be deemed 'misleading' in terms of suggested returns will fall foul of the FCA
- Disclosure wording that is too small: any 'small print' needs to be clearly visible
- Unsubstantiated claims about a firm being 'the largest' or 'most successful' without appropriate evidence
- A lack of documented compliance approvals: the process for producing financial promotions can be as important as the finished product. A documented compliance process is essential

8. Are any changes planned to the financial promotions regulations?

The FCA was due to introduce new guidance for the regulation of social media in Q1 2014.

At the time of writing (May 2014), nothing has been issued, but we can expect an update to their existing guidance at some point soon. Currently, the FCA's approach to social media is based on guidance produced in 2008, since when there has been a sea-change in the way firms use social media for financial – and other – promotions.





9. How can Marketing make Compliance's life easier (and vice versa!)?

Marketing can make Compliance's life easier by:

- Understanding the FCA requirements for financial promotions and the reasons why Compliance may insist on changes to draft promotions
- Ensuring that promotions are fair, clear and not misleading to start with, therefore minimising the changes the Compliance team need to make
- Keeping clear records of the promotions produced and their sign off (in some firms, this may be Compliance's responsibility, or a responsibility held jointly between Marketing and Compliance)

...and Compliance can make Marketing's life easier by:

- Clearly explaining the reasons for any changes to draft promotions, to promote better joint understanding of what's needed
- Ensuring a clear audit trail of promotions' versions and approvals
- Providing compliance training for their marketing team

How can we help!

Hopefully this has given you some useful pointers to help ensure your financial promotions, and the processes that support their sign-off, meet the FCA's requirements.

LS Consultancy has wealth of experience in reviewing [financial promotions](#) and can do so on a one-off or on an on-going basis.

We are also skilled in reviewing and assessing your [financial promotion procedures](#) and can assist you to establish the necessary framework to help future compliance with [regulatory requirements](#).

Remember: Not everything is black and white when it comes to Financial Promotions, and many of the rules are open to interpretation. If you are unsure how your activities fit within the rules, please email us: info@LSCPROM.co.uk

www.LSCPROM.co.uk

