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FINANCIAL PRODUCTS, SERVICES AND INVESTMENTS

Background

The rules in this section largely draw attention to statutory regulation with which all advertisements must comply. Selecting the most relevant financial products or services normally requires consumers to consider many factors; short-form television and radio advertisements are not well-suited to communicating large amounts of detail. They are not, therefore, suitable formats for advertising especially high-risk or specialist investments or any financial products or services that are not regulated or permitted in the UK under the Financial Services and Markets Act 2000 (FSMA).

The ASA and BCAP Executive may seek advice from other regulators when investigating possible breaches of the BCAP Code. They will apply their usual standards to prevent misleading advertising (see Section 3: Misleading Advertising) and require significant exceptions and qualifications to be made clear (see rule 3.10).

On 1st April 2013, the Financial Services Authority was split into two new regulators: the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).

The FCA is the conduct regulator for the financial services industry and is also responsible for the prudential regulation of those financial services firms not supervised by the PRA (e.g. asset managers). It regulates conduct of business, including advertising, for investment products, including structured deposits where capital is subject to market risk. It also regulates the advertising of insurance, including the activities of insurance intermediaries (for example motor, home and travel insurers). It is responsible for the regulation of most first-charge mortgage lending and selling. Mortgages that are not regulated are those secured on non-UK land and business premises with less than 40% residential occupation. The FCA's financial promotion rules set out in Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) Chapter 3 in the FCA Handbook apply to Home Reversion Plans, sale and rent back business and qualifying credit promotions as defined under the Financial Services and Markets Act (Financial Promotion) Order 2005 (as amended) (FPO) and the FCA Handbook glossary. The rules in MCOB 3 do not apply to Home Purchase Plans, with the exception of the "clear, fair and not misleading" standard and some relevant guidance detailed in MCOB Chapter 2.

Unsecured consumer credit or consumer hire, other forms of secured consumer credit and some other credit-related activities are also regulated by the FCA under FSMA, the Consumer Credit Act 1974 (as amended), the Consumer Credit Act 2006 and the FCA's Consumer Credit sourcebook (CONC) CONC Chapter 3 requires financial promotions concerning consumer credit, among other more detailed requirements, to be "clear, fair and not misleading".

The FCA regulates the activity of accepting deposits from banking customers in the UK under the Banking Conduct Regime, which applies the FCA's Principles for Businesses, the conduct of business requirements of the Payment Services Regulations (PSRs) and the Banking Conduct of Business sourcebook (BCOBS). BCOBS Chapter 2 states that, when designing a financial

promotion, a firm may find it helpful to take account of the British Bankers' Association/Building Societies' Association Code of Conduct for the Advertising of Interest Bearing Accounts. The FCA Handbook requires financial promotions to be "fair, clear and not misleading".

The PRA, a subsidiary company of the Bank of England, is responsible for the prudential regulation of banks, building societies and credit unions (collectively 'deposit-takers'), insurers and major investment firms. It will promote the safety and soundness of these firms, seeking to minimise the adverse effects that they can have on the stability of the UK financial system; and contribute to ensuring that insurance policyholders are appropriately protected.

Definitions

In this section, unless otherwise stated, the terms "financial promotion", "authorised person", "qualifying credit" and "regulated activity" have the same meanings as in FSMA and FPO. The FSMA definition of a financial promotion is broad and includes, for example, advertisements for deposits and insurance products.

Under FSMA, a financial promotion is "an invitation or inducement to engage in investment activity" that is made "in the course of business" and is "capable of having an effect in the UK." That broad definition captures all promotional activity, including traditional advertising, telephone sales and face-to-face conversations, in relation to all products and services regulated by the FCA. Under FSMA, "investment activity" does not cover only conventional investments; it includes deposits, home finance transactions (regulated mortgages, home purchase plans and home reversion plans), unsecured consumer credit or consumer hire agreements, other forms of secured consumer credit or hire and credit-related activities, such as credit broking, debt counselling, debt adjusting and most insurance, including some advertisements by insurance intermediaries (see the Insurance Conduct of Business sourcebook - ICOBS).

A "specialised financial channel or station" is an Ofcom-licensed channel or station whose programmes, with few exceptions, are likely to be of particular interest only to business people or finance professionals.

In this Code, "spread betting" and "contract for differences" have the same meanings as in the glossary to the FCA Handbook.

Rules

- 14.1 Radio Central Copy Clearance** Radio broadcasters must ensure advertisements for consumer credit, investment and complex financial products and services are centrally cleared.
- 14.2** Broadcasters are responsible for ensuring that advertisements carried by them comply with all the relevant legal and regulatory requirements. Broadcasters might need to seek legal advice if an advertiser claims an advertisement should

be considered:

- 14.2.1 not to be a financial promotion or
 - 14.2.2 to be a financial promotion that is not required to be communicated or approved by an authorised person (because it is subject to an exemption under the FPO). Advice, or general advice from the FCA, might be required on compliance with the FCA Handbook. The FCA does not pre-vet or advise on the compliance of proposed financial promotions with FSMA. For more information, visit the financial promotions pages of the FCA website (www.fca.gov.uk) and see the FCA Handbook, especially: the Consumer Credit sourcebook (CONC) Chapter 3; the Conduct of Business sourcebook (COBS) Chapter 4; the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) Chapter 3; the Insurance: Conduct of Business sourcebook (ICOBS) Chapter 2.2; and the Perimeter Guidance Manual (PERG) Chapter 8.
- 14.3 Advertisements for financial services that are broadcast exclusively to audiences in EU Member States other than the UK or are not subject to the FCA's financial promotion rules need not comply with this section. Instead, they must comply with the laws and regulations of the relevant Member States.
- 14.4 Financial promotions or other advertisements for regulated activities may be broadcast if:
- 14.4.1 communicated by an authorised person
 - 14.4.2 approved or issued by an authorised person or an appointed representative of an authorised person who, to the broadcaster's satisfaction, has confirmed that the final recorded version of the advertisement complies with the FCA's financial promotion rules or
 - 14.4.3 exempt under the FPO. An advertisement by a general insurance intermediary need not be approved by an authorised person if it is a generic promotion and exempted by the FPO. (That is usually if the advertisement does not identify an insurer, insurance intermediary or product; so it will usually apply if the financial promotion refers generally to product types.)
- 14.5 These categories of advertisement may be broadcast on specialised financial channels, stations or programming only:
- 14.5.1 advertisements for the acquisition or disposal of derivatives, warrants or other transferable securities (such as shares) that are not on the Official List of the FCA or admitted to trading on a Regulated Market in the UK or other

EEA State (as defined by the Markets in Financial Instruments Directive)

- 14.5.2 advertisements for spread betting, as an investment only. Spread betting advertisements may be advertised on interactive or additional TV services (including text services). They must comply with the gambling rules (see Section 17: Gambling). The advertised products or services should be available only to clients who have demonstrated through a pre-vetting procedure compliant with the FCA's appropriateness test that they have relevant financial trading experience
- 14.5.3 advertisements for contracts for differences (except spread betting), provided the products are available only to clients who have demonstrated through an appropriate pre-vetting procedure that they have relevant financial trading experience.
- 14.5.4 advertisements for investments not regulated or permitted under FSMA. An advertisement that implies, for example, that a collectors' item or other unregulated product or service could have investment potential (in the colloquial sense) would normally be unacceptable.
- 14.6 Unless they are obviously addressed to a specialist audience and shown either on specialised financial channels or stations or in breaks in relevant financial programmes, advertisements subject to this section must be considered to be addressed to non-specialist audiences. No specialist knowledge should normally be required for a clear understanding of claims or references. For example, exceptions, conditions or expressions that would be understood by finance specialists must be avoided or explained if they would be unfamiliar to the audience.
- 14.7 References to interest payable on savings are acceptable, subject to these conditions:
 - 14.7.1 they must be factually accurate at the time of broadcast and the advertisement must be modified immediately if the rate changes
 - 14.7.2 advertisements quoting a rate must use the Annual Equivalent Rate (AER) and the contractual rate as set out in the British Bankers' Association and Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts and advertisements should comply with all the provisions of that code
 - 14.7.3 if conditions apply to calculations of interest and might affect the sum received, the advertisement must refer to the conditions and how they can be accessed

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- 14.7.4 advertisements quoting a rate must make clear whether it is gross or net of tax, or tax-free, but do not need to explain those expressions
 - 14.7.5 where the interest rate is variable, this must be stated
 - 14.7.6 if the investment returns of different types of savings products are compared (for example, a unit trust and a bank deposit), significant differences between the products must be explained.
- 14.8 Subject to legal requirements, reference to specific sums assured in life insurance advertisements must be accompanied by all relevant qualifying conditions; for example, age and gender of the assured at the outset of the policy, period of policy and amount and number of premiums payable.
- 14.9 References to income tax and other tax benefits must be properly qualified, clarifying their meaning and making clear, if relevant, that the tax treatment depends on the individual circumstances of each person and could be subject to change in future.

Lending and credit

- 14.10 Advertisements for paper or electronic publications (for example, periodicals, books and text services) must not recommend a specific investment offer.
- 14.11 The advertising of unsecured consumer credit or hire services by consumer credit businesses or consumer hire businesses and / or credit brokering businesses or related credit services, such as debt counselling or debt adjusting is acceptable only if the advertiser complies with the financial promotions requirements imposed by FSMA and the FCA's rules set out in Chapter 3 of CONC.. The requirements for financial promotions set out in Chapter 3 of CONC do not apply: (a) where the credit is available only to a company or other body corporate (such as a limited liability partnership); (b) where a financial promotion is solely promoting credit agreements or consumer hire agreements or P2P lending agreements for the purposes of a customer's business; (c) to a financial promotion to the extent that it relates to qualifying credit or (d) it falls within the definition of an excluded communication as set out in the FCA's handbook. If the applicability or interpretation of these rules or provisions is in doubt, advertisers may contact the FCA. The FCA does not check financial promotions for compliance with the CONC rules before they are published. Such advertisements that involve distance marketing must also comply with the Financial Services (Distance Marketing) Regulations 2004 (as amended). Other distance-marketing financial advertisements are covered by

the FCA Handbook.

- 14.12 Advertisements for mortgages and re-mortgages are normally financial promotions under FSMA and must comply with the requirements imposed by FSMA and MCOB.
 - 14.12.1 Advertisements for most loans secured by a second charge are financial promotions, and special note should therefore be taken of the requirements of MCOB 3A.
 - 14.12.2 Advertisements for some mortgages might also have to comply with the provisions of COBS (for example if an investment product is being sold alongside a mortgage).

Direct remittance

- 14.14 Advertisements on television or radio are unacceptable if they directly or indirectly invite the remittance of money direct to the advertiser or any other person without offering an opportunity to receive more information; an intermediate stage at which more information is supplied is mandatory.
- 14.15 Advertisements on Ofcom-regulated text services that invite the direct remittance of money are acceptable for the categories listed in rule 14.4, but not those in rule 14.5.