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AFM Response to FCA GC12/2, Financial promotions on social media

1. I am writing in response to this consultation paper, on behalf of the Association of Financial Mutuals. The objectives we seek from our response are to:

    - Comment on the proposals for updated guidance.

About AFM and its members

2. The Association of Financial Mutuals (AFM) represents insurance, as well as healthcare and indemnity providers that are owned by their customers, or which are established to serve a defined community (on a not-for-profit basis). Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 32 million people in the UK and Ireland, collect annual premium income of over £22 billion, and employ nearly 30,000 staff[1].

3. The nature of their ownership and the consequently lower prices, higher returns or better service that typically result, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of continued support and promotion. In particular, FCA and PRA are required to analyse whether new rules impose any significantly different consequences for mutual businesses[2] and to take account of corporate diversity[3].

[1] ICMIF and AFM, 2022: https://financialmutuals.org/wp-content/uploads/2022/10/UK-Market-Insights-2022.pdf
[2] Financial Services Act 2012, section 138 K: http://www.legislation.gov.uk/ukpga/2012/21/section/24/enacted
[3] http://www.legislation.gov.uk/ukpga/2016/14/section/20/enacted

AFM comments on the proposals

4. We welcome the opportunity to respond on this guidance consultation. The nature, volume and impact of financial promotions through social media has changed enormously since FCA guidance was first introduced in 2015. Whilst the general principles of clear, fair and not misleading remain, it is important that the guidance reflects the market today.

5. This includes of course the introduction of the Consumer Duty, which presents an extra onus on firms to ensure they understand the risks of foreseeable harm to prospective customers. On social media the nature of possible harm inevitably includes that a decision is made on incomplete or unbalanced information. The guidance offers a helpful reminder that 'image advertising' is likely to be exempt from financial promotion rules (paragraph 12). In cases however where this is not the case, we consider that more thought should be given to the prominence of risk warnings.

6. We agree that the rapid rise of financial influencers creates a new risk to young and vulnerable consumers, to whom those influencers are likely to promote specific financial products or services. We welcome additional guidance that avoids the risk that unauthorised influencers provide advice.

7. We have commented on the questions raised in the consultation, and would welcome the opportunity to discuss further the issues raised by our response. We are happy to be included in the published list of respondents.

Yours sincerely,

Martin Shaw
Head of Policy
Association of Financial Mutuals

AFM response to specific questions raised in the consultation

Q1: *Do you agree with our approach to the prominence of required information in various social media settings? Please explain your answer, highlighting any other issues that would be useful to consider.*

The guidance indicates that "risk warnings are more effective when viewed at the time of or just before the communication of the promotion" (paragraph 30). This is based on research for OP/26, produced in 2017, and whilst this provided a useful overview of behavioural science, it focused on traditional forms of financial promotion. We would encourage FCA to undertake research today, to understand how people respond to issues such as prominence and stand out in social media.

It would be useful to test the effectiveness of some of the good practice examples provided in the guidance. We are concerned that some of these are not likely to have a positive impact on the consumer: for example, figure 9 consists of a series of risk warnings with little or no promotional messages, and we would be interested to know what impact this might have on a prospective consumer, and what action it might lead them to take.

As an alternative to FCA research, under Consumer Duty rules, firms will be undertaking more rigorous consumer research, and may be able to provide some real-world evidence of outcomes.

Research might indicate that for many financial companies, it would be difficult to produce anything other than image advertising for social media, and this might have a detrimental impact on the sale of some key products. For example, the range of risk warnings that might accompany a pension investment promotion on social media may discourage people from taking action, when it would often be in their best interests to do so.

To illustrate, when the government launched the Child Trust Fund, it advocated that a stocks and shares *stakeholder account* should be the default. However, setting out the downside risks meant that in many cases the adult/ parent failed to act, or elected for a sub-optimal deposit-based account instead.

There may be other cases where the guidance presents difficulties for very-well intentioned campaigns to support consumers. Many mutuals adopt long-form video, via YouTube and elsewhere, as part of their communications strategy. The guidance on video usage is restricted currently to one row in Table 1, and indicates that risk warnings are "displayed clearly and prominently on the screen *for the duration of the video".* We would like to see more guidance on this topic: for example, would FCA's expectation be that this applies to videos like Royal London's well-regarded "Cost of Living Room"? If so, how might this change consumer behaviour?

Q2: *Do you have any comments on our proposed expectations under the Consumer Duty for communications on social media? Please highlight any other issues it would be useful to consider.*

We agree with the approach set out. Under Consumer Duty rules, firms are expected to undertake more consumer testing on products and their promotion, and this should include how they use social media as part of their sales strategy. The Consumer Duty retains the use of 'clear, fair and not-misleading', and this is generally taken to ensure a proper balance, between risk and reward, on financial promotions, but that is not evident in some of the examples of compliant advertising used (e.g. Figure 9), and we welcome more clarity from FCA on how it expects firms to achieve this.

We agree that for some products, social media can helpfully signpost consumers to other channels to find more information.

We note that the tense used in paragraph 38 should now be amended.

Q3: *Do you agree with our approach to affiliate marketing? Please explain your answer, highlighting any other issues that would be useful to consider.*

We agree that the firm retains responsibility for how their affiliate marketeers communicate financial promotions.

Q4: *Do you have any comments on the use of shared social media profiles between UK and non-UK entities? Please highlight any issues that would be useful to consider.*

We agree with the guidance as stated in paragraph 26 and 27. In particular we encourage FCA to explore to what extent non-UK entities are issuing promotions that can be seen by UK consumers, and how it ensures these comply with all relevant UK requirements.

Q5: *Do you have any comments on the proposed guidance we have set out on the financial promotion perimeter? Please highlight any other issues that would be useful to consider.*

We note that Chapter 3 on influencers includes a range of examples of influencers acting 'in the course of business'. This is helpful, but it would be valuable to see some examples when this is not the case.

Q6: *Do you have any additional comments on our proposed guidance or think there are any other topics we should consider?*

No.