Guidance consultation

Financial Promotions – Advertising ISAs & Adverts for Investment Professionals

January 2011

Advertising ISAs

We expect all firms to promote their products and services in a way that treats their customers fairly. Amongst other things, we look for a clear and adequate description of the product, with a fair balance between its benefits, key risks and drawbacks.

Individual Savings Accounts (ISAs)

As the 'ISA season' gets into full swing, your firm may be planning ISA advertising. Here we highlight some of the questions a firm could ask itself while developing promotional material. We will, of course, expect you to apply your usual compliance procedures to ensure that the promotion complies with our rules. But these questions may be a useful reminder of key points to help you to create promotions that are clear, fair and not misleading.

Questions to ask

- Does the promotion make clear what the customer's money will be invested in (cash, corporate bonds, equities etc)?
- If the promotion refers to charges, does it fairly represent these (and not just focus on 'headline' charges), especially if they are likely to change?
- If the promotion refers to the ISA’s tax status, is the description fair and not misleading, for example, given that equity-based funds are subject to some unrecoverable tax?
- Where you are promoting the ISA for a particular purpose (e.g. as a pension or a mortgage repayment vehicle), do you explain, in a way that is fair and balanced, the risks and drawbacks as well as the benefits, of using the ISA for that purpose?
- If the promotion leads on a particular interest rate, does it clearly set out any requirements such as minimum balance or minimum term? Does it clearly indicate for how long the advertised rate applies and what it then reverts to?
- If you are using past performance data in a promotion, does the promotion still give a balanced picture of the product?

- If you are promoting ISA transfers, are you describing fairly the possible impact of a transfer (particularly on the level of risk)?
- Are appropriate risk warnings prominent enough?

Adverts for investment professionals

We've also seen a number of adverts, for fund managers etc., which state they are for 'investment professionals' but it is not always clear that this is the case. We set out below what we expect for such promotions to be fair, clear and not misleading.

'Investment professionals' is a term used in the relevant legislation, which gives an exemption from the financial promotion restrictions.[1] But these exemptions are usually only relevant for unauthorised firms or unregulated Collective Investment Schemes (CIS), and those in the FPO[2] are not available for 'MiFID business'[3].

In the legislation, 'investment professionals' are defined as (broadly):

- authorised persons;
- exempt persons (for the relevant controlled activity);
- other persons who carry on the relevant controlled activity for the purposes of business purposes;
- government, local authority or an international organisation; and
- a director, officer or employee of any of the above, acting in that capacity.

Firms wanting to communicate a promotion to investment professionals should be clear about to whom a promotion is directed and on what basis.

As noted above, an exemption under the FPO is not available where MiFID business is concerned. And in the case of promotions for collective investment schemes by authorised firms, the relevant Conduct of Business (COBS) 4 rules still apply, primarily of course the 'fair, clear and not misleading' rule at COBS 4.2.1R.

COBS 4.2.2G reflects the stance of the European legislation that the 'fair, clear and not misleading' rule should apply in a way that is appropriate and proportionate. Subject to that, the further guidance at COBS 4.2.4G on this rule applies to financial promotions targeted at investment professionals. This includes a 'capital at risk' warning when appropriate, and a clear distinction, where applicable, between FSA-regulated and other matters.

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[1] See the Financial Services and Markets Act [FSMA] 2000 (Financial Promotion) Order 2005 at article 19, giving an exemption from the financial promotion restriction at FSMA s.21(1); and the FSMA 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (the PCISEO). In the PCISEO, article 14 gives an exemption for promotions to investment professionals from the restriction on the promotion of collective investment schemes at FSMA s. 238(1). The PCISEO is one of three routes to promoting collective investment schemes (CISs), the other two being (a) where the scheme is an authorised or recognised unit trust or OEIC, or (b) where the promotion is in accordance with COBS 4.12. So the PCISEO exemption is not really relevant to authorised schemes, and indeed article 14(4) refers explicitly to 'persons having professional experience of participating in unregulated schemes'.

[2] Financial Services and Markets Act [FSMA] 2000 (Financial Promotion) Order 2005.

[3] As defined in the Handbook Glossary at: http://fsahandbook.info/FSA/html/handbook/Glossary

What we expect

Authorised firms should use language appropriate to the promotion.

Promotions can be targeted at investment professionals, but they must:

- be effectively targeted through the publication or medium used;
- be fair, clear and not misleading;
- clearly state the target audience:
    - This should be reasonably prominent, so not in ‘small print’ at the foot of the advert.
    - There is no specified wording, but the membership of the target group must be clear. Firms may wish to consider explicitly excluding non-target groups, by stating, for example, ‘not for retail clients’.
    - The content and language should reflect the target group. For instance, where relevant, references should be to ‘your client’s money’ rather than ‘your money’ to be clear.
    - In both targeting and content, the promotion should not confuse the legislative category of ‘investment professional’ with the Handbook category of ‘professional client’.