

11 September, 2023

Financial promotions on social media  
Financial Conduct Authority  
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London E20 1JN

Submitted by e-mail to: [gc23-2@fca.org.uk](mailto:gc23-2@fca.org.uk)

**CFA Institute and CFA UK joint response to FCA’s guidance consultation: Financial promotions on social media (GC23/2)**

CFA Institute and the CFA Society of the UK (CFA UK) are pleased to respond jointly to the FCA’s consultation on financial promotion on social media. In line with CFA UK’s purpose, we aim to highlight relevant issues to help the investment community to serve its stakeholders well and to build a more sustainable future. Investor protection, professional excellence, transparency and information fairness are by definition core parts of the CFA Institute investment ethos. Our membership is bound by a common commitment to the [Code of Ethics and Standards of Professional Conduct](#)<sup>1</sup> that requires all members and candidates to *‘place their clients’ interests before their employer’s or their own interests’* which is completely aligned with the thrust of the FCA’s new Consumer Duty.

CFA Institute speaks on behalf of its members and advocates for market integrity and investor protection to standard setters, regulatory authorities, and legislative bodies worldwide. CFA Institute also conducts research into trends and challenges within the investment industry that impact our members. This serves two purposes: informing our policy positions and enhancing our advocacy and outreach initiatives. Recently, CFA Institute has been conducting research into new ways of investing. This includes a forthcoming study exploring the use of financial influencers (“finfluencers”, used interchangeably with “influencers”) on social media, in the provision of investment promotions and recommendations. The study analyses finfluencer content on three social media platforms: TikTok, Instagram and YouTube across what we identified as three key finfluencer markets: the UK, the USA, and the EU. The study addresses three main research questions:

1. How well do existing regulatory frameworks account for finfluencer activities?

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<sup>1</sup> Code of Ethics and Standards of Professional Conduct <https://www.cfainstitute.org/en/ethics-standards/ethics/code-of-ethics-standards-of-conduct-guidance>

2. What are the key characteristics of finfluencer content?
3. How are Gen-Z investors engaging with finfluencer content?

Our research report on finfluencers will be published in October 2023. CFA Institute would be happy to share a private copy of the report with the FCA ahead of publication, which we hope could help further the dialogue on the subject. We use the findings from our research report, in addition to our internal policy expertise, to inform our responses to the questions raised in this consultation and our recommendations.

The FCA's proposal to update FG15/4 is well received and we believe the consultation is timely given widespread use of social media to promote financial products and make investment recommendations, which are increasingly relied on by younger investors, a trend which the FCA acknowledges and that our research supports<sup>2</sup>. Given that social media has the potential to make financial information and promotions more accessible, we agree that social media is of 'significant value to firms' as the FCA acknowledged as early as 2015 (in FG15/4). We believe it is therefore important that the FCA applies consistent rules across all distribution channels so that social media does not confer an unfair competitive advantage due to gaps in the financial promotions regime, or disproportionately harm consumers.

Our research identified four main risks to consumers:

1. Hidden marketing as a result of missing and inadequate disclosures
2. Misinformation
3. Scams
4. Exploitation of behavioural biases

Recent research<sup>3</sup> points to how these risks and the risk of poor advice are amplified when the finfluencer is either financially unskilled, or worse anti-skilled, and likely not tied to an authorised firm. The proposals in GC23/2 (and questions 1-5) pertain largely to the rules of the regulatory perimeter and so do not directly address this. We present some proposed solutions in our answer to question 6 which seeks 'additional comments'.

The FCA has increased the duty of care which firms owe to consumers by necessitating firms to actively seek to provide '*good outcomes for consumers*' under the FCA's

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<sup>2</sup> Unpublished data from a joint study by CFA Institute and the FINRA Investor Education Foundation, Gen Z and Investing: Social Media, Crypto, FOMO, and Family. The study highlights that 44% of UK Gen-Z investors use social media to learn about investing and 38% cite finfluencers as a major factor in their decision to start investing [https://www.cfainstitute.org/-/media/documents/article/industry-research/Gen\\_Z\\_and\\_Investing.pdf](https://www.cfainstitute.org/-/media/documents/article/industry-research/Gen_Z_and_Investing.pdf)

<sup>3</sup> 'Finfluencers' published in the Swiss Finance Institute Research Paper No: 23-30 by Ali Kakhbod, Seyed Mohammad Kazempour, Dmitry Livdan and Norman Shuerhoff (July 2023): [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4428232](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4428232)

Consumer Duty regulations. However, the risks which social media promotions pose to consumers potentially undermine this objective. Hence, we agree with the FCA’s move to update the financial promotions regime to be in line with Consumer Duty, and to make it clearer to firms what their responsibilities are. There is a delicate balance to be struck, however, and it will be a challenging task to ensure that those financial promotions in social media from finfluencers tied to authorised firms (and therefore acting within the regulatory perimeter) are enhanced for consumers and not rendered overly ‘formal’ in comparison to those financial promotions from unauthorised finfluencers (acting outside of the regulatory perimeter and over which the FCA have less control). At the same time, we believe there are some measures that the FCA can take to reduce what we see as the greater risk of harm posed by unauthorised finfluencers.

We believe the FCA’s proposal could be strengthened in areas we detail in our responses to the consultation questions. In summary, our consultation responses include the following nineteen specific policy recommendations and suggestions. To facilitate their consumption, we have indicatively delineated<sup>4</sup> them in the table below between measures addressing a) finfluencers acting as tied agents of authorised firms within the regulatory perimeter (mostly discussed in our answers to questions 1-5) and b) unauthorised finfluencers acting independently of any authorised firm and outside of the regulatory perimeter (mostly discussed in our answer to question 6):

	<b>Measures addressing finfluencers acting as tied agents to authorised firms (and within the regulatory perimeter):</b>	<b>Measures addressing finfluencers acting independently of any authorised firm (and outside of the regulatory perimeter):</b>
1.	Incorporating the requirements from COBS 4.5A.3 <sup>5</sup> which state that risk warnings should not be in a smaller font size to the predominant font size used throughout a promotion. This should ensure that risk warnings are not obscured in captions.	
2.	Considering the difficulties in assessing consumer objectives,	

<sup>4</sup> Note: this delineation is not an exact science but we believe it is a helpful exercise. Some of the proposed measures apply to both finfluencer types and some might mainly apply to one type but also apply indirectly or to a lesser extent to the other type also

<sup>5</sup> <https://www.handbook.fca.org.uk/handbook/COBS/4/5A.html>

	ensuring comprehension, and preventing exploitation, we recommend that the FCA strongly urge firms to thoroughly consider the appropriateness of using social media to market financial products.	
3.	Individuals exposed to marketing communications on social media might not necessarily be existing customers. Hence, the FCA should provide clarity on language by making it clear to firms that these principles also apply to prospective clients as well as existing clients.	
4.	The FCA should make clear to firms that affiliate partners should disclose the exact nature and structure of any related compensation such as whether influencers are paid per sign up, or by the number of times a link is clicked, how much commission they will receive in total, whether it is capped and how this is calculated.	
5.	Those sharing affiliate links in social media content should also make it identifiable to audiences that content contains a promotion, and which links affiliate promotions are attached to, in order to avoid misleading consumers.	
6.	The FCA should provide clearer guidance and opinion in relation to when a financial promotion constitutes an inducement.	
7.	Approvers of financial promotions should provide compliance training to those who they partner with such as influencers, before promotional content is made. This builds in compliance throughout the life cycle of a promotion.	
8.	We urge that firms limit their use of discount codes and promotional offers when promoting products online through affiliate marketing. This is because discounts and	

	<p>promotions have the potential to distort perceptions of value for money and exploit consumer behavioural bias, which is contrary to the objectives of the Consumer Duty.</p>	
9.	<p>We suggest that parties using shared social media profiles should include regional content disclaimers by noting that their content is only relevant to those based in their respective regions. Assuming a shared social media account is otherwise compliant, parties should apply regional targeting to any content made. The FCA should continue its cooperation with financial regulators outside of the UK, to monitor joint accounts.</p>	
10.	<p>We agree with the FCA’s proposal to require approvers of financial promotions to check the promotion every three months to ensure it has not changed but recommend conducting a thematic review on the effectiveness of the frequency of firms’ checks and attestations.</p>	
11.	<p>Where a firm approves an unauthorised person to promote products on their behalf, we recommend that the FCA also consider a requirement for the unauthorised person to display prominently through a statement, <i>who</i> the promotion has been approved by.</p>	

Outside of the proposed guidance, we believe that the FCA should focus on:

	<b>Measures addressing influencers acting as tied agents to authorised firms (and within the regulatory perimeter):</b>	<b>Measures addressing influencers acting independently of any authorised firm (and outside of the regulatory perimeter):</b>
12A.	Increasing its data collection and reporting on whistleblowing and complaints activity related to financial influencers.	
12B.		Greater cooperation with social media platforms to enforce marketing disclosures and improve content moderation to ensure the types of products promoted are suitable for mass market audiences.
12C.	The functioning of private online financial communities.	
12D.		Updated guidance on the provision of investment recommendations online, by unauthorised individuals in addition to promotions.
12E.		The influence and legalities around advertisements by individuals who claim to be able to teach audiences how to trade. These adverts were prevalent on YouTube.
12F.	The influence and legalities around advertisements by individuals who claim to be able to teach audiences how to trade. These adverts were prevalent on YouTube.	
12G.	To ensure that information which consumers receive is suitable for them, the FCA should remind firms that these risks can be <i>somewhat</i> managed by ensuring that financial promotions are at a minimum not included in randomization or (worse) generative AI algorithms and if any targeting is used this only includes specific groups likely to	

	have sufficient financial literacy and experience.	
	<b>Measures addressing influencers acting as tied agents to authorised firms (and within the regulatory perimeter):</b>	<b>Measures addressing influencers acting independently of any authorised firm (and outside of the regulatory perimeter):</b>
12H.	The FCA should consider using social media channels themselves to signpost resources such as their register of approved firms and individuals <sup>6</sup> and complaints channels to help safeguard users from harm and encourage users to report any harm incurred.	

We hope that the findings of our research are of interest and that our suggestions and recommendations appear well-reasoned. We would be pleased to meet and clarify any aspects of this letter if that were helpful.

Yours sincerely,



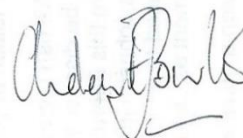
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With thanks to the oversight of the [Professionalism Steering Committee](#).

<sup>6</sup> The Financial Service Register <https://register.fca.org.uk/s/>

## APPENDIX I: About CFA UK and CFA Institute

**CFA UK** serves nearly twelve thousand leading members of the UK investment profession. Many of our members work with pension funds, either managing investment portfolios, advising on investments, or as in-house employees responsible for pension investment oversight.

The mission of CFA UK is to build a better investment profession and to do this through the promotion of the highest standards of ethics, education and professional excellence in order to serve society's best interests.

Founded in 1955, CFA UK is one of the largest member societies of CFA Institute and provides continuing education, advocacy, information and career support on behalf of its members.

Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.

For more information, visit [www.cfauk.org](http://www.cfauk.org) or follow us on Twitter @cfauk and on LinkedIn.com/company/cfa-uk/.

**CFA Institute** is the global association for investment professionals that sets the standard for professional excellence and credentials.

The organisation is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow.

It awards the Chartered Financial Analyst® (CFA) and Certificate in Investment Performance Measurement® (CIPM) designations worldwide, publishes research, conducts professional development programs, and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.

There are nearly 200,000 CFA® charterholders worldwide in more than 160 markets. CFA Institute has ten offices worldwide, and there are 160 local societies.

For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org) or follow us on [LinkedIn](#) and Twitter at [@CFAINstitute](#).



## APPENDIX II: Responses to the Consultation Questions

**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.**

We agree with the approach the FCA has taken on the prominence of information required for social media promotions. We analysed 110 content sources as part of our study on influencers. We found that 36% of content in our sample, contained investment promotions, the majority of which were improperly disclosed, without featuring information such as prominent marketing disclosures, appropriate risk warnings, conflicts of interest and the regulatory status of influencers pertaining to how they were authorised to promote products.

In particular, we agree with the FCA's position that risk warnings should be made viewable to consumers upon first interaction then sustained for a given period. This is because in the minority of cases, where risk warnings were identified in content included in our sample, they were often placed in content captions. This required viewers to enlarge the caption often by clicking 'show more', to read risk warnings, which were typically presented in small font, often smaller than the predominant font used in the main promotion. We question the likelihood that a consumer would click to see more about a financial promotion unless directed to, and therefore it is likely that the risks involved with some financial products promoted via social media are unclear to consumers. In our view, the lack of transparency in relation to product risk, is incoherent with Principle 6 and 7 of the Consumer Duty<sup>7</sup> obligations to treat consumers fairly and to communicate information in a way that is 'clear, fair and not misleading'. This lack of transparency is unlikely to deliver good outcomes for consumers (Principle 12)<sup>8</sup>. Therefore, we believe the FCA should go further in their approach to risk warning prominence, by reminding firms of their existing rules from the general requirements of COBS 4.5A.3<sup>9</sup> which state that:

*'(c) the information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent'.*

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<sup>7</sup> Principle 6 in [FG22/5](#) – A firm must pay due regard to the interests of its customers and treat them fairly. Principle 7 in [FG22/5](#) – A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading

<sup>8</sup> Principle 12 in [FG22/5](#), requires firms to 'act to deliver good outcomes for retail customers'.

<sup>9</sup> COBS 4.5A Communicating with clients (including past, simulated past and future performance) (MiFID provisions) <https://www.handbook.fca.org.uk/handbook/COBS/4/5A.html>

Ensuring that the font size is more consistent across a promotion will reduce the scope distributors of financial promotions have to obscure risk warnings by using smaller text [RECOMMENDATION 1].

**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.**

The expectations proposed under the Consumer Duty for firms are reasonable. It is important that firms help customers achieve their financial objectives and do not cause harm. Specifically, we note that the Consumer Duty expectations also place a responsibility on firms to ensure customer understanding and not to exploit vulnerabilities in consumers. We note this is a similar requirement in COBS 4.5.A.3 (d)<sup>10</sup>. Nevertheless, assessing customer understanding on social media presents a challenge. This is primarily due to the variation in financial and advertising literacy among consumers, coupled with differences in their familiarity with financial products. As mentioned in FG15/4, factors such as the target audience, product nature, and recipient information needs should be considered. However, the use of algorithms in displaying content raises uncertainty about firms' control over their promotions' audience. Additionally, evaluating customer objectives is challenging on social media given the breadth of audiences who are likely to have diverse financial goals. This complexity would therefore make it difficult to verify that promotions do not exploit vulnerabilities such as knowledge gaps or experiential limitations of consumers.

Considering the difficulties in assessing consumer objectives, ensuring comprehension, and preventing exploitation, we recommend that the FCA urge firms to carefully consider how they wish to use social media, and apply to it, the rules applicable to any other distribution channel, paying particular attention to the grey areas introduced by social media such as: the transboundary nature, the diversity of audiences and the scope of the existing financial promotions regime [RECOMMENDATION 2]. In this regard, our view is that the expectations outlined in section 8.9 of the Consumer Duty (10) are clear in establishing firms' responsibility in preventing any form of manipulation which could limit consumers' ability to make effective decisions. This responsibility is particularly important for products that disproportionately serve vulnerable groups, such as debt relief assistance and cryptoassets. We note that this consideration gets at the essence of the '*Consumer understanding outcome*' of the Duty, mandating firms to assess the suitability of communication channels and the characteristics of the intended recipients. However, it is important to note that individuals exposed to marketing

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<sup>10</sup> COBS 4.5.A.3 (d) <https://www.handbook.fca.org.uk/handbook/COBS/4/5A.html> (d) the information is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received.

communications on social media might not necessarily be existing customers. Hence, the FCA should provide clarity on language by making it clear to firms that these principles also apply to prospective clients [**RECOMMENDATION 3**]. **Top of Form**

**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 firms should take more responsibility over how affiliate marketing programs are operationalised. We think more onus should be placed on the disclosure of affiliate marketing and compensation received. CFA Institute's study on finfluencers revealed that the quality of disclosures made by finfluencers using affiliate links varied. Common disclosures stated '*this content may contain affiliate links*' but did not elaborate on how compensation models worked. Moreover, this type of disclosure presumed that audiences had a clear understanding of affiliate marketing. In this sense, without a prior understanding of affiliate marketing, it would be unclear that this content was in fact promotional.

Many finfluencers also displayed multiple affiliate marketing links for different investment product providers in the captions of their content but only made a single generic disclosure. Consequently, it was unclear which products disclosures related to. We view this type of hidden marketing, whether intentional or not, as not only misleading but also anti-competitive, potentially placing lawful companies engaged in transparent promotions at a disadvantage.

We recommend that the FCA should make clear to firms that affiliate partners should disclose the exact nature and structure of any related compensation such as whether finfluencers are paid per sign up, or by the number of times a link is clicked, how much commission they will receive in total, whether it is capped and how this is calculated [**RECOMMENDATION 4**]. This is consistent with what we view as a more rigorous approach to disclosures that is aligned with practices observed in other market such as in the EU (Article 24(9) MiFID II<sup>11</sup>). Those sharing affiliate links in social media content should also make it identifiable to audiences that content contains a promotion, and which links affiliate promotions are attached to, in order to avoid misleading consumers [**RECOMMENDATION 5**].

CFA Institute's study also identified that financial promotions using affiliate links were often accompanied by recommendations which in our opinion, could be viewed as inducements and invitations. For example, we frequently identified instances where

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<sup>11</sup>DIRECTIVE 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL On markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32014L0065>

finfluencers highlighted the benefits of investing in ETFs and then invited their followers to purchase an ETF using an affiliate link in the caption below the content. The FCA may have to provide additional clarity to firms over when the use of affiliate links constitutes an inducement and/ or an invitation, and in doing so, refer firms to [PERG 8.4 Invitation or inducement<sup>12</sup>](#). Our study found that finfluencers often made disclaimers such as *'this is not advice'* which suggested that individuals believed disclaimers were adequate for absolving themselves of the potential consequences of making recommendations and invitations. We observe that in PERG 8.4.5<sup>13</sup>, under *Invitations*, the FCA suggest that making a statement that the communication *'is not an invitation'* may be viewed as evidence of such. Therefore, although we think the scope of the perimeter is sufficient, we suggest that it could be made clearer when/ if such statements are sufficient disclaimers. This is to help firms and individuals navigate the regulatory regime and understand when they are accountable for their communications **[RECOMMENDATION 6]**.

The FCA also suggests that firms should consider how they monitor the actions of their affiliate partners. We believe that firms should not only focus on monitoring but also take proactive steps to ensure compliance. We suggest this could be done by mandating that firms provide their marketing affiliates with compliance training which covers the importance of and how to make adequate disclosures, and the requirement for content containing financial promotions to be balanced and accurate in terms of the risk and reward in accordance with COBS 4.2.1 R<sup>14</sup> and the Consumer Duty **[RECOMMENDATION 7]**. Firms also thereby set the standard expected of their affiliates and can then more easily and robustly call affiliates into line if their promotions are not compliant. Like the FCA, we have also observed that financial promotions on social media have a tendency to highlight and, in some cases, over-emphasise the benefits of financial products without giving due attention to the risks. It should also be made clear to approvers of financial promotions that they must assess promotions in a balanced way. We believe the FCA's March [2023, practical guidance<sup>15</sup>](#) on how to assess promotions is useful in aiding firms in this assessment. The examples the FCA have provided in GC23/2 are helpful in showing what a balanced promotion might look like on social media.

We recognise the Consumer Duty regulations outline that promotions should not exploit the behavioural biases of consumers. The discounts offered as part of affiliate marketing

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<sup>12</sup> PERG 8.4 Invitation or inducement <https://www.handbook.fca.org.uk/handbook/PERG/8/4.html#D620>

<sup>13</sup> PERG 8.5 Invitation or Inducement <https://www.handbook.fca.org.uk/handbook/PERG/8/4.html>

<sup>14</sup>COBS 4.2 Fair, clear and not misleading communications  
<https://www.handbook.fca.org.uk/handbook/COBS/4/2.html>

<sup>15</sup> Approving financial promotions [https://www.fca.org.uk/firms/financial-promotions-and-adverts/approving-financial-promotions#:~:text=Where%20a%20financial%20promotion%20contains,and%20balanced%20way%20\(COBS%204.5.](https://www.fca.org.uk/firms/financial-promotions-and-adverts/approving-financial-promotions#:~:text=Where%20a%20financial%20promotion%20contains,and%20balanced%20way%20(COBS%204.5.)

campaigns signposted through links have the potential to exploit consumer perceptions of value for money [RECOMMENDATION 8]. The perception that affiliate marketing discounts provide good value for money may also be exacerbated when risk warnings for financial products are concealed. Furthermore, we note that the sales journey from clicking an affiliate link to product signup are often short. This restricted choice architecture is likely to further exacerbate behavioural biases. Previous research by CFA Institute on gamification, discusses the downside of restricted choice architecture in more detail<sup>16</sup>.

**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.**

Social media profiles shared between UK and non-UK entities are likely to operate between two different regulatory regimes. Social media platforms stipulate that all promotions should be adequately disclosed as such which provides support to the existing financial promotions rules on disclosures. Therefore, shared profiles are less challenging in relation to marketing disclosures. However, in the USA for example, regulation on who can promote financial products is less clear in that there are differing legal definitions of when a person may be considered as an *'investment advisor'* across jurisdictions and sometimes states<sup>17</sup>. Whilst the FCA state that 'A financial promotion communicated by the non-UK entity that can be viewed by UK consumers must comply with all relevant UK requirements,' we suspect this would be difficult to universally enforce due to the scale of non-UK promotions viewable to UK consumers.

Our research identified that investment promotions created outside of the UK were easily accessible to UK-domiciled viewers. We suggest that parties using shared social media profiles should include regional content disclaimers by noting that their content is only relevant for to those based in their respective regions. Assuming a shared social media account is otherwise compliant, parties should apply regional targeting to any content made. The FCA should continue its cooperation with financial regulators outside of the UK, to monitor joint accounts [RECOMMENDATION 9].

**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.**

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<sup>16</sup> Fun and Games: Investment Gamification and Implications for Capital Markets <https://www.cfainstitute.org/en/research/industry-research/investment-gamification-implications>

<sup>17</sup> There is no legal definition of what constitutes investment advice in the USA. Instead, there is a definition of who is considered an investment advisor. This is found in 202(a) (11) of the Investment Advisers Act [https://www.sec.gov/about/offices/oia/oia\\_investman/rplaze-042012.pdf](https://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf)

We support the existing financial promotion perimeter and believe it is necessary that financial promotions are disseminated by an authorised firm or approved by an authorised firm or individual. We believe the scope of the existing regime adequately covers promotions made by influencers and would be sufficient to cover newer intermediaries that may emerge. However, we believe that determining which financial promotions have been lawfully approved may be more challenging due to the prevalence of financial promotions on social media. In our sample, around 40/110 sources of influencer content contained an investment promotion. Verifying the authorisation of these promotions, identifying the authorising parties, and ensuring ongoing compliance is likely to require a significant use of time and resource.

For this reason, we welcome the FCA's focus on the responsibilities of approvers of financial promotions. We agree with the FCA's proposal requiring firms as approvers of promotions by unauthorised individuals such as influencers, to monitor and keep record of attestations of '*no material change*' for the approved promotion every 3 months. The FCA should aim for the right balance of controls and seek to understand what is both feasible for firms and effective for the purposes of compliance. This could involve conducting a thematic review on the frequency of checks for '*no material change*', and then assessing the effectiveness of the proposed three-month period **[RECOMMENDATION 10]**.

Where a firm approves an unauthorised person to promote products on their behalf, we recommend that the FCA also consider a requirement for the unauthorised person to display prominently through a statement, *who* the promotion has been approved by **[RECOMMENDATION 11]**. This would make firms more accountable for promotions they approve and deter harmful practice as firms may seek to avoid reputational risks. This aligns with the position adopted by the FCA in GC23/2 which notes that approvers of financial promotions have a duty to manage risks including reputational. We welcome this emphasis on risk, as we believe that firms are not only putting consumers at risk through unsuitable promotions but are also placing themselves and the wider industry at risk of reputational damage.

We also suggest that the FCA require that firms partnering with influencers to promote financial products, provide influencers with compliance training to mitigate reputational risks and harm to consumers. Compliance training should cover what to include in disclosures, how to provide prominent risk warnings, fair and accurate information, and the penalties for noncompliance. Educating influencers on compliance should increase the likelihood that promotions are suitable for consumers. This also ensures that compliance is considered throughout the lifecycle of a promotion and not just at the approval stage.

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

CFA Institute have some additional areas we think the FCA should consider. Whilst we are aware that the FCA collect data regarding non-compliant financial promotions, we believe that the FCA should begin recording complaints and whistleblowing activities received specifically regarding influencers, including the platforms involved **[RECOMMENDATION 12A]**. This data should then be aggregated and publicly reported. A lack of data may result in challenges issuing timely warnings to the public regarding specific companies or individuals such as influencers who consistently violate regulations, in addition to determining the appropriate platforms to target enforcement actions. Additionally, the FCA could work with social media platforms to better enforce financial product promotion disclosures, and to develop content moderation systems which identify whether the types of products promoted on platforms are suitable for mass-market audiences **[RECOMMENDATION 12B]**.

CFA Institute's research found that YouTube was the platform that contained the greatest proportion of investment promotions with over 70% of influencer content on the platform being identified as containing a promotion. We would recommend that the FCA conducts a similar study or thematic review of influencer content across more social media platforms to understand where to target enforcement activities for the purposes of resource efficiency **[RECOMMENDATION 12C]**.

In addition to the scale of financial promotions, the role of paid for advertisements before and during influencer content on YouTube is also a concern. This is for two reasons outlined below:

1. Large content creators, who typically have followings in the hundreds of thousand, often get a share of advertisement revenue for advertisements that feature between their content. This share of ad revenue creates a conflict of interest by creating an incentive to create content to receive advertisement revenue. However, in the influencer content reviewed in our study, we did not see influencers disclosing advertisement revenue as a form of compensation.
2. The nature of adverts that appeared between influencer content on YouTube was often problematic, featuring individuals claiming they could "teach" consumers "how to trade", for example. It is unclear whether teaching people how to trade is a regulated activity and what qualifications these individuals have to do so. These adverts in which individuals claimed to teach audiences how to trade, then signpost consumers to paid for courses. Given the potentially unregulated nature of this activity and the potential

vulnerabilities of consumers who may view them, we believe the FCA should be paying closer attention to such trading adverts in between finfluencer content **[RECOMMENDATION 12D]**.

Our research also identified instances where finfluencers would signpost their audiences to online investment communities on private forums such as discord. Given the privacy of these groups, there is greater risk that unauthorised individuals are providing investment recommendations and promotions to their audiences within these spaces. The FCA should consider conducting a thematic review of online investment communities, to better understand their practices **[RECOMMENDATION 12E]**. An objective of the thematic review could be to establish when the activities of a community fall within the financial promotion regime. As part of this process or as a result of it, the FCA may have to clarify previous guidance given in FG15/4<sup>18</sup> that suggests that conversations between groups and individuals ‘not acting in the course of business’ are ‘outside of their regulation’<sup>19</sup>. The example regarding what chat room activity is not classified as ‘in the course of business’ given in paragraph 81 of the GC23/2 is helpful. More guidance of this kind regarding chat room activity could be useful.

Given that algorithms influence who social media content is displayed to, some promotions, and particularly promotions that occur on platforms that use randomization algorithms and or auto-display content, could be classified as ‘unsolicited’. To ensure that information which consumers receive is suitable for them, as highlighted in FG15/4, firms should be reminded that these risks can be *somewhat* managed by ensuring that financial promotions are at a minimum not included in randomization algorithms or (worse) generative AI algorithms and if any targeting is used this only includes specific groups likely to have sufficient financial literacy and experience **[RECOMMENDATION 12F]**.

The FCA also make clear in FG15/4, that firms should ‘*keep adequate records of any significant communications*’ and suggests that firms should exercise their judgment when deciding what is a significant communication and what is considered adequate. The FCA recite similar statements in their proposed guidance ‘*Firms should also keep adequate records of any relevant communications*’<sup>20</sup>. We think the FCA should elaborate further by outlining what they mean by relevant communications and clarify how long they expect firms to keep record **[RECOMMENDATION 12G]**. We have noted that ‘*General rules on record-keeping*’, stated under SYSC 9.1.2<sup>21</sup>, state a common platform

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<sup>18</sup> FG15/4 paragraph 1.5

<sup>19</sup> FG15/4 paragraph 1.5

<sup>20</sup> GC23/2 paragraph 54 under Approval and record keeping.

<sup>21</sup> General rules on record-keeping <https://www.handbook.fca.org.uk/handbook/SYSC/9/1.html>



firm must retain all records kept by it in relation to its MiFID business, for a period of at least five years. The FCA should make clear that record keeping obligations apply to social media promotions. It is worth mentioning that US regulator FINRA, mandates that records of social media promotions should be kept for three years<sup>22</sup>. We believe this level of clarity would aid firms and the FCA when investigating consumer complaints. As part of our research, we spoke to an investment company who had used influencers in their promotions, both in the UK and the USA. They found FINRA's promotions regime easier to navigate and by comparison, found the obligations placed on them by UK regulators to keep records, lax.

CFA Institute suspect that harm experienced because of social media financial promotions may go currently underreported. Given that those who experience harm from online resources are likely to frequent social media sites, the FCA should consider using social media channels to signpost its resources such as its register of approved firms and individuals<sup>23</sup> and complaints channels to help safeguard users from harm and to encourage the reporting of any harm incurred [**RECOMMENDATION 12H**]. We recognise that the FCA have previously taken proactive steps to educate investors using social media, through their Invest Smart campaign<sup>24</sup>.

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<sup>22</sup> FINRA Social Media <https://www.finra.org/rules-guidance/key-topics/social-media> In more recent guidance FINRA also note that 'Maintaining records of social media influencer and referral program communications with the public consistent with applicable U.S. Securities and Exchange Commission (SEC) and FINRA recordkeeping obligations' in <https://www.finra.org/rules-guidance/guidance/targeted-examination-letters/sweep-update-feb2023>

<sup>23</sup> The Financial Service Register <https://register.fca.org.uk/s/>

<sup>24</sup> Invest Smart <https://www.fca.org.uk/investsmart>