

Chapter 3

Marketing strategies

The Consumer Duty

- 3.1** The Duty came into force on 31 July 2023 for products and services that are on sale to new customers or available for renewal to existing customers. It will apply to closed products from 31 July 2024. The standards under Principle 12 and PRIN 2A, including the cross-cutting rules, apply to communications and financial promotions on social media. This applies whether the firm has a direct relationship with the customer or not, including where a firm approves a financial promotion. The Duty sets higher standards than our basic expectations under Principle 7. Therefore, although all communications (including financial promotions) are required to be fair, clear and not misleading, compliance with these requirements by themselves will not be sufficient to ensure compliance with the Duty.
- 3.2** Firms advertising using social media must consider how their marketing strategies align with acting to deliver good outcomes for retail customers. Firms' communications should support and enable informed decision-making, equipping consumers with the right information in a timely way. This goes beyond ensuring that an individual promotion supports consumer understanding by providing balanced information about the benefits and risks in a way that is clear, fair and not misleading.
- 3.3** The Duty also requires firms to do things such as identify a target market and tailor their communications to account for the characteristics of their target market and the characteristics of the marketing channel used. This would include, for example, taking account of the features of different social media platforms. They should also ensure that their promotions are likely to be understood by the audience, utilising regular consumer testing where appropriate. [FG22/5](#) outlines examples of good and poor practice under the Duty that firms should refer to.
- 3.4** Confining promotions to a restricted target market on social media may be practically difficult. Where a promotion is designed only for a professional target market for example, it is not sufficient simply to include a disclaimer to the effect that the promotion is 'for professional investors only'. If firms are considering communicating promotions to a restricted audience on social media, they should carefully consider whether they're able to comply with applicable requirements, including the Duty. Firms should also carefully consider whether social media is appropriate for these communications if there's limited ability to control who sees the promotion, and if their distribution strategy might result in consumer harm.

- 3.5** We've seen consumers on social media be repeatedly bombarded by financial promotions from the same service or firm. Consumers with characteristics of vulnerability may be more susceptible on social media to the type of behavioural biases that excessive contact of an individual tries to exploit. We do not think this type of practice is acting in good faith, as required by the Duty (PRIN 2A.2.1). Firms should consider whether their marketing strategies are consistent with enabling good consumer decision making, as part of which we expect firms should not seek to exploit customers' behavioural biases. Firms should also ensure any use of advertising tools offered by social media platforms that allow them to target advertising is compliant with their obligations under the Duty, particularly the requirement to tailor communications to the characteristics of the target market.
- 3.6** Firms should regularly test, monitor, and adapt communications to support good consumer outcomes. This will be especially relevant as social media evolves and new features emerge that may impact consumer understanding. [FG22/5](#) provides examples of good and poor practice under the Consumer Duty related to monitoring and testing that communications are supporting consumer understanding.
- 3.7** We've published behavioural research that firms may find helpful when considering how to aid consumer understanding, including [OP23](#), [OP26](#) and [research notes on high-risk investments](#).
- 3.8** Firms should also reflect on the relevance of our sector-specific reviews to their social media promotion strategy. For example, consumer finance firms are reminded of the marketing expectations we outlined in our review of [relending by high-cost lenders](#).

Recipients sharing or forwarding communications

- 3.9** For third-party sharing, such as reposting a promotion, any breaches of our rules in the original communication are still the responsibility of the originating firm. Sharing or forwarding by a third party does not eliminate any original non-compliance.
- 3.10** There is a risk that sharing or forwarding itself creates non-compliance. For example, a communication that is intended for a professional investor is viewed by a retail customer. It is difficult to guard against communications being distributed beyond their target market on social media. So, firms should consider whether social media is an appropriate channel to promote products or services with a restricted target market.
- 3.11** If a firm shares a customer's social media post, whether that sharing amounts to the communication of a financial promotion will depend on the content and context of the social media post. This will be determined by whether it amounts to an invitation or inducement to engage in investment activity. The firm is responsible for compliance if it shares the post, even though the firm did not generate the original content of the communication. Firms may wish to review our existing guidance on communicating and its relevance to financial promotions in [PERG 8.6](#).

Unsolicited promotions

- 3.12** There are specific legal requirements when sending marketing through electronic media. Firms should be aware of the Privacy and Electronic Communications Regulations 2003 (PECR) and the Information Commissioner's Office [Direct Marketing guidance](#). The Government has also [consulted](#) on extending the current bans on 'cold calling' (unsolicited real-time promotions) for pensions and claims management firms to cover all consumer financial services and products.
- 3.13** Social media is often used for making unsolicited promotions. For such promotions and cold calling, we remind firms of our rules in [COBS 4.8](#) (cold calls and other promotions that are not in writing), [MCOB 3A.3.5](#) (prohibition on cold calls of qualifying credit, a home reversion plan or a regulated sale and rent back agreement), [CONC 3.10](#) (financial promotions not in writing), and [FPCOB 4.2](#) (funeral plans). A promotion by a tweet (for example) is not a real-time promotion within the meaning set out in the FPO. However, firms may wish to follow up promotions on social media with real-time promotions. In this context, being a 'follower' of a firm or 'liking' a firm's page or profile does not constitute 'an established existing client relationship' as required by the relevant Handbook provisions.
- 3.14** Whether a financial promotion is real or non-real time can have implications for the financial promotion rules that will apply. A financial promotion is likely to be non-real time if it is made or directed at more than one recipient in identical terms, creates a record which is available to the recipient at a later time, and is made by way of a system which in the normal course does not enable or require the recipient to respond immediately ([PERG 8.10](#)). This means promotions communicated by means of channels like live-streams or gaming streams are likely to be considered a non-real time promotion.

Approval and record-keeping

- 3.15** Firms must have an adequate system in place to sign off digital media communications, in line with the requirements of Senior Management Arrangements, Systems and Controls sourcebook (SYSC), [SYSC 3](#) and [SYSC 4](#). This sign-off should be by a person of appropriate competence and seniority within the organisation. Firms should also be aware of any sector specific requirements, for example those in [COBS 4.10](#).
- 3.16** Firms should also keep adequate records of any relevant communications, as outlined in [SYSC 9](#) and our sector specific sourcebooks. As well as helping to protect consumers, these records enable the firm to deal effectively with any subsequent claims or complaints. Firms should not rely on digital media channels to maintain records, as they will not have control over this. Social media platforms may refresh content from time to time, deleting older material.

- 3.17** The current sign-off and record-keeping provisions in our Handbook apply to digital (including specifically social) media in the same way as to print, broadcast and outdoor media. Beyond that, these issues are a question of risk management by the firm. Firms should consider the provisions in [SYSC](#). Risk management encompasses all relevant risks, including legal and reputational risk, as well as regulatory risk.

Affiliate marketing

- 3.18** Affiliate marketing is a common part of firms' marketing strategies. This is where a firm makes an agreement to pay commission to a person (who could be an unauthorised person) based on business generated from referrals. Firms should take proactive responsibility for how their affiliate marketers communicate financial promotions.
- 3.19** Where an affiliate marketer is communicating a financial promotion containing a firm's referral link without the firm having developed, created, or controlled the content of that communication, we may still consider that the firm is causing the communication to be made. The firm would be liable for the compliance of that financial promotion.
- 3.20** We've seen examples of firms lacking proper systems and controls to manage how their promotions are used on social media. Principle 3 requires firms to take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems. This Principle is supplemented by detailed requirements in SYSC for establishing and maintaining appropriate systems, controls, policies and procedures for ensuring compliance with a firm's regulatory requirements.
- 3.21** Firms that use affiliates, such as 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 relevant regulatory requirements. This includes taking appropriate steps to ensure that any influencers they use are not illegally communicating financial promotions. When considering if it is appropriate to engage a particular affiliate, firms should consider (among other things) whether that affiliate may alter their promotions, communicate unapproved promotions, or might carry on regulated activity in breach of the general prohibition in s19 FSMA.
- 3.22** Firms should consider how they can monitor the marketing actions of their affiliate partners to ensure good customer outcomes, and how many partnerships the firm can viably maintain before adequate monitoring is no longer possible. Firms should also be aware that specific ongoing monitoring requirements apply where a firm approves a financial promotion that is subject to the financial promotion rules in COBS 4 ([COBS 4.10.2R](#)). [FG22/5](#) provides guidance on our expectations when firms are working with unregulated entities in the distribution chain (particularly in paragraph 2.22). Table 2 below provides some examples of good and poor practices that we have seen in the systems and controls that firms have in place around their use of affiliates.
- 3.23** If an affiliate is not an authorised person, they will need to consider how they are complying with s21 in communicating financial promotions. They may also need to consider whether their activities are regulated for the purposes of the general prohibition in s19 FSMA. It is a criminal offence for a person to carry on regulated activity

in the UK unless they are authorised or exempt. An activity is regulated if it is of a type falling within the FSMA (Regulated Activities) Order 2001 (RAO) and is carried on by way of business. [PERG 2](#) contains detailed guidance on the regulated activity regime. For example, an affiliate marketer earning commissions by introducing prospective customers to an investment firm may need to consider whether that activity involves them carrying on regulated arranging activity by way of business. Whether or not a particular affiliate's activity is a regulated activity will depend on the nature of the affiliate's role. If they are carrying on regulated activity, they will need to consider how they do so legally.

- 3.24** In addition to this Guidance, firms and affiliate marketers should be aware of other standards and guidance that apply to their activities, such as the ASA's [guidance on online affiliate marketing](#).

Table 2: Examples of good and poor practices for the monitoring and oversight of affiliate marketers, such as influencers

Good monitoring and oversight practices	Poor monitoring and oversight practices
Having an affiliates policy, and one specific to the UK for firms with an international structure, and regularly updating the terms and conditions in light of new rules.	Leaving it to affiliates to ensure promotions are communicated legally and in compliance with our rules.
Monitoring promotions made by affiliates on an ongoing basis to ensure they remain compliant for their lifetimes.	Little or no ongoing monitoring of the compliance of promotions made by affiliates as required by COBS 4 .
Having oversight and control systems in place to ensure affiliates only communicate content prepared by the firm.	Control measures that solely focus on ensuring a particular communication is compliant and do not consider wider issues such as affiliates amending content or communicating their own promotions.
Terminating affiliate relationships where there are continued non-compliance issues.	Having many affiliate partnerships combined with inadequate controls and few staff to ensure compliance.