

## Finalised guidance

# FG15/4: Social media and customer communications

## The FCA's supervisory approach to financial promotions in social media

March 2015

# 1 The FCA's supervisory approach: a statement

### What are social media?

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- 1.1 Social media share the characteristic of being digital and can be defined as 'websites and applications that enable users to create and share content or participate in social networking' (Oxford Dictionaries 2013). The following is a non-exhaustive list:
  - blogs
  - microblogs (Twitter)
  - social and professional networks (Facebook, LinkedIn, Google+)
  - forums
  - image and video-sharing platforms (YouTube, Instagram, Vine, Pinterest)
- 1.2 A number of media may impose character limits, or other space or time limitations. These include Twitter (140 characters) and Vine (maximum six-second video loops). Adverts on Facebook have 25 characters for the headline and 90 characters for the body text (although status updates are effectively unlimited). Pinterest is limited to 500 characters. An SMS text message, which could be business-related or purely social, has a limit of 160 characters.
- 1.3 We recognise that social media are particularly powerful channels of communication and therefore of significant value to firms. We do not want to prevent their use. These media allow firms to contact their customers, and vice versa, both pre- and post-sale.

## What is a financial promotion?

- 1.4 We remind firms that any form of communication (including through social media) is capable of being a financial promotion, depending on whether it includes an invitation or inducement to engage in financial activity.<sup>1</sup> This could include, for example, 'advergaming', where promotional messages are placed in entertainment applications. Figure 1 below is a non-promotional communication but would constitute a financial promotion if, for example, the second sentence read: 'We also invest in our trading technology, to help get you the best returns!'

*Figure 1: A non-promotional communication that focuses on the firm's non-regulated activities*



- 1.5 A financial promotion must also be made 'in the course of business' to be within our regime. We have published guidance on this in our Perimeter Guidance manual (PERG). The 'in the course of business' test requires a commercial interest on the part of the communicator. It is intended to exclude genuine non-business communications. Social media conversations involving groups and individuals not acting in the course of business are therefore outside our regulation.<sup>2</sup> Where capital is raised for small private companies

<sup>1</sup> By financial activity we mean 'investment activity' as defined in s.21 FSMA. This includes mortgages, insurance, banking and consumer credit, as well as investments in the narrower sense

<sup>2</sup> PERG 8.5 – see particularly PERG 8.5.3G

and the company is already in operation, it will be acting 'in the course of business' when seeking to generate additional capital. At the pre-formation stage, however, individuals who are proposing to run the company may approach friends and relatives to see if they are willing to provide start-up capital.

Such individuals will not, in our view, be acting 'in the course of business' during this pre-formation stage, and so such communications will fall outside our regime. But this will not be the case if they are forming companies with such regularity that they would be regarded as carrying on the business of forming companies.

In principle, however, there is no reason why an individual, such as a sole trader, cannot act 'in the course of business': the key factor is the purpose of the communication rather than who is making it. And as we say in our guidance at PERG 8.5.2G, there has to be a commercial interest on the part of the communicator.

Where a personal social media account (such as a Twitter account) is used by someone associated with a particular business, for example a senior person at the business, that individual and the firm should take care to distinguish clearly personal communications from those that are, or are likely to be understood to be, made in the course of that business (see Figure 9).

- 1.6 There is a specific requirement that financial promotions for investment products<sup>3</sup> are identifiable as such. Our view is that – for social media in particular – it is important that, in all cases, it is clear that a promotion is a promotion. This can be by labelling the promotion as such, or it may be clear from the context.

### Clear, fair and not misleading

- 1.7 We remind firms that, under Principle 7 of the Principles for Businesses, it remains a fundamental requirement that all communications (including financial promotions) are clear, fair and not misleading. Promotions that fail to be 'clear, fair and not misleading' can pose a risk as they could lead consumers to buy the wrong product – ultimately with unhappy outcomes for them and for firms.
- 1.8 Communications through social media can reach a wide audience very rapidly, so firms should take account of that in their decision to promote through social media, and the nature of their promotions. Firms should therefore ensure that their original communication would remain clear, fair and not misleading, even if it ends up in front of a non-intended recipient (through others retweeting on Twitter or sharing on Facebook). One way of managing this risk is the use of software that enables advertisers to target particular groups very precisely.
- 1.9 The requirements to be fair and not misleading imply balance in how financial products and services are promoted, so that consumers have an appreciation not only of the potential benefits but also of any relevant risks. Firms should consider the appropriateness of character-limited media as a means of promoting complex features of financial products or services. It may be possible to signpost a product or service with a link to more comprehensive information, provided that the promotion remains compliant in itself. Alternatively, it may be more appropriate to use 'image advertising' (see paragraph 1.15) to promote a firm more generally. Figure 2 shows an example of a tweet where the promotion lacks balance, as it over-emphasises the benefits and includes an inadequate risk warning. It also fails to comply with the past performance rules as it makes the indication of past performance the most prominent feature, and fails to include performance information covering at least the immediately preceding five years. In addition, it does not clearly identify itself as a promotion.

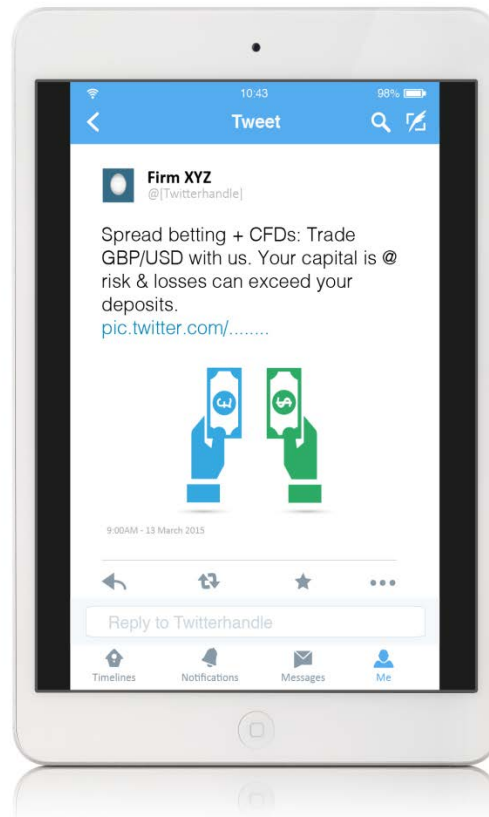
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<sup>3</sup> COBS 4.3.1R

**Figure 2: Example of a non-compliant promotional tweet (see paragraph 1.9)**



**Figure 3: Example of a fair, clear and not misleading tweet, conveying a prominent warning within the character limitation**



1.10 We produced guidance in September 2011 setting out our expectations on prominence and providing examples of good and poor practice.<sup>4</sup> In deciding whether a particular statement meets the rules on prominence, consideration should be given to the target audience, the nature of the product or business and the likely information needs of the average recipient. Targeted consumer testing is an avenue that could be explored to assist with firms' assessments in this area. We remind firms that there are sector-specific requirements in relation to prominence in the relevant sourcebooks.<sup>5</sup> We look at prominence in the context of the promotion as a whole. Figure 3 shows how this can be achieved using character-limited social media.

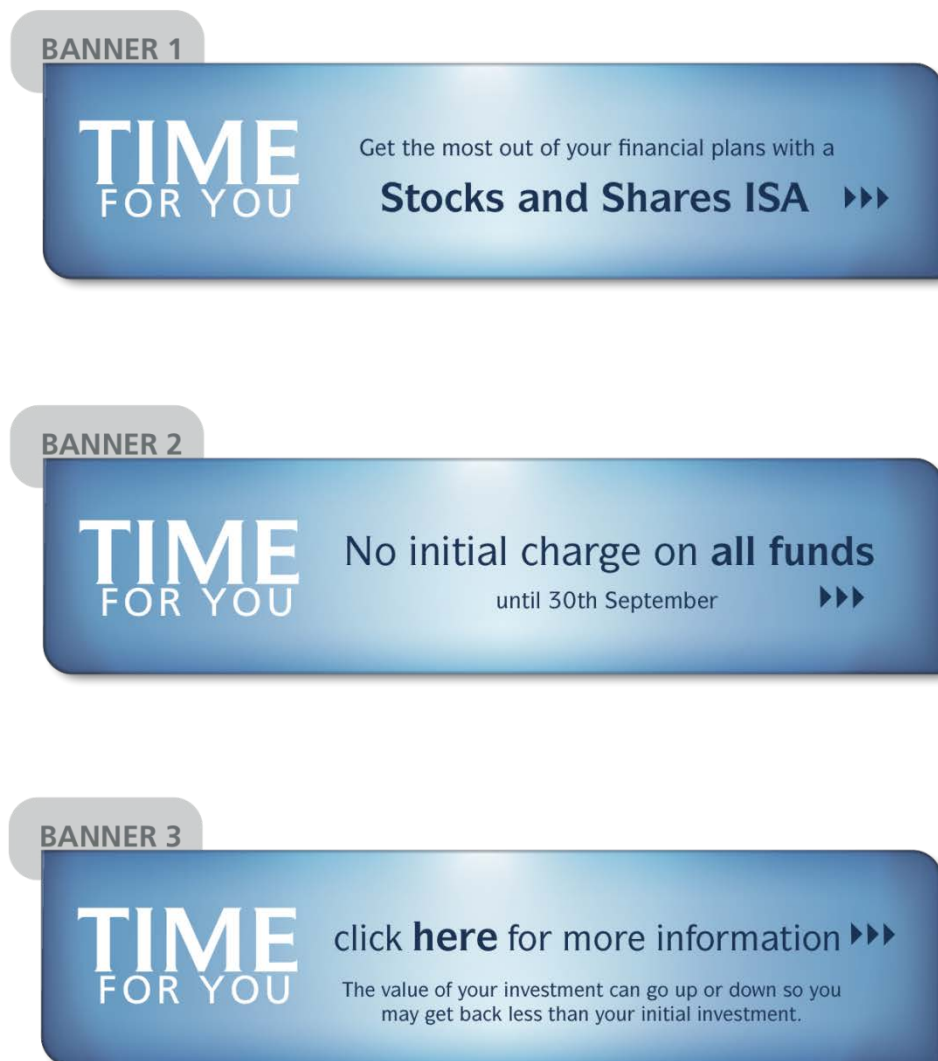
<sup>4</sup> [www.fca.org.uk/static/pubs/final/fg-fin-proms-prominence.pdf](http://www.fca.org.uk/static/pubs/final/fg-fin-proms-prominence.pdf)

<sup>5</sup> COBS 4, MCOB 3, ICOBS 2, BCOBS 2 and CONC 3

## Standalone compliance

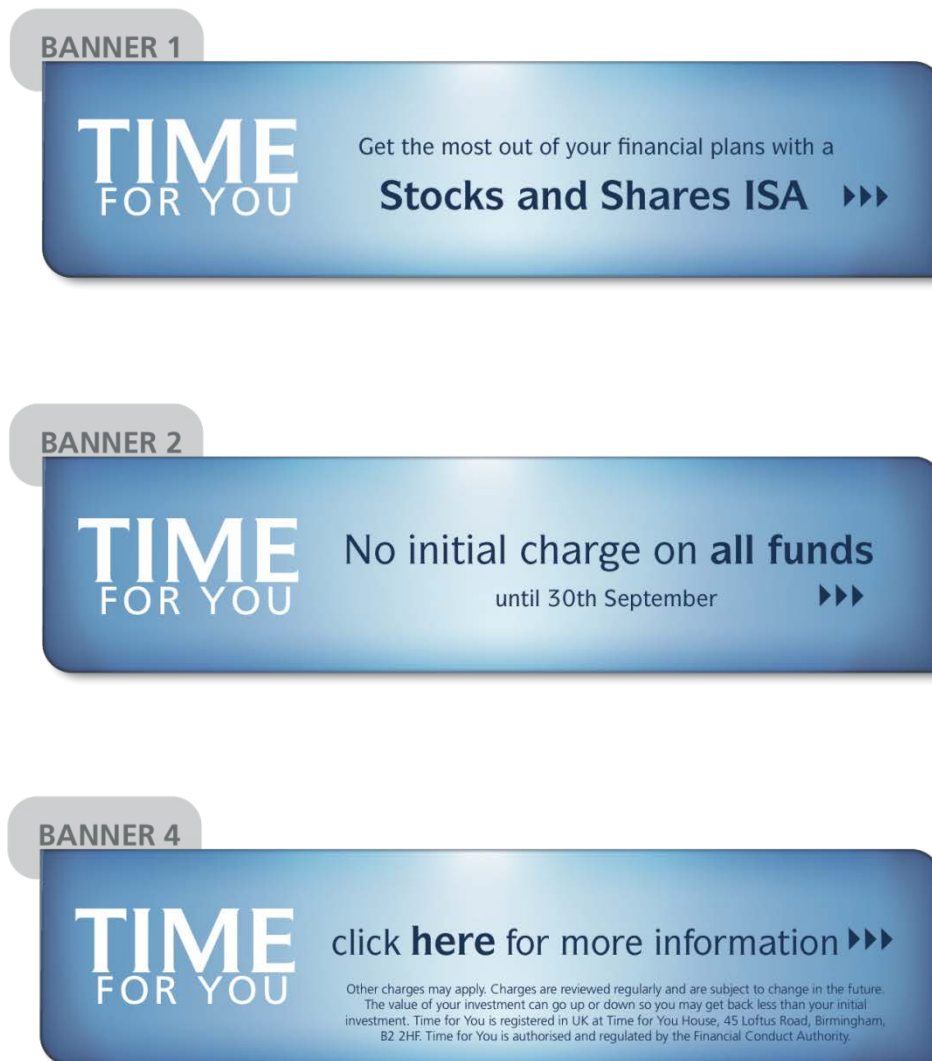
1.11 Each communication (e.g. a tweet, a Facebook insertion or page, or web page) needs to be considered individually and comply with the relevant rules.<sup>6</sup> Figure 4 shows how this can be achieved through a banner promotion. By contrast, Figure 4a shows a non-compliant version where the risk warning is not clear.

**Figure 4: Example of a compliant banner promotion. The risk warning is clear in the last frame of a dynamic banner**



<sup>6</sup> [www.fsa.gov.uk/pages/doing/regulated/promo/pdf/compliance.pdf](http://www.fsa.gov.uk/pages/doing/regulated/promo/pdf/compliance.pdf)

**Figure 4a: Example of a non-compliant banner promotion. The risk warning is lost in surrounding text, which is also of much smaller font-size**



**Risk warnings and other required statements**

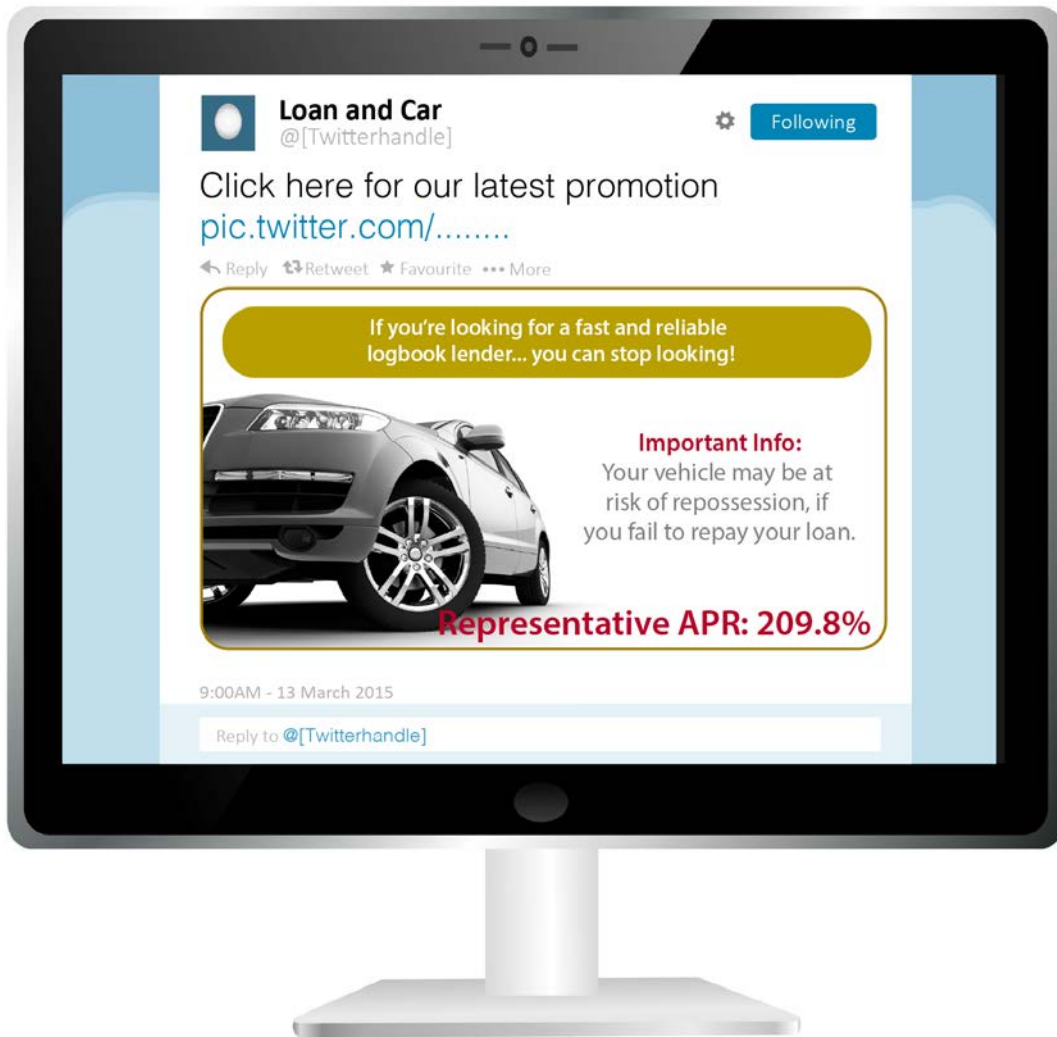
- 1.12 We remind firms that there are requirements to include risk warnings or other statements in promotions for certain products/services. These rules are media-neutral and therefore apply to social media as they would to any other medium. When taken into account with our supervisory approach to standalone compliance, this poses particular challenges for the use of character-limited social media.
- 1.13 One possible solution to the problem of character limitation is to insert images, including the use of infographics, into communications such as tweets (see figure 5), which allows relatively unrestricted information to be conveyed. Clearly, the image must in itself be compliant.

Figure 5: Investment inserted images example.





Figure 6: Consumer Credit inserted images example.



However, we are aware that the functionality that allows a Twitter image to be permanently visible, may be switched off so that the image appears simply as a link.<sup>7</sup> Therefore, where the financial promotion triggers a risk warning or other information required by our rules, this cannot appear solely in the image.

<sup>7</sup> Recipients with mobile devices may do this to save battery or speed up processing time. In addition, social media management applications such as Hootsuite and Tweetdeck may not show the image preview.



Firms can also tweet a link to a website with a financial promotion. We appreciate that firms will want to include some signposting language to encourage or give some reason to the recipient to open the link.<sup>8</sup> We remind firms that the signpost must be standalone compliant. For example, with investments, character-limitation imposes constraints if the content would otherwise trigger a past-performance warning and five-year table; similarly with consumer credit, if the content triggers a representative example. Examples A1 and A2, and B1 and B2 below show compliant and non-compliant versions:

A1. "To see our current UK equity fund range, go to [www FirmXYZ.co.uk](http://www.FirmXYZ.co.uk)"

A2. "To see our range of credit cards, go to [www FirmXYZ.co.uk](http://www.FirmXYZ.co.uk)"

These are compliant as the signposting wording does not create a financial promotion: it simply encourages the recipient to find out more. Firms may want to review our existing guidance on what is an 'invitation or inducement' to engage in financial activity, in chapter 8 of the Perimeter Guidance manual:

<https://www.handbook.fca.org.uk/FS/html/FCA/PERG/8/4>

B1. "To see our top-performing UK equity fund, go to [www FirmXYZ.co.uk](http://www.FirmXYZ.co.uk)"

This is non-compliant as the words 'top-performing' introduce an element of inducement that creates a promotion, which then also requires a past-performance warning and five-year table.

B2. "To see our range of 0% balance transfer cards, go to [www FirmXYZ.co.uk](http://www.FirmXYZ.co.uk)"

This is non-compliant, as '0%' is a rate of interest triggering the need for a representative example.

- 1.14 We say at paragraph 1.9 above that firms should consider the appropriateness of character-limited media as a means of promoting complex features of financial products or services. More broadly, we would highlight the fact that all media have their constraints: for example, radio adverts are audio-only, and television advertising, outdoor advertising (billboards etc.), digital and print advertising all have different characteristics. Advertisers in all sectors, not just financial services, have to work within the constraints of the medium chosen.

### Image advertising

- 1.15 We remind firms that it remains possible to advertise their presence in the market through 'image advertising' in a way that is less likely to present difficulties with character limits. This shares some features with 'brand' advertising but there are specific requirements in our Handbook. 'Image advertising' (or its equivalent in the different sourcebooks) is defined in the FCA Handbook as advertising that only consists of the name of the firm, a logo or other image associated with the firm, a contact point and a reference to the types of regulated activities provided by the firm or to its fees or commissions.<sup>9</sup> Below is a summary of how image advertising interacts with the conduct of business rules for different sectors:

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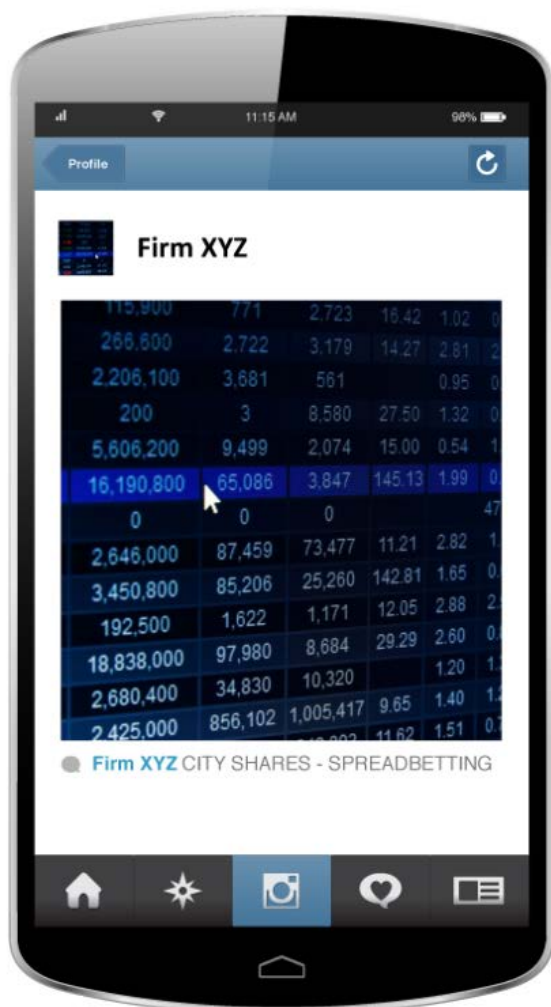
<sup>8</sup> We have recently consulted on removing the requirement for a generic risk warning statement to be given under our financial promotions rules for mortgages. Under the proposed approach firms will no longer be required to provide a generic risk statement from March 2016, but will need to ensure promotions are fair, clear and not misleading and sufficiently balanced. This may result in more flexibility for firms when using social media for promotional purposes. For more information see CP 14/20 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages* <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-20>

<sup>9</sup> <https://www.handbook.fca.org.uk/FS/glossary-html/handbook/Glossary/1?definition=G2470> and see also COBS 4.5.1R (2)(b), MCOB 3.2.5R (2) and CONC 3.1.7R

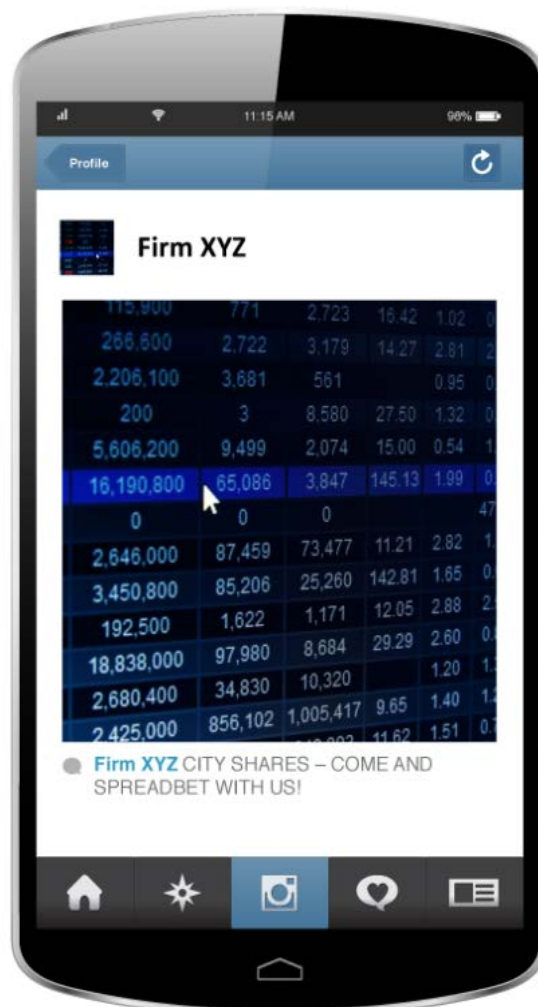
- For investments, image advertising is exempt from most of the detailed financial promotions rules and guidance in COBS 4, but it will still need to comply with the high-level 'fair, clear and not misleading' rule.
- For mortgages, MCOB 3 contains a specific exemption for financial promotions that comply with MCOB 3.2.5R.
- For insurance and banking, there is no equivalent provision for image advertising in ICOBS 2 or BCOBS 2 and firms cannot rely on exemptions.
- For credit products, CONC 3 applies only to a limited extent to financial promotions or communications falling within CONC 3.1.7R and that comply with the parts of CONC 3 set out in that rule.

Figure 7 shows an Instagram image advert (compliant). Figure 8 shows a similar format advert that goes beyond 'image' with the words 'come and spreadbet with us' and is non-compliant (as it does not give a fair and prominent indication of the relevant risks).

**Figure 7: Compliant**



**Figure 8: Non-compliant**



## Other regulatory issues

### *Recipients sharing or forwarding communications*

- 1.16 Where a recipient shares or forwards (such as by retweeting) a firm's communication, responsibility lies with the communicator, so in that case the firm would not be responsible. We remind firms, however, that any breaches of our rules in the original communication are still the responsibility of the originating firm, and not the 'retweeter'. In other words, sharing or forwarding by a third party does not somehow 'cure' any original non-compliance. Figure 9 provides examples of compliant and non-compliant tweets from a Twitter user's profile page, which is being used in the course of business.
- 1.17 This raises the question of what happens when the sharing or forwarding creates the non-compliance: a prime example of this is a tweet intended for another authorised person, which is retweeted to a retail customer. This is not an issue solely for social media communications, as printed brochures can be distributed beyond their original intended audience. And the same principles apply: firms should take steps in their labelling and targeting of communications to mitigate the risk of this happening. For character-limitation and achieving compliance in this respect, we refer firms to our comments at paragraph 1.13 on the insertion of images into tweets.
- 1.18 If a firm retweets a customer's tweet, whether or not it is a financial promotion will depend on the content of the tweet. For example, a tweet expressing satisfaction with considerate service received from the firm will not be a promotion, as good customer service is not itself a controlled activity<sup>10</sup> (it concerns the way in which the activity is carried on, not the activity as such). However, if the customer's tweet comments on or endorses the benefits of a regulated financial product or service, then sharing or forwarding by the firm will constitute a promotion by the firm. The firm is responsible if it communicates the retweet, even though the firm did not generate the original content of the communication.<sup>11</sup>

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<sup>10</sup> A 'controlled activity' is one that is included within the definition in the FSMA 2000 Financial Promotion (Exemptions) Order 2005 (see article 4 and Schedule 1) and therefore falls within the financial promotions regime.

<sup>11</sup> Firms may wish to review our existing guidance on communicating, and its relevance to financial promotions at section 8.6 of our Perimeter Guidance Manual (PERG 8.6): <https://www.handbook.fca.org.uk/FS/html/FCA/PERG/8/6>

Figure 9: Profile page example illustrating compliant and non-compliant tweets.

The image shows a Twitter profile page for a user named 'Mr MD' (@[Twitterhandle]). The profile summary includes a cover photo of a person on a beach, a profile picture of Mr MD, and statistics: 626 tweets, 956 following, and 353 followers. The bio states: 'Managing Director of Firm XYZ and would be football star. London'.

Three tweets are shown with compliance annotations on the right:

- Retweet:** Mr MD retweeted a tweet from News/Gossip@news\_gos dated Mar 13. The tweet text is 'Firm XYZ: 3 ETFs for the markets which will soar in 2015 – time to invest news\_gos.com/story'. It has 34 retweets and 1 star. A red 'X' icon and the text 'Non-compliant – promotional' are next to it.
- Original Tweet:** Mr MD @ [Twitterhandle] - Mar 13. The text is '“RT@news\_gos Firm XYZ: 3 ETFs for the markets which will soar in 2015 news\_gos.com/story” – good time to invest but remember capital at risk'. It has 34 retweets and 1 star. A green checkmark icon and the text 'Compliant – promotional. User added risk warning in retweet' are next to it.
- Original Tweet:** Mr MD @ [Twitterhandle] - Mar 13. The text is 'US equities rocket – record breaking ETF year. Check out this article by News/Gossip news\_gos.com/story'. It has 34 retweets and 1 star. A green checkmark icon and the text 'Compliant – non promotional' are next to it.

At the bottom, there is a reply box with the text 'Reply to @[Twitterhandle]'.

### *International communications*

- 1.19 Clearly, digital communications of all types, but including social media, are not limited by national borders. There are also of course a number of measures in place within the European Economic Area (EEA) to facilitate trade and commerce within the EEA. As the UK regulator, our rules cover all financial promotions capable of having an effect in the UK, unless an exemption is available.

### *'Real time' and digital media*

- 1.20 Whether a financial promotion is considered real time or non-real time has implications for the rules that are potentially engaged, where the promotion is unsolicited (see paragraphs 1.22 and 1.23 below). Digital media communications take place in real time in the ordinary sense of that phrase, but may not fall within the definition of 'real-time' communication under article 7 of the Financial Promotion Order (FPO).<sup>12</sup>
- 1.21 We remind firms that a promotion is non-real time and therefore subject to our conduct of business rules where it creates a record of the communication, is directed at multiple recipients, and does not require the recipient to respond immediately. We would, for example, consider a tweet a non-real time promotion.

### *Unsolicited promotions*

- 1.22 We remind firms that are considering sending marketing through electronic media that there are specific legal requirements that they must comply with when doing so.<sup>13</sup>
- 1.23 Social media are prime channels for making unsolicited promotions. For such promotions and 'cold calling' (unsolicited real-time promotions), we remind firms of our rules at COBS 4.8 (Cold calls and other promotions that are not in writing), MCOB<sup>14</sup> 3.7 (Unsolicited real time financial promotions of qualifying credit, a home reversion plan or a regulated sale and rent back agreement) and CONC 3.10 (Financial promotions not in writing). A promotion by a tweet (for example) is not a real-time promotion within the meaning set out in the FPO. Firms may wish, however, to follow up promotions in social media with real-time promotions. In this context, our view is that being a 'follower' of the firm on Twitter or 'liking' a firm's Facebook page does not in itself constitute 'an established existing client relationship' for the purposes of COBS 4.8.2R (1) or an 'express request' for the purposes of MCOB 3.7.1R (2) (b).

### *Approval and record-keeping*

- 1.24 We remind firms of their obligations to have an adequate system in place to sign off digital media communications. This sign-off should be by a person of appropriate competence and seniority within the organisation.<sup>15</sup>

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<sup>12</sup> Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

<sup>13</sup> Regulation 22 of the Privacy & Electronic Communications Regulations 2003 (PECR). With regard to unsolicited telephone calls for direct marketing purposes, live (as opposed to automated) direct marketing calls are covered by regulation 21 of PECR. The Information Commissioner's Office website provides more information through its [Direct Marketing guidance](#).

<sup>14</sup> MCOB will be replaced with new rules from April 2016.

<sup>15</sup> SYSC 3 and 4 generally, but particularly SYSC 3.1.6R, 3.2.6R, 4.1.1R and 4.3.1R; see also COBS 4.10, MCOB 3.9 and 3.11, and ICOBS 2.2.3R

- 1.25 Firms should also keep adequate records of any significant communications. As well as helping to protect consumers, these records enable the firm to deal effectively with any subsequent claims or complaints. Firms should not rely on digital media channels to maintain records, as they will not have control over this: social media in particular may refresh content from time to time, with the consequent deletion of older material.<sup>16</sup>
- 1.26 In summary, the current sign-off and record-keeping provisions in the relevant chapters of the conduct of business sourcebooks in our Handbook apply to digital (including specifically social) media in the same way as to print, broadcast and outdoor media. Beyond that, these matters are a question of risk management by the firm. We refer firms to the provisions in our Senior Management Arrangements, Systems and Controls manual, referenced in the footnote to paragraph 1.24 above. Risk management encompasses all relevant risks, including legal and reputational risk, as well as regulatory risk.

### *Advertising Standards Authority*

- 1.27 Advertisers are required to adhere to the Committee of Advertising Practice Code, which applies to 'non-technical' elements of financial advertising, for example matters of social responsibility, harm and offence.

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<sup>16</sup> COBS 4.11; MCOB 3.10; ICOBS 2.4



# Annex 1 – Feedback Statement

## 1 Summary of feedback and our response

- 1.1 In August 2014, we published a Guidance Consultation on social media and customer communications, specifically focusing on our supervisory approach to this medium to provide greater clarity for firms and to encourage compliant promotions.
- 1.2 As we noted in the Guidance Consultation, firms are using, or wanting to use, social forms of digital media (social media) for their communications with customers. Several of these media have character limitations or restrictions which can constrain their use. We are aware that in some circumstances firms may legitimately want to use certain media but perceive difficulties in complying with some of our rules, particularly with our financial promotion rules.
- 1.3 We recognise also that there is potential for uncertainty in these media regarding what constitutes a financial promotion, and a perceived risk of non-compliance, particularly where there is reputational pressure on firms for an immediate response to consumer queries.
- 1.4 Our rules are intended to be media-neutral to ensure that consumers are presented with certain minimum information, in a fair and balanced way, at the outset of firms' interaction with them. Our rules include sector-specific requirements but in each case there is an overarching principle that any communication should be fair, clear and not misleading.
- 1.5 The consultation period for this proposed guidance closed on 6 November 2014. We received a total of 67 formal responses, which included industry bodies and others representing a number of firms as well as media platforms. It should also be noted that this was the first time that the FCA used social media during the consultation process, setting up the #SMFCA on Twitter. During this consultation period 523 tweets used this hashtag, which includes all the retweets of the FCA's posts and other users' comments.
- 1.6 LinkedIn was also used to distribute the Guidance Consultation, which was seen by 27,653 users and was clicked on 302 times, with 68 interactions (44 likes, 4 comments and 20 shares).
- 1.7 The responses were broadly supportive, but did raise a number of issues, mostly queries and points for clarification.
- 1.8 We set out a summary of those issues, together with our responses below. Please note that the issues have been listed in the order they appeared in the original Guidance Consultation.



## 2 'Click-through approach'

- 2.1 A number of the responses suggested that tweets and posts be viewed as an initial part of the promotion, not in isolation: they should instead be viewed as the start of the customer journey. These respondents said that standalone compliance should therefore be assessed on the combination of a tweet or post and the website to which it links, where further balance/risk information can be presented in its entirety. This suggestion is often referred to as a 'click-through approach', where the initial communication is only required to be fair, clear and not misleading – the website to which it links then meets any further requirements that might be triggered by the content of the initial communication.
- 2.2 Such a 'click-through' approach raises the question of what constitutes 'a' financial promotion. In our view, a tweet and a website will be separate financial promotions, as defined in the Financial Services and Markets Act 2000 (s.21). On that basis, each must comply separately with any specific requirements in our rules, as well as being clear, fair and not misleading.

This is also consistent with the applicable European Directives, which give us only limited scope to amend our rules in this area. In particular, the Directives on consumer credit and mortgages require<sup>17</sup> standard information to be included in advertising by means of a representative example, whenever an interest rate or any figure relating to the cost of the credit to the consumer is indicated. Our view is that this means that the whole of the representative example must be included in a single financial promotion. Firms may wish to ensure therefore that the initial tweet or post does not contain any 'trigger' information but merely links through to a webpage where all the information is shown together.

The same constraints do not exist in other areas, but we think it is important to adopt a common approach across all the sectors we regulate, and across all media. To do otherwise would create a more complex and less certain regime, which could impose additional costs and which firms and consumers would find more difficult to navigate.

In the Guidance Consultation (and in the Finalised Guidance) we describe and discuss how images can be inserted into tweets, which for most practical purposes solves the problem of character-limitation in that channel.

## 3 'In the course of business'

- 3.1 Further explanation was requested regarding the difference between personal and business related posts/tweets. One specific question that highlights the issue was: 'If an employee makes reference to a firm's products on their own profile does this amount to a financial promotion and are they subject to the same rules that the firm would be?'
- 3.2 If an employee of a firm uses their personal social media account to send communications that could be considered an inducement or invitation, then this may constitute a financial promotion and may therefore be subject to the same rules that apply to the firm. In this instance the employee (the communicator) may be acting in the course of business because they have a commercial interest in the communication (i.e.

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<sup>17</sup> Consumer Credit Directive 2008/48/EC and Mortgage Credit Directive 2014/17/EU. In the case of mortgages, the requirements will take effect from March 2016.

they are trying to obtain more clients/business for their employer). If, however, the employee sends a genuine non-business communication or indeed the conversation involves groups and individuals not acting in the course of business, then this would fall outside our regulation.

- 3.3 We have expanded our explanation of what is 'in the course of business' at paragraph 1.5 in the Finalised Guidance. We draw firms' attention again to our guidance on this point in chapter 8 our Perimeter Guidance manual (PERG).

## 4 The use of '#Ad' to identify promotions and the use of hashtags in general

- 4.1 In COBS 4.3.1R firms are required to ensure that financial promotions addressed to a client are clearly identifiable as such. We suggested that one way to achieve this was the use of #ad. This produced a varied response; some saying it was an innovative way of highlighting that the content was promotional, others suggested it was an inappropriate use of the hashtag functionality. There was also a further query regarding whether hashtags would be appropriate for the inclusion of risk warnings (e.g. #capitalatrisk, #pastperf, etc) or to highlight jurisdictional limitations to products (e.g. #UKinvestors).
- 4.2 Following this feedback we have revised our stance on this issue. We believe that hashtags are not an appropriate way to identify promotional content. We note that paid-for advertising on several social media platforms already signpost that the content is promotional (e.g. Twitter includes statements such as 'promoted by...' or 'promoted only' and on Facebook it states 'SPONSORED'), therefore the additional use of '#ad' would not be required to identify the communication as promotional.
- 4.3 Another significant aspect of the hashtag functionality is that, when clicked on, the consumer will be led to a separate page where all the communications that have used this hashtag will be displayed. These communications and their content will be outside the control of the firm. There is potential for consumer confusion here as the majority of the information will be irrelevant to the initial communication, although this may not be immediately obvious to the user.
- 4.4 We appreciate that most promotions on social media will be self-evidently promotions and we would expect some type of signposting (ad / advert / promotion) only when the promotional nature is obscured or coupled with other material (e.g. a celebrity endorsement or journalistic content).
- 4.5 For the same reasons as above, we also believe that the hashtag functionality is inappropriate for the inclusion of risk warnings or statement of jurisdiction. We appreciate that there may be positives to their use, such as improved prominence by the hashtag appearing as a coloured hyperlink. However, we believe that the warning or information would be ultimately diminished by the running together of the words in undifferentiated text (e.g. #capitalatrisk) and by the link to another page with largely irrelevant material, with the result that the consumer does not effectively access the important information.
- 4.6 We have therefore deleted the reference to #ad at paragraph 1.6 in the Finalised Guidance.

## 5 Retweets

- 5.1 Clarification was requested regarding where the responsibility lies when a communication is retweeted and when this can be considered a financial promotion. It was also queried whether 'favouriting', 'commenting', 'liking' and other social media functionality can be considered as financial promotions.

- 5.2 In the Guidance Consultation we made the point that all firms should ensure that their original communication would remain clear, fair and not misleading, even if it ends up in front of a non-intended recipient. The reasoning behind this was that Principle 7 of our Principles for Businesses (PRIN)<sup>18</sup> applies to all communications to all clients, or potential clients.
- 5.3 However, when a communication is retweeted or shared, the responsibility lies with the communicator (i.e. the user sending the retweet or sharing the communication). If a consumer retweets/shares a promotional communication from a firm and they are not acting in the course of business, then only the original communication from the firm would fall within our remit – the consumer's subsequent communication would fall outside of regulation.
- 5.4 With regards to firms retweeting, sharing or liking a consumer's original communication and whether this action can be considered an inducement or an invitation, hence falling into the financial promotions rules – they can all be considered inducements or invitations depending on what the original consumer communication stated. For example if the consumer communication stated 'just got a brilliant two-year fixed rate mortgage from Firm X' and then Firm X subsequently retweeted/shared/liked this communication – there is clearly an action made by the firm, which is in the course of business as it is in their commercial interests to distribute the original communication. Therefore, the firm's subsequent communication would then be subject to the financial promotion rules.
- 5.5 We have expanded our comments on this area in paragraph 1.17 of the Finalised Guidance.

## 6 Dynamic functionality and standalone compliance

- 6.1 The inclusion of a banner promotion depicting standalone compliance produced the reaction that it was not strictly an example of a social media promotion and that the inclusion of the risk warning in the final frame of the banner meant that the example was actually non-compliant.
- 6.2 We agree that a banner promotion is not strictly social media: our visual example was intended to illustrate banners appearing on social media websites and how risk warnings/balancing statements can be diminished by their lack of prominence and combination with other text. Our point is that firms should ensure that relevant text is sufficiently prominent.
- 6.3 It was also queried whether supplying the risk warning/balancing statement only on the last frame of the banner was compliant. When assessing the compliance of a promotion that is viewed via a dynamic medium (i.e. the loading of the promotion occurs automatically and without the consumer being required to click for further information to view the standalone promotion), we assess the promotion as a whole and take a proportionate view on the number of frames and where the risk warning/balancing statement is provided within the promotion.

## 7 Inserting images

- 7.1 We were asked for clarification regarding our suggestion that the insertion of images could help firms comply with the financial promotion rules when using a character-limited medium (such as Twitter). We were asked where the inducement and the balancing statement/risk warning need to appear, within the message or the image itself.

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<sup>18</sup> A [firm](#) must pay due regard to the information needs of its [clients](#), and communicate information to them in a way which is clear, fair and not misleading. (PRIN 2.1.1R).

- 7.2 In the Guidance Consultation, we explained that if firms cannot ensure that the image (such as an infographic) will always be displayed automatically (users may switch off images to save on data usage) then both the invitation/inducement and the risk warning/balancing statement would need to be provided within the inserted image. In such cases, the main message should only contain signposting language that does not itself create a financial promotion. If the language of the main message goes beyond this, then it should itself be standalone compliant i.e. comply with any relevant financial promotions rules. All communications must of course be fair, clear and not misleading.
- 7.3 It should be noted that this suggestion was only intended to be an option when using character-limited media. We are aware that this suggestion may not be appropriate for other forms of social media, which limit the proportion of text to visual content within an image<sup>19</sup>, or where images can also be 'cropped', meaning that the firm will have no control over whether the inducement and risk warning/balancing statement will be viewed together as a whole.
- 7.4 In relation to consumer credit, we are consulting (CP 15/6) on removing the exemption from the high cost short term credit risk warning at CONC 3.4.1R (2), so we have deleted the reference to this exemption at paragraph 1.13 in the Guidance Consultation.

## 8 Sign-off for digital communications

- 8.1 Further explanation was requested regarding what is included when we state that firms are required to have 'an adequate system in place to sign off digital media communications'.
- 8.2 Firms are required to have an adequate system in place to sign off all communications, not just digital communications. We have added some text to the Finalised Guidance at paragraph 1.24 to explain that firms should consider the provisions in our Handbook relating to sign-off and record-keeping (see section 9 below) as part of their general approach to risk management.
- 8.3 Some respondents asked why financial promotions in social media are considered to be non-real time promotions. On this point, at paragraph 1.20 (of the Guidance Consultation and the Finalised Guidance), we refer to article 7 of the Financial Promotion Order.<sup>20</sup> This sets out three factors to be treated as indications that a communication is non-real time:
- (a) the communication is made to or directed at more than one recipient in identical terms (save for details of the recipient's identity)
  - (b) the communication is made or directed by way of a system which in the normal course constitutes or creates a record of the communication which is available to the recipient to refer to at a later time
  - (c) the communication is made or directed by way of a system which in the normal course does not enable or require the recipient to respond immediately to it
- The first two factors typically apply to social media.

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<sup>19</sup> For example, Facebook has restricted users to 20% text within an image.

<sup>20</sup> Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

## 9 Record-keeping

- 9.1 Clarification was requested regarding what communications were required to have a record kept and for how long.
- 9.2 We expect firms to perform risk management in this area and assess for themselves what they consider 'significant communications' to keep records of. When making this assessment firms should bear in mind the need to demonstrate compliance if required to do so, as well as queries and complaints from customers which may require evidence. As noted at 8.2 above, we have added some text to the Finalised Guidance to explain our approach in this area.

## 10 Other FCA publications

- 10.1 We will soon publish a Discussion Paper exploring how we and the industry can work together to deliver information to consumers about the products or services they have bought or are thinking of buying in smarter and more effective ways.

To drive progress, and linked with Project Innovate<sup>21</sup>, we are also inviting stakeholders, from across the financial services industry, consumer groups and other industries and sectors, to engage in this debate now and get in touch to share:

- their research and broad ideas for improving the effectiveness and delivery of information to consumers about products or services. We are interested in all potential ideas particularly those that take advantage of technological developments
- ideas they are currently testing or are simply considering, and
- ideas that have been effective in other areas of their business or that have worked in other sectors or abroad

We also want to test practical ideas for alternative approaches to communicating with consumers. Our [website](#) has further details. Stakeholders can send any ideas, questions or requests for an informal discussion to [disclosuretesting@fca.org.uk](mailto:disclosuretesting@fca.org.uk).

- 10.2 In our Finalised Guidance on 'Retail investment advice<sup>22</sup>: Clarifying the boundaries and exploring the barriers to market development', we discuss the role of social media in sending messages to more than one customer or potential customer, and when such messages might constitute a personal recommendation. We assess this in relation to the target audience, and the content of the message, but for more detail, see FG15/1.

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<sup>21</sup> [www.fca.org.uk/firms/firm-types/project-innovate](http://www.fca.org.uk/firms/firm-types/project-innovate)

<sup>22</sup> [www.fca.org.uk/your-fca/documents/finalised-guidance/fg15-01](http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg15-01)