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FCA's Introduction of a Gateway for Firms to Approve Financial Promotions



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On September 12, 2023, the UK's Financial Conduct Authority ("FCA") published Policy Statement PS23/13 (the "Policy Statement") setting out its final position on the introduction of a new gateway for firms that approve financial promotions. This Policy Statement and final position follows from the FCA's Consultation Paper CP22/27 published in December 2022.

This initiative aims to bolster consumer protection and strengthen oversight and accountability in the UK financial promotion approval process and acknowledges the importance of maintaining high standards in financial promotions to protect consumers.

Financial Promotions

In the UK, financial promotions are regulated under section 21 of the Financial Services and Markets Act 2000 ("FSMA"), which, in the course of business, restricts a person from communicating an invitation or inducing to engage in an investment activity (that is, make or issue a financial promotion) unless:

- (i) that person is authorised by the FCA or the Prudential Regulation Authority in accordance with the FSMA;
- (ii) the content of the communication has been approved by an authorised person in accordance with the FCA rules; or
- (iii) the communication is covered by an exemption.

Before an authorised person approves a financial promotion either for itself or for communication by an unauthorised person, it must confirm that the financial promotion complies with the FCA's financial promotion rules and ensure that the

financial promotion is fair, clear and not misleading. However, there is currently no requirement for a copy of the financial promotion to be submitted to the FCA.

The Gateway for Approval

The Policy Statement and corresponding amendments to section 21 of the FSMA introduces significant changes to the current process in which authorised persons approve financial promotions in the UK for communication by an unauthorised person by creating an online approval gateway operated by the FCA. This move comes in response to concerns about the quality and accuracy of advertisements related to financial products and services.

Once the new gateway comes into effect, all authorised persons that want to continue to approve financial promotions for unauthorised persons will need to apply to the FCA for permission to do so (subject to certain exemptions). They will also be required to undergo rigorous screening checks to ensure their suitability for the role. This includes evaluating their competence and ability to carry out their duties effectively.

It will not affect authorised persons that only approve their own financial promotions for communication by an unauthorised person, the financial promotions of their appointed representatives for the regulated activities they have accepted responsibility for, or the financial promotions of unauthorised persons within their corporate group.

Firms need to consider whether there is a need for them to apply to continue to approve financial promotions for unauthorised persons.

Timing

While the new legislation will not come fully into force until February 7, 2024, the FCA intends for firms to be able to submit applications for permission to approve financial promotions through the new gateway from November 6, 2023.

Firms that have not applied to the gateway by February 6, 2024 will no longer be able to approve financial promotions (subject to exemptions).

Firms that apply to the gateway during the initial application period (*i.e.*, from November 6, 2023 to February 6, 2024) will be able to continue approving financial promotions for unauthorised persons while the FCA determines their application.

Firms that do not apply to the gateway during the initial application period that want to approve financial promotions in the future must apply to the FCA for permission to approve using a variation of permission form. However, they will not be able to approve financial promotions until the FCA has determined their application as successful.

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