

Chapter 4

Influencers and social media platforms

What is an influencer?

- 4.1** We've seen harm occurring from influencers communicating legal but non-compliant financial promotions (where promotions have been approved by an appropriate authorised person) and illegal financial promotions (where promotions have not been appropriately approved for the purposes of s21). The way influencers work varies. Some influencers have direct relationships with firms and others promote on their own initiative. Some of the different kinds of influencer business models are outlined below.
- 4.2** First, there are the archetypal celebrity influencers who are not associated with financial services but have large follower groups. These influencers are not financial experts but may be compensated for using their digital presence to promote companies that have a business interest in persuading people to make certain financial decisions.
- 4.3** Second, there are financial influencers known as 'finfluencers' who may not be authorised by the FCA to provide financial advice yet share their opinions and recommendations on digital platforms. Consumers show high levels of trust in finfluencers, but their advice can sometimes be misleading.
- 4.4** Third, there are forums and discussion groups on financial topics that function as spaces in which individuals exchange information and share knowledge. These forums can be both public (such as Reddit) or private (such as Telegram). Sometimes these groups are set up to encourage participants to register for a specific course or are used by participants to encourage others to engage in personal chats outside the platform where they sell financial advice or financial products.
- 4.5** All segments of the influencer market are capable of communicating a financial promotion, and whether a communication falls within the scope of s21 is not based on the size of an influencer's following.
- 4.6** The FCA has partnered with the ASA to create an [infographic](#), which is designed to help influencers make an informed choice when they are approached to promote a financial product or service. This infographic encourages influencers to consider whether they are the right person to promote a product or service as well as highlighting when they may be at risk of communicating financial promotions illegally.

Figure 13: FCA – ASA infographic to help influencers who have the opportunity to promote a financial product



Other policies to be aware of

- 4.7** Firms and influencers should be aware of wider regulation on advertising online set out by the ASA. The ASA recently published an update on their expectations of influencer advertising. If an influencer receives payment or any other incentive from a brand, or they are otherwise personally or commercially connected to the brand, any content featuring or referring to the brand will need to be obviously identifiable as advertising. The ASA also has guidance on advertising delayed payment services (unregulated BNPL). More broadly, firms and influencers should make sure they have familiarised themselves with the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing (the CAP code).
- 4.8** Influencers should also be mindful of the Market Abuse Regulation (MAR) if they are producing or providing investment recommendations on social media. Under article 20 of MAR, anyone recommending or suggesting an investment strategy must make sure information is objectively presented and disclose any conflicts of interest. People who repeatedly propose investment decisions and who present themselves as having financial expertise and experience are required to disclose more detailed information. Further information can be found in COBS 12.4, on our website, and in our technical standards.

Social media platforms

- 4.9** Firms and influencers using social media to communicate financial promotions should be aware of social media platforms' own policies relating to advertising on their platforms. There may be additional requirements or restrictions beyond what is set out in this Guidance. Firms and influencers should check a social media platform's own policy before using the service to communicate a promotion.
- 4.10** Online platforms need to consider how the financial promotion regime applies to them and ensure that they do not host illegal content. This includes removing this when alerted to its presence. Platforms should also 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.
- 4.11** Additionally, the Online Safety Act, among other things, places duties on online services, including but not limited to search engines and social media sites, to put in place proportionate systems and processes to mitigate the risks to users posed by illegal content on their sites, including illegal financial promotions. This new regime will be overseen by Ofcom. We continue to work closely with Ofcom to create a shared understanding of how platforms' obligations under the regime will interact with financial promotion legislation.

Firms and their responsibilities as approvers of financial promotions

- 4.12** Unauthorised influencers who are communicating financial promotions in the course of business without s21 approval from an appropriate authorised person are likely to be communicating an illegal financial promotion, unless the promotion is exempt under the FPO. An appropriate authorised person who approves a promotion would not necessarily be responsible if the contents of the promotion are changed by an unauthorised entity and communicated without permission.
- 4.13** Firms approving the financial promotions of influencers should consider the influencer's audience demographics and whether they are likely to have an audience with characteristics of vulnerability. For example, it would be inappropriate for investment firms to work with influencers whose content centres around tips on how to quickly get out of debt, without regard for the nature of the influencer's audience.
- 4.14** Firms that approve investment-related financial promotions (including for HRIs) are reminded that strengthened requirements (in COBS 4.10) apply to such approvals. Under the ongoing monitoring requirement, firms are required to play an active role in ensuring approved promotions remain compliant for their lifetime. In support of this requirement, they are also required to obtain attestations of 'no material change' for the approved promotion every 3 months.
- 4.15** Firms approving the communication of influencers' investment-related promotions should ensure they are playing an active role in ensuring the promotion remains compliant for its lifetime. They should also be mindful of their choice of influencer when communicating financial promotions. We've seen firms using influencers that may not be appropriate for the promotion of complex products such as CFDs. Firms should ensure the influencer understands the products or services they are promoting and how to be compliant in their promotions on social media.

'In the course of business'

- 4.16** We've seen cases of influencers communicating financial promotions without realising they fall within the perimeter of s21. This is often because firms and influencers assume there must be direct compensation for an influencer's post to be subject to the financial promotion restriction. We've also seen examples of unauthorised persons communicating financial promotions in chatrooms without realising that any underlying commercial interest could mean the promotion is subject to the s21 restriction.
- 4.17** We've seen financial promotions be communicated on chatrooms such as Reddit and Telegram, often using memes to hype up specific investments. Users of chatrooms or forums should be aware that financial promotions on these channels will still be subject to the financial promotion restriction. This applies to both public and invitation-only platforms.

- 4.18** Section 21 provides that a person must not communicate an invitation or inducement to engage in investment (or claims management) activity 'in the course of business'. We consider that this requires a commercial interest on the part of the communicator. This does not necessarily have to be a direct interest and, in our view, is intended to capture any level of commerciality. Where an influencer operates on a commercial basis and they communicate a financial promotion alongside their other content, in our view that is likely to be enough for the influencer to be considered to be communicating the promotion in the course of business.
- 4.19** We've set out a non-exhaustive list of examples below to explain where influencers and unauthorised persons communicating financial promotions would, in our view, likely be acting 'in the course of business' within the meaning of s21. These scenarios purely look at the business test, but firms and unauthorised persons should consider all elements of s21 when considering whether communications are subject to the financial promotion restriction.

An influencer is directly compensated by a firm and issues posts encouraging followers to use the firm's services.

- 4.20** An influencer would likely be acting 'in the course of business' because they are employed or recruited to promote the services of the firm and therefore the requirement that there is 'a commercial interest' on the part of the influencer, as set out in PERG 8.5.2G, would be satisfied.

An influencer is not currently employed by a firm but is promoting a firm's services to generate revenue from a relationship with the firm in the future.

- 4.21** An influencer would likely be acting 'in the course of business' because they have a commercial interest in promoting the firm's services as they are communicating in anticipation of future revenue from a relationship with the firm. As set out in PERG 8.5.2G: (i) a person who is carrying on any business may satisfy the 'in the course of business' criterion if the promotion is in the course of business and (ii) the commercial interest does not have to be a direct interest.

An influencer is promoting the services of a firm on a social media platform in a bid to acquire more views and attention for their content. They are then directly compensated by the social media platform for the views they acquire.

- 4.22** An influencer would likely be acting 'in the course of business' because the promotion is aimed at acquiring more views, attention, and 'traffic' for which they will be directly compensated by the online platform, which would constitute a commercial interest.

An influencer is promoting the services of a firm but only to try to acquire more followers and likes. They will then use the increased followers and likes to ask for a higher fee in future brand deals with firms.

- 4.23** An influencer would likely be acting 'in the course of business' because their promotion of the firm's services is to increase their followers or likes, improve their brand and use that improved brand to negotiate higher fees in future commercial deals. This constitutes a commercial interest. The interest does not need to be direct and therefore the 'future seeking' aspect of this scenario does not prevent it from being 'in the course of business.'

Person A is promoting chatroom B which they run to promote investment products. They have a commercial relationship with firm C who sells investment products.

- 4.24** Person A would likely be acting 'in the course of business' because there is a commercial interest on their part in promoting both chatroom B and they have a commercial relationship with firm C. This would be true even if person A is not promoting firm C's products in the chatroom or otherwise. Depending on the circumstances, the promotion of the chatroom alone may or may not be an invitation or inducement to engage in investment activity.

Person A is promoting investment products on a social media platform to lead people to a chatroom centred around investing that they run or are involved in running. They gain a monetary benefit from the success of the chatroom, for example by selling courses about investing.

- 4.25** Person A is likely to be acting 'in the course of business' because there is a commercial interest on their part to promote products to attract people towards a specialist investments chatroom they run or are involved in running. Depending on the circumstances, the promotion of the investment products in this example may or may not be an invitation or inducement to engage in investment activity.

An influencer promotes the services of a firm through an affiliate link. When a consumer clicks the link and purchases the product the influencer will be directly compensated for their purchase.

- 4.27** An influencer would likely be acting 'in the course of business' because they are promoting the firm's affiliate link and their services to receive direct compensation when the consumer clicks or purchases the product. Therefore, the requirement that there is 'a commercial interest' on the part of the influencer, as set out in [PERG 8.5.2G](#), would be satisfied.