

## Guidance consultation

# Financial Promotions

January 2011



## Financial Promotions

As a firm, you are required to explain products and services clearly and give consumers fair and clear information, which is not misleading. This article runs through what we, the FSA, expect of you when it comes to promoting financial products and services. It goes through what firms should avoid and where you can go to find more information.

Advertising is an important part of a firm's business, in financial services as in other sectors; otherwise financial services firms would not spend over £2m a week on press advertising alone. Equally, they are an important source of information for consumers.

### Financial promotions: The firm's 'shop window'

In the financial services sector, financial promotions (we shall use the term here interchangeably with advertising or adverts) are a firm's shop window. And, just as consumers go 'window shopping', they use financial advertising to shop around. This is particularly true of the internet.

### Giving consumers fair, clear and not misleading information

This is why it is important consumers base their decisions on fair, clear and not misleading information. We embody this in Principle 7 of our Principles for Businesses; it is also our central, high-level rule in chapter 4 of our Conduct of Business sourcebook (COBS 4). You can access these on [www.fsa.gov.uk](http://www.fsa.gov.uk)

### Fund performance: How can I present this?

Consumers must receive standardised information, so they can compare like with like in key areas such as the track records of funds. This is particularly true for past performance information: see our 'Past Performance: Key Points' box on page 5 which examines this closely.

You can add further performance information as long as you comply with the rules. However, this must not be the most prominent part of the advert, and overall the advert must be fair, clear and not misleading.

### Image advertising vs. financial promotions

As well as promoting particular products, we understand you also want to promote your 'brand'. Brand advertising is advertising that focuses on the firm's brand, to raise awareness, but which may, for example, refer to and promote particular products and services. 'Image advertisements' are different, and are strictly defined: in effect, they consist of basic information about the firm, rather than promotion of the firm and its products. As such, image adverts attract exemptions from the rules. So you mustn't assume that, because you consider a communication to be a brand advertisement, then it is an image advertisement, with the consequent exemptions from the financial promotion rules. It's important that you carefully check the rules to determine exactly what an image advertisement is (see the box inset).

#### **What is an image advertisement?**

A communication that consists only of one or more of the following:

- The name of the firm
- A logo or other image associated with the firm
- A contact point
- A reference to the types of regulated activities provided by the firm, or to its fees or commissions.

When a communication goes beyond the definition of image advertising, it must comply with all relevant financial promotions rules. The treatment of image advertising varies depending on the type of product and therefore on which sourcebook applies. For example, image advertising for investment products is exempt from most detailed financial promotions rules and guidance in COBS 4, but it still needs to comply with the high-level 'fair, clear and not misleading' rule. See the Handbook glossary for a definition of 'image advertising' on [www.fsa.gov.uk](http://www.fsa.gov.uk).

Clearly, if the reference to the regulated activities contains an element of 'invitation or inducement', then further requirements may apply, such as the need to warn customers that capital is at risk (depending on the nature and content of the advert).

For general guidance about invitations and inducements, see section 8.4 of our Perimeter Guidance manual.

### Creative marketing and the customer journey

So, how do you market your products creatively while complying with all the relevant rules? We understand you need to promote your products and services to persuade consumers to buy them. Very little in COBS 4 prescribes particular wording or ways of doing things. Within the framework of the rules, how you inform – and promote your products to – your customers is up to you.

When you comply with advertising rules, you are enabling consumers to make informed decisions. No one wants to trick consumers into buying something that is not right for them! In seeking to give consumers a clear and fair impression of your product, consider their ‘journey’ through your website, or how their eye might run over a press advert. To explain what you have to offer to them, this journey must be clear, while giving them fair and not misleading information along the way.

### Are you serving up a ‘risk sandwich’?

Usually unhelpful, the ‘risk sandwich’ comprises a section on benefits, followed by a section on risk warnings, followed by another section on benefits.

If your fund invests overseas, for example, you could talk about the currency risk at the same time as introducing the overseas feature of the fund. Be careful not to diminish or obscure important statements or warnings: that’s a creative challenge. But how you structure your communication – again within the framework of the rules – is up to you. And how much detail you go into depends on the advert - from a website, where you have almost limitless space, to a ‘teaser’-type ad. But remember that all promotions must be balanced and therefore stand-alone compliant at each stage.

### Financial promotions – a window into the culture of a firm

The content of a shop window not only tells you about the goods for sale; it speaks volumes about its business in its first contact with the consumer. Similarly, an advert’s content can offer strong clues as to how fairly your firm treats your customers. Attractive headline rates of return that only a small minority of customers can obtain; or important information relegated to the ‘small print’ (typically below the ‘call to action’, encouraging customers to contact the firm) are not usually consistent with a culture of treating customers fairly, as well as failing to be fair, clear and not misleading.

Similarly, if a firm repeatedly issues non-compliant adverts, this may well indicate that their systems and controls lack robustness.

Financial promotions are, by definition, in the public domain. However, as is well-known, and unlike some other regulators around the world, we do not pre-vet or approve promotions. So, even though non-compliant promotions are in circulation, this does not exonerate other firms from seeking to comply. We are, of course, conscious of the need for a level playing field between firms, something we strive to enforce and maintain.

Both FSA-regulated firms and consumers can help us by bringing unfair, unclear or misleading adverts to our attention. You can call our dedicated Hotline on 0845 606 1234 or complete our [reporting form](#), which can be submitted electronically or by hard copy to: The Financial Services Authority, 25 The North Colonnade,

London, E14 5HS. Please note, however, that for legal reasons we cannot comment on individual complaints. We need enough detail about the advert to make sure we can find it, so ideally the complainant will send us a copy of the advert either to the postal address above, or by email to [finprom1@fsa.gov.uk](mailto:finprom1@fsa.gov.uk).

## Conclusion

The principle of being fair, clear and not misleading is at the very heart of financial promotions. While COBS 4 is clear about outcomes, in general it is not prescriptive as to how these outcomes should be achieved— notably it is only one-third the length of the sourcebook chapter that it replaced.

There are, however, detailed requirements in certain areas, which are likely to be particularly relevant to fund managers. These include the limits of image advertising and rules about past performance, and I have addressed these in this article.

It is in firms' interests to explain their products and services helpfully and clearly. Research shows consumers tend to shy away from something they don't understand. This is another reason why you should consider your target audience, and aim your promotions carefully, considering your content and what channel you use. And finally, always consider, from the customer's point of view, whether your advert is fair, clear and not misleading.

### Past performance: Key points

#### When do the past performance rules apply?

The past performance rules in COBS 4.6.2R apply when information contains an indication of past performance for:

- relevant business (e.g. the business of arranging, advising or managing an investment – for example, a promotion containing information about a fund manager’s previous performance);
- a relevant investment – such as a share or a collective investment; or
- a financial index.

Firms will also have to consider whether:

- the communication is promotional or non-promotional; and
- if it relates to the Markets in Financial Instruments Directive (MiFID) or non-MiFID business.

Further information can be found in our FAQs:

<http://www.fsa.gov.uk/pages/Doing/Regulated/newcob/faqs/comms2.shtml>

The past performance rules are media-neutral and their application is not affected by the method chosen to communicate a promotion (e.g., by telephone, in writing or online).

For non-MiFID business, our past-performance requirements apply to promotional communications – they would not normally apply to a communication that merely informs or educates. Whether a communication is promotional will depend on its content and, in some instances, how it is communicated. For example, in most circumstances, a press release that contains past performance information would be considered information-only. However, if that press release was linked to a promotional page on a firm’s website, it would normally be considered a promotional communication, as the past performance information is used to encourage the investor to act.

#### Prominence of past-performance information

Under COBS 4.6.2R (1), a promotional communication must not lead on past performance. This includes both hard data, e.g. specific statistics/returns, and general comments, e.g. opinions about past performance.

#### Presenting past-performance information (including simulated past performance)

We have seen some instances where past performance information is based on periods of less than 12 months. To comply with COBS 4.6.2R (2), past performance information must be based on and show complete 12-month periods. Therefore, if figures are only available for a nine-month period, compliance with this rule is impossible, so actual past performance cannot be shown at all.

Some firms include both simulated and actual past-performance data within the same communication. Where this is the case, a firm must comply with both COBS 4.6.2 and COBS 4.6.6. To meet the fair, clear and not misleading requirement, the two types of performance must also be clearly marked and clearly identifiable.

#### Comparisons with other products or offerings

We have noticed instances where firms have highlighted their performance by comparing it to other products or offerings. Regardless of whether a communication is promotional or non-promotional, comparative information must be meaningful and presented in a fair and balanced way. (MiFID firms also need to comply with additional comparative information requirements as set out in COBS 4.5.6R (b).) For example, comparing a historical return of a savings account with an investment product is unlikely to be meaningful due to key differences between the two types of products.

### **Awards**

The winning of awards can amount to an indication of past performance, depending on the context. As an example, if the award is for service or administration then the requirements would not apply. On the other hand, an award that reflects the fund manager's skill and expertise ultimately reflects the performance of the fund and the fund manager's achievements and so trigger the requirements of COBS 4.6.2R.

### **Dividend record**

The COBS 4.6 rules are derived from MiFID, they are widely framed and not aimed at controlling growth, as opposed to income, data alone. They apply to any information containing an indication of past performance, and are there mainly to ensure that, if past performance is mentioned (including past dividend performance), then it is not to be the most prominent feature and the last 5 years' worth of data must also be available (to prevent the 'cherry-picking' of favourable periods). The source of the data must be given, and the relevant warnings must be given too.