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HM Treasury
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By email: FinProms@hmtreasury.gov.uk

Dear Sir/Madam

Financial Services Consumer Panel (the Panel's) Response to the Regulatory Framework for Approval of Financial Promotions Consultation

The Panel welcomes the opportunity to respond to this consultation.

The Financial Services Consumer Panel (the Panel) is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

We are supportive of the development of a gateway to enable the FCA to assess the suitability of a firm before it is permitted to approve the financial promotions of an unauthorised person as we believe this is an important step in reducing the likelihood of consumer harm resulting from such promotions.

We do, however, feel the proposed changes do not go far enough and would propose further consideration is given to:

1. Further clarity and rules regarding how regulatory words and phrases are used in financial promotions so that the consumer understands what has, and hasn't, been approved;
2. Controlling the potential harm from digital promotion by ensuring both the means of delivering and targeting the promotion is included in the approval to ensure consumers are treated fairly;
3. Removing the 'carve-out' proposed that will allow all authorised firms to approve the financial promotions of unauthorised persons within the same group;
4. Making digital platform owners, such as Google and Facebook, responsible for ensuring the appropriate approval exists for financial promotions they pass on or host¹, and that any consumer targeting is within the boundaries of the approval, and
5. Ensuring the FCA have the powers to identify unapproved, misleading or scam promotions and then have these swiftly withdrawn or blocked.

¹ <https://press.which.co.uk/whichpressreleases/which-calls-for-action-over-emotional-and-financial-toll-of-online-scams-as-tech-giants-fail-to-adequately-protect-users/>

We believe these steps would further protect consumers from harm and help restore confidence in financial promotions.

Yours sincerely

Wanda Goldwag

Chair, Financial Services Consumer Panel

Consultation Questions

Q1: Do you agree that a gateway should be established enabling the FCA to assess the suitability of a firm before it is permitted to approve the financial promotions of unauthorised persons?

We agree that a gateway should be established to enable the FCA to assess the suitability of a firm before it is permitted to approve the financial promotions of unauthorised persons.

Recent events have demonstrated that the current system is both open to abuse and insufficient in its controls and has allowed significant harm to be caused to consumers.

It is critical that the firm approving any promotions has sufficient knowledge, understanding and experience of the product, market and target consumers to enable it to thoroughly check and ensure that the promotion is clear, fair and not misleading *and* is appropriate for the intended audience. Such approval should not be given lightly, and the firm giving the approval should remain both diligent and, in an ongoing way, responsible for the promotion.

We hope that the creation of the gateway will enable the FCA to better regulate this element within the market by pre-determining whether a firm's systems, governance and processes are robust prior to providing the authorisation to that firm to enable them to approve unauthorised person's promotions.

We note however, that even with the proposed gateway approach, a certain degree of the regulation of the approving firm and the approved promotions will be reactive in nature. We therefore believe it is critical that the FCA also has the power to remove the authorisation (to approve unauthorised persons' promotions) quickly and without undue regulatory processes.

Whilst supportive of the proposal, we also believe this does not go far enough, in protecting consumers from financial harm, in the following areas:

A. Use of 'Approved and Authorised by...' wording

We have identified some adverts, as an example, that used the regulatory words '*Authorised and Regulated by the Financial Conduct Authority*' where this either referred to a different part of the firm, or to the advert itself (having been approved by an authorised firm). In these examples, the actual product being promoted wasn't authorised or regulated. The wording used was not clear and was obviously used in an attempt to mislead the consumer and add undue legitimacy to the product. This approach clearly does not treat customers fairly as it is being used to influence their decision-making process inappropriately, potentially leading to consumer harm.

Some of the adverts identified provided a caveat on the regulation, such as an

investment product advert that stated '*Authorised and Regulated by the Financial Conduct Authority for credit purposes*' we still believe this was intended to confuse and mislead. It is unlikely that the average consumer would understand the nuance in the wording, and would, in all likelihood interpret the advert to mean that the investment product is authorised and regulated.

It is therefore important that the required and permissible form of 'regulatory wording' included in these promotions is both specified and controlled in the new regulation and also forms part of the approval process to ensure that consumers are not misled in this way.

B. Controlling the potential harm from digital promotions

We believe that the approval of all financial promotions needs to be widened to both consider and include the method of delivery of the promotion, and also any means by which consumers will be targeted.

A promotion that may be 'generically' viewed as clear, fair and not misleading may be *targeted* in a way that means it could be misleading, unfair and not clear and therefore doesn't treat customers fairly.

For example, a financial promotion for a loan, whilst appropriate in one medium to a wide audience, when targeted toward [say] a consumer addicted to gambling, repetitively through search engines or social media, especially if and when the consumer is not actively searching for a loan, could exploit this vulnerability and could therefore be considered to be unfair.

Similarly, whilst the digital promotion of investment products (which have associated risks) to investors looking to invest could be appropriate and within the approval given, if the same promotion was to be served-up to consumers clearly searching for 'savings' products (*not wanting to risk their capital*), it could be viewed as misleading.

Our Digital marketing research paper² notes and questions such practices that can be used to create an environment which can make consumers feel pressured or misled into making decisions that prove to be harmful.

We believe an additional requirement, as part of the approval process, to consider the delivery channel and targeting that will be used should apply to firms approving either their own promotions or those of unauthorised persons.

C. Removal of the carve-out for firms/persons within the same Group

We note the intention that this reform will not apply to 'firms approving the financial promotions of an unauthorised person within the same group.' We do not agree that such a carve-out is required, appropriate or in consumers' interest.

The proposed regulation looks to address the risks posed by, inter alia, (1) the lack of relevant approver firm expertise and (2) the lack of approver firm due diligence. We are

² The FSCP digital marketing paper can be found at https://www.fs-cp.org.uk/sites/default/files/fscp_final_digital_advertising_discussion_paper_20200630.pdf

not convinced that these risks are sufficiently removed when the approving firm and the unauthorised person are in the same group. Indeed, there could be an argument that the fact that the unauthorised person is in the same Group as the approving firm may enable undue pressure to be exerted on the approval process itself.

We would request that this approach is reconsidered in the next stage of the consultation.

D. Defining the responsibility of digital platform providers

Online platforms, such as search engines and social media platforms, play an increasingly significant role in communicating financial promotions to consumers.³ Indeed, it is often these platforms' own algorithms and customer data-sets that are used to target paid-for promotions to specific consumers with specific user profiles.

This has resulted in consumers being better targeted, more frequently, than ever before, with repetitive presentation of promotions, and also being exposed to scams and misleading adverts.⁴

As the digital world continues to evolve, at pace, and access to targeted promotional services becomes cheaper, easier and more widespread, the potential harms to consumers is constantly changing and increasing in severity. This is especially pronounced for those consumers more vulnerable to digital promotions and scams.

Whilst we believe the targeting approach used should be clearly defined and understood as part of the approval process of the financial promotion we also believe that platform owners, such as Google, should bear clear regulatory and legal responsibility for the financial promotions they pass on or host. We would expect, that as a minimum, an online 'publisher' should have to ensure that any financial promotion which they communicate to consumers has been approved by an authorised firm and that any targeting is restricted to those consumers (or consumer types) clearly identified in the approval. We would also expect the 'publisher' to have the means to identify and remove promotions quickly.

This would go some way to preventing the harm that targeted, aggressive and repetitive promotions can cause. It may also be helpful for the Department of Culture, Media & Sport to include financial harm as an 'online harm' (see Online Harms [White Paper](#)), given the losses suffered by many as a result of misleading or fraudulent behaviour online.⁵ This would be a further means of holding these tech companies to account for poor consumer outcomes online.

Furthermore, whilst not directly relevant to this consultation, we would also support the inclusion of the targeting element of online promotions into the FCA's regulatory perimeter.

³ https://www.fs-cp.org.uk/sites/default/files/fscp_final_digital_advertising_discussion_paper_20200630.pdf

⁴ <https://press.which.co.uk/whichpressreleases/which-calls-for-action-over-emotional-and-financial-toll-of-online-scams-as-tech-giants-fail-to-adequately-protect-users/>

⁵ <https://www.which.co.uk/news/2020/10/which-calls-for-tighter-protections-against-online-scams-in-online-harms-bill/>

E. The ability to identify and remove/block wrongly authorised/unauthorised promotions quickly

The Panel has long questioned the effectiveness of the financial promotions regime, in particular the length of time it can take to remove misleading promotions.

Whilst the proposed approach would give the FCA the ability to withdraw consent for an approver firm to approve financial promotions for unauthorised persons, where promotions are identified as being misleading, unclear or not fair, the FCA also need to have the powers, and the technology (Reg-Tech), to search for, identify and have such promotions withdrawn or blocked swiftly.

We recognise the challenges of policing digital promotions, with multiple channels and new adverts emerging as quickly as misleading ones are taken down and therefore suggest that there is the need for a more co-ordinated approach across the FCA, ASA and ICO to better regulate this online environment. Furthermore, we believe the FCA could make greater use of digital solutions, including artificial intelligence, to quickly identify and remove or block promotions which are unapproved or scams.

In many circumstances, this will require the engagement with and co-operation of the platform owner, and supports our view that we need to have clear responsibilities in this area to enable regulation to protect consumers from financial harm.

Q2: What are the risks and benefits of each of the two policy options put forward? Would there be any unintended consequences resulting from implementation?

We are focused on the outcome of any change and the resultant impact on consumers in reducing the potential for financial harm and therefore view both options as equal.

We believe that by ensuring that all financial promotions have been through a thorough and robust approval process by a firm that is qualified and authorised to give such approval, this should reduce the number of misleading promotions presented to consumers and therefore reduce harm. This will also go some way to restoring consumer confidence in financial promotions.

Additionally, the removal of some of the current workload of the FCA in this area, through this enhanced regulation, will hopefully free-up resource that can focus on the identification and removal of financial promotions that either have no approval (or falsely claim to have) or are scams.

If the platform owners are also made responsible for checking the approval status of financial promotions this will provide a further barrier to these 'seeing the light of day' and causing consumer harm.

Q3: If the government was to proceed with one of the two policy options, which would be your preference and why?

As outlined in our answer to Q2, the FSCP has no preference between the two options.

Q4: Do you have any further comments on any of the matters covered in this consultation

No further comments.