Guidance Consultation: Financial Promotions on Social Media

BSA Response

Restricted
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Building Societies Association

Introduction

The Building Societies Association (BSA) represents all 42 building societies, as well as 7 larger credit unions. Building societies serve almost 26 million consumers across the UK and have total assets of over £500 billion. Together with their subsidiaries, they have helped over 3.6 million families and individuals to buy a home with mortgages totalling over £370 billion, representing 23% of total mortgage balances outstanding in the UK. They are also helping over 23 million people build their financial resilience, holding over £362 billion of retail savings, accounting for 19% of all cash savings in the UK. Building societies account for 41% of all cash ISA balances. With all of their headquarters outside London, building societies employ more than 51,500 full and part-time staff. In addition to digital services they operate approximately 1,300 branches, holding a rising share of financial services branches in local communities.

Key points

The BSA welcomes the FCA consultation on financial promotions in social media. Seven years since its last guidance was issued, it is long overdue, and we agree entirely that poor quality financial promotions on social media can lead to consumer harm due to their wide reach and the complex nature of financial services.

The guidance consultation raises a number of questions with us, as follows:

1. **Application of existing regulatory requirements:** Is it appropriate for the FCA to simply seek to clarify the application of existing rules to a relatively new media's use in the marketing of financial services? Instead, the FCA should consider whether it may be more appropriate to take a more fundamental look at its own requirements around financial promotions as a whole, and their application/relevance/workability on social media.

2. **Potential unforeseen consequences:** We are concerned at the potential impact of the guidance on a firm's ability to effectively promote products and services via social media – particularly the channels of choice for news and information for increasing parts of the population, especially younger consumers of financial services. When taken alongside the existing raft of regulation regarding financial promotions, could the guidance have unforeseen consequences? By removing the opportunity, or making it more difficult for properly regulated and responsible financial services firms to effectively promote their products and services through these channels, the door could be left open for less scrupulous organisations to step in. Is the FCA satisfied that it has fully considered the range of unforeseen consequences from both its explicit guidance and implied stance?

3. **Products' suitability for promotion on social media:** Are there specific products that the FCA considers inappropriate for marketing or promoting via social media? A couple, such as debt counselling, are identified in the consultation. If there are other products about which the regulator has concerns, we believe that the FCA should take this opportunity to specify them. This would leave users of social media in no doubt that if they did see advertising in relation to those products, that it was not legitimate, could be misleading and encourage them to take more care. This approach would also align with the reasoning behind, for example, the government's current consultation on a ban on cold calling in financial services, and give certainty to consumers and firms alike. On the flip side, if there are products and services that the FCA considers

are/could be suitable for promotion via social media, why not specify them? Again the FCA should consider carefully whether banning or deterring promotion of specific products or services via social media channels contributes to creating pockets or areas of financial exclusion among those parts of the population that rely substantially on social media channels for their news and information needs.

4. **Claims Management Companies:** It is very clear that the requirements extend to the activities of Claims Management Companies. How does the FCA intend to ensure that other regulators of these businesses enforce and regulate with the same rigour that the FCA should display?

Further comments/questions

5. **Finfluencers:** We agree with the FCA's general comments in relation to Finfluencers, and that there should be a greater level of control/accountability, that they should think carefully about their actions and properly understand their obligations. While the consultation makes this point, it does not elaborate on how the FCA intends to make sure that Finfluencers are indeed aware of FCA requirements. It would be helpful to understand how the FCA intends to raise levels of awareness among Finfluencers.

   The guidance also states that "*firms that use influencers to communicate financial promotions on social media should take appropriate steps to ensure any such influencer understands the product or service they are promoting and is aware of the relevant rules*." Does the FCA have any views on what appropriate steps might be? Further guidance on this/examples could be helpful to firms.

6. **Targeting and evidencing reduction in harm:** The FCA states that the guidance *"aims to reduce the number of illegal and non-compliant financial promotions on social media through clarifying our expectations for firms as well as helping unauthorised persons to navigate the financial promotion perimeter"*. While we agree that in clarifying the expectations on firms, the numbers ought to reduce, it is worth considering the following:

   a. Does the FCA have accurate figures on the number of illegal and non-compliant financial promotions currently? If not, how will the success of this aspect be measured?
   b. Are there certain types of product in which the FCA has seen greater numbers of illegal or non-compliant promotions? If so, the FCA could consider taking action beyond simply issuing this guidance for those areas of the market/products (the consultation mentions, for example, buy now pay later, and crypto assets).
   c. Helping unauthorised persons "navigate" the perimeter is a worthy ambition. We also believe, however, that more targeted action would help to ensure that unauthorised persons are more likely to be aware of the activities that are regulated and the consequences of failing to act in the required manner. That in turn would help reduce breaches further. We would expect the FCA to take strong action where it sees unauthorised firms or individuals promoting financial services illegally or in a non-compliant manner on social media.

7. **Sustained period:** The FCA makes the point at paragraph 19 of the draft guidance that to meet their "*expectations regarding prominence, firms should aim to display the key information about risk upon a consumer's first interaction with the promotion and the warning should be displayed for a sustained period*". Clarity is sought on what is meant by "sustained period". For example, is the FCA's expectation that what is a sustained period on one form of social media would not be considered as such on others?

8. **Signposting and image advertising:** Paragraph 20 of the draft guidance suggests that rather than signposting to additional information, image advertising may be more appropriate. Linked to point 3 above, if the FCA has particular concerns, it would be helpful if these could be specified, and if that is not possible, then the guidance could be extended to include examples of when the FCA considers that that could be appropriate.

9. **Shortened risk warnings:** Paragraph 32 of the draft guidance states that "*Where our rules allow shortened risk warnings, firms should ensure the shortened clause is clearly visible, and the full warning is included after click-through*." Linked to point 1 above, does the FCA have any plans to review the circumstances where a shortened risk warning is appropriate rather than simply regulate on the basis that its current rules and requirements are right in the context of evolving social media use? Again, as stated above, is a more root and branch review of the regulatory regime required instead, to ensure that consumers are not prevented from hearing from legitimate, well controlled businesses through social media channels?

10. **Risk Warnings:** The table on page 19 of the draft guidance includes reference to the inclusion of risk warnings. In relation to these:

    a. Has the FCA considered how practical it is to display the risk warning on every slide on a carousel platform such as Instagram? This seems particularly onerous.
    b. The FCA suggests displaying the risk warning for the full duration of a short or long form video (Tiktok vs YouTube). Rather than making this the only option, and in light of the application of the overall requirements of the Consumer Duty on firms, it may be better to allow firms to take a more tailored approach.

11. **Online Platforms:** Paragraph 68 says that "*Online platforms need to consider how the financial promotion regime applies to them and ensure that they do not host illegal content. Platforms should consider whether their sites are suitable for promotions of certain high-risk products given their complexity. For example, some platforms have banned the promotion of binary options or other similar financial products*." What work is the FCA doing or has it planned with the OFT to address this where it has concerns over the advertising of particular products over social media?

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £481 billion, and account for 23% of the UK mortgage market and 18% of the UK savings market.