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Dear Richard

Social media and customer communications: The FCA's supervisory approach to financial promotions in social media (GC14/6)

The IMA represents the asset management industry operating in the UK. Our members include independent asset managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £5 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts, and a wide range of pooled investment vehicles. In particular, our members represent 99% of funds under management in UK authorised investment funds.

In the context of increased interest in the use of social media for customer communications within the financial services industry, the IMA welcomes this FCA initiative to clarify its supervisory approach. From discussions held with our members, we understand that few are contemplating issuing financial promotions through social media, so the main benefit of enhancing regulatory clarity through guidance at this time will be to help firms ensure that their use of social media does not inadvertently constitute a financial promotion. For now at least, most of our members are more interested in the potential of social media in the areas of brand awareness and thought leadership rather than financial promotion per se.

Our detailed comments on the consultation are set out below.

Paragraph 2.6 refers to the COBS 4.3 requirement for financial promotions to be identifiable as such and states that this is important for social media in particular. But the draft guidance includes a supposedly compliant example of a financial promotion where this requirement does not seem to be met (in figure 4).

Paragraph 2.8 addresses the issue of re-tweeting and suggests that one way of managing the risk of a tweet ending up in front of a non-intended recipient would be to use software that enables precise targeting of particular groups. But while this would clearly help to define the audience for the original tweet, it is not clear how it could help to manage the re-tweeting risk, i.e. the risk of the original recipient passing it on to whoever they like.

Paragraph 2.8 also raises a more fundamental issue; the responsibility of a firm communicating through social media for someone else who forwards that communication to another party. We submit that requiring firms to "ensure that their original communication would remain fair, clear and not misleading, even if it ends up in front of a non-intended recipient (through others re-tweeting on Twitter or sharing on Facebook)" would be an unreasonable obligation to place on the originator. It also seems to be at odds with the statement at paragraph 2.17, which clearly states that the firm that originated the communication would not be responsible for any sharing or forwarding. Whilst we accept that any communication must be designed and targeted in such a way that it is fair, clear and not misleading for the intended audience, we believe that paragraph 2.17 is correct in its explanation of relevant responsibilities in the case of re-tweets and other cases of forwarding or sharing. Paragraph 2.8 should be amended to avoid confusion.

Paragraph 2.11 uses a banner promotion to demonstrate the importance of standalone compliance. Whilst the examples serve to demonstrate the point being made, banner promotions are unlikely to feature in social media as opposed to more general online communications and are therefore not a good example in guidance on the use of social media.

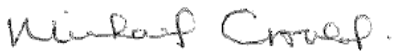
Paragraph 2.14 as written is rather confusing. In the first sentence, it suggests that the problem of including risk warnings in social media with character limitations can be addressed by the use of infographics. However, later on in the same paragraph it is stated that "where the financial promotion triggers a risk warning or other information required by our rules, this cannot appear solely in the image". Is this latter statement only meant to apply to media where the functionality that allows the image to be permanently visible can be switched off? If so, this should be made clear. The guidance should also address situations with social media that automatically truncates longer messages by typically requiring a user to click "more" if they wish to see the full message. On Facebook for example, a message longer than four or five lines is usually arbitrarily truncated to show only the first three or so lines. If a firm issued a financial promotion and included all of the necessary risk warnings in the message, but such message was automatically truncated by Facebook or LinkedIn such that the warnings were only displayed once the user clicked "more", would the financial promotion still be compliant?

Paragraph 2.23 states that firms are required to have "an adequate system in place to sign off digital media communications". We do not think this is correct. COBS 4.10 relates to approving and communicating financial promotions, not communications more generally.

Similarly, paragraph 2.24 states that "firms should also keep adequate records of any significant communications". COBS 4.11 covers record keeping for financial promotions, but does not extend to other types of communications, although, in this case, we accept that SYSC rules might require the maintenance of such records.

Please contact me if I can provide any clarification on our response.

Yours sincerely



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