

ADVICE MATTERS

The CPD Solution For Financial Professionals

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Welcome to this edition of Advice Matters for 2022.

Welcome

So, here it is! The first edition of Advice Matters for 2022. A little bit later than usual, but we hope you'll feel that it's been worth the wait.

It promises to be an interesting and exciting year for a variety of reasons, several of them very close to home. We're sure that the eagle-eyed amongst you will have noticed some significant changes to our branding. Gone is FSTP and in its place has come ZISHI Cornerstone. But there's no cause for alarm, or despondency ... the name on the door may have changed, but the dedicated team that has brought you Advice Matters over the years remains the same.

We did make a promise to ourselves not to mention the 'C' word in this introduction. We've heard more than enough of it over the last 2 years. But now that the time has come, we're afraid there's no avoiding it; not even tangentially. The UK regulators already had the sometimes thorny topic of Operational Resilience firmly in their sights prior to the pandemic, but there's no doubting the fact that concern over the short-, medium- and longer-term implications of Covid prompted a heightened sense of urgency over and around the subject. Overnight, theory had to be translated into practice as businesses were forced to confront and address the immediate logistical, operational, managerial, financial and psychological issues associated with locked-down and dispersed work forces whilst ensuring that the risk of client detriment was kept to an absolute minimum.

It's hugely topical, therefore, that our first article examines the requirements set down in FCA's Policy Statement – 'PS21/3 Building Operational Resilience' (published in March 2021), which all regulated firms must be fulfilling come 31 March this year. These developments are the culmination of a joint FCA / PRA consultation which kicked-off in the latter part of 2019.

Whilst some may have been labouring under the misapprehension that Brexit would relieve the UK of any concern over EU Directives, our second article highlights the fact that Europe still has a bearing on how things are done on this side of the English Channel. We're now into our 6th EU Money Laundering Directive and the signs are that number 7 is not too far away. It's not just the EU, of course, but the US also has a big say on the development and evolution of effective global anti-money laundering measures. So, we give some thought to what's coming down the track ... and why.

Our third article concentrates on Financial Promotions, an area that is a standing item on the regulator's agenda. The subject takes on even greater significance with the impending introduction of the new 'Consumer Duty' which is scheduled to land on the industry this summer.

ApEx Standards

The learning outcomes and the ApEx Standards can be found at the end of this edition of Advice Matters

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As the article points out, firms will need to monitor and, where appropriate, test and adapt their communications so that they will be in a position to demonstrate that they have acted to deliver the required outcomes and support consumers. There is much for firms to do before now and the summer.

The moment has passed for us to wish you a Happy New Year, but we do hope that 2022 has started well for you and that the coming months will bring you much success and prosperity.

With all our best wishes.

The Advice Matters Team



Staying on Track

This section will keep you up to date with the changes in market, product, legislation & regulation.

Operational resilience - is your firm ready?

COVID 19

If there is one lesson learned from the Covid-19 pandemic, it's the importance of having an effective business continuity plan! Pre Covid-19, it's fair to say that your firm's business resumption and continuity response should have been a key item on the Risk Register, along with ensuring that the supporting systems and controls were in place and subject to regular testing. Several firms may also have detailed scenario planning in place to support the Internal Capital Adequacy Assessment Process (ICAAP), but how many will have planned specifically for an event such as Covid-19, with all its associated implications? Responding quickly and effectively to Covid-related restrictions has been a whole different ball game to managing a few days' outage caused by a burst water main, localised gas leak, or an internal IT systems failure. Firms' business continuity plans will have been well and truly tested over the last 2 years, and many will have been rewritten with the benefit of experience!

In one of those strange quirks of timing, in December 2019 the FCA published CP19/32 'Building operational resilience: impact tolerances for important business services' and feedback to DP18/04 - covering the joint FCA / PRA policy summary on operational resilience. In March 2020, the UK entered its first Covid lockdown.



The regulators' answer to operational disruption

Addressing operational resilience is a joint initiative between the FCA and PRA and CP19/32 underlined the importance of ensuring that the UK financial sector is operationally resilient. The consultation was followed by the publication of FCA's PS21/3 Building Operational Resilience in March 2021, implementing the majority of proposals across various financial services sectors including insurers, enhanced scope SMCR firms and payment services providers.

In a nutshell, operational resilience is the ability of firms, financial market infrastructures and the financial services industry per se to prevent, address, recover and learn from operational disruption.

The FCA's view is that operational disruption and the unavailability of important business services have the potential to cause wide-reaching harm to consumers and/or risk to market integrity, whilst threatening the viability of firms and causing instability in the financial system. The disruption caused by Covid-19 has shown why it is critically important for firms to understand the important business services they provide, and to invest in their resilience arrangements to protect themselves, consumers and markets.

What's changing?

By 31 March 2022 firms must have:

- Identified the business services that, if disrupted, could cause intolerable harm to their consumers pose a risk to market integrity, threaten the viability of firms or cause instability in the financial system
- Set impact tolerances for the maximum tolerable disruption to these services
- Carried out mapping and testing to a level of sophistication necessary to identify important business services, set impact tolerances and identify any vulnerabilities in its operational resilience
- Conducted lessons learned exercises to identify, prioritise, and invest in their ability to respond and recover from disruptions as effectively as possible
- Developed internal and external communications plans for when important business services are disrupted
- Prepared self-assessment documentation

As soon as reasonably practicable after 31 March 2022 and no later than 31 March 2025, firms will need to have:

- Performed mapping and testing so that they can remain within impact tolerances for each important business service
- Made the necessary investments to be able to operate consistently within their impact tolerance

What do these changes mean?

The FCA and PRA expect firms to be operationally resilient by having a comprehensive understanding and mapping of the people, processes, technology, facilities and information necessary to deliver each of the important business services.

“Important business services” means a service provided by a firm, or by another person on behalf of the firm, to one or more customers of the firm which, if disrupted, could cause intolerable levels of harm to those customers or to market integrity. Firms must therefore identify those services which, if disrupted could lead to potential consumer harm.



This is very much down to the firm’s judgment but must focus on services which impact consumers. For the purposes of this exercise, internal functions such as payroll services are not important business services, although they may be essential to the smooth running of the firm and so can still be included as part of the firm’s mapping exercise.

These services should be reviewed at least annually, or earlier where there is a material change. The firm should document its detailed reasoning as to how it has determined its important business services. In particular, there should be a distinct reasoning to support each important business service and detailed methodologies/metrics will be helpful in demonstrating the rationale. For example, it may include the numbers of consumers that might be affected, the ability (or otherwise) of consumers to move to an alternative provider, and the way in which consumers could be harmed.

It is difficult to determine the degree of impact that will be tolerable without first understanding what impact could look like and how it might change as the level of disruption becomes more severe (e.g. it becomes prolonged and/or more widespread). Firms need to consider in detail the point at which any further disruption could cause intolerable harm, i.e. the point at which the harm caused to the customer is so acute, long lasting, or widespread that it cannot be easily remedied. It also includes the scenario in which a risk is posed to the firm's safety and soundness and/or financial system/market stability has crystallised (e.g. customers defaulting, material movements in market pricing, availability of products from the industry being impacted, wind-down plan thresholds being breached). One of the keys actions will be to engage different parts of the business in the conversation, including customer facing, as well as operations and technology teams.

Firms need to test their impact tolerances in a range of "severe but plausible" scenarios. This approach will give firms a clear idea of where unexpected events may fall outside acceptable tolerances when they come to test them. This should include circumstances inside and outside the firm's control; for example, cyber-attacks, regional/national power failures etc.



Operational resilience and third parties/ outsourcing arrangements

Firms increasingly depend on third party providers and outsourcers. This means firms need to manage these providers effectively, to reduce the risk of operational disruption and harm being caused to their consumers. Generally, outsourcing occurs when a firm engages a third-party service provider to perform a process, service, or activity on its behalf; for example, a firm may outsource hosting of a customer data centre or customer business process to a third-party. Firms should have appropriate risk management systems and controls in place which include outsourced activities and these should be accommodated in the mapping of important business services.

Remember - a firm is responsible and accountable for all the regulatory obligations that apply to outsourcing and third-party service arrangements that it has commissioned.

The FCA's supervisory approach from 1 April 2022

The FCA has stated that it will contact firms for feedback on how they have/are implementing the requirements.



In particular, the self-assessment document must be available on request from 31 March 2022.

Board and senior manager responsibility

In line with good standards of general governance and the Senior Managers & Certification Regime (SM&CR), senior managers in all firms should know what they are responsible and ultimately accountable for. This includes establishing clear lines of responsibility for the management and oversight of operational resilience.

Firms will be expected to structure the oversight of operational resilience in a way that is effective and proportionate for their business, using existing committees or establishing new ones if necessary. Attention must be paid to achieving a clear delegation of responsibilities where an important business service is supported by a wide range of people and systems. Irrespective of firm size or complexity there should be clarity on who is responsible for what within a firm, including operational resilience. The individual with overall accountability is likely to be the person performing the Chief Operations Officer function (SMF24) and that person's Statement of Responsibilities should be updated to include operational resilience. Where firms do not have an individual performing the SMF24 function, the firm will need to determine the most appropriate individual within the firm who to take accountability.

The firm's Board (or management body) will be expected to receive appropriate management information to inform its decision making where this has consequences for operational resilience. The Board should provide evidence that it is satisfied that the firm is meeting its responsibilities in this area. Individual board members will not necessarily be required to be technical experts in operational resilience but should, collectively, have adequate knowledge, skills and expertise to provide constructive challenge to senior management as part of their oversight responsibilities.

Final thoughts

- Firms have been given quite a short implementation period of 12 months for the initial work to be completed, followed by a three-year transition period, by the end of which firms will be expected to have carried out any remediations necessary to ensure that they meet the impact tolerances they have set for their important business services
- The onus continues to be placed squarely on senior leadership to ensure a firm's ongoing operational resilience. The Board should sign-off on the identification of important business services with associated impact tolerances and review and approve the firm's operational resilience self-assessment. The responsibility of a firm's SMF24 (or equivalent) for the overall delivery of its operational resilience strategy should also be affirmed
- There is a focus on important business services and impact tolerances. It is for firms to identify their important business services and then to focus on their resilience by setting impact tolerances that convey the maximum tolerable interruption of those services when faced with a severe but plausible disruption scenario. Whilst the focus is on the resilience (or continuity) of those services under severe but plausible scenarios, there should be a continuing focus on the prevention of such disruptions
- Test, test, test. Testing the resilience of services against severe but plausible disruptions must be carried out. The regulators are not prescriptive about what kinds of tests should be conducted, but are keen to see the industry develop innovative ways of simulating disruptions and demonstrating resilience





Tech Check

In Tech Check we address aspects of technical knowledge that you need to keep abreast of and that will enable you to have better conversations with your clients.

Money Laundering Regulation - latest developments

With accusations of money laundering continuing to make headlines, sometimes it's worth taking a step back and looking at where your firm might be vulnerable. The rules in this area continue to develop in the UK, the EU and beyond.

2022- Change is coming

Despite promoting itself as a fair and safe place to bring international trade, London has unfortunately also gained a reputation for being a place to park ill-gotten gains. The phrase 'Moscow-On-Thames' is used far too often and because mud has a habit of sticking, there is a risk that the reputation of the law-abiding majority will also be sullied.

Over the final months of 2021 we saw two UK banks fined astronomical amounts for money laundering offences. A staggering state of affairs given the mass of directives, regulations, and Acts of parliament issued over the years aimed at dealing with the problem. Without being too sanctimonious, there is one basic rule we should all be aware of. If a customer is literally turning up at your door with bin-bags full of cash, that should normally be considered a 'red flag'. With fines now topping 9-figure sums, the time has long gone when people could simply pay lip-service to anti-money laundering (AML) rules and training.

In a post-Brexit environment, hard decisions need to be made as to the direction the UK wants to take. In this article, we aim to cover proposed developments in anti-money laundering countermeasures affecting business in the domestic as well as EU and US markets.

European Union

The 6th Anti-Money Laundering Directive

The 6th Anti-Money Laundering Directive (6AMLD) applied across the EU from the start of December 2020, with a deadline for implementation in June 2021.

Although this expanded the bloc's regulatory reach, for some countries this was closer to a 'levelling up' towards best practice exhibited elsewhere. Indeed, although the UK is no longer subject to EU Directives, most changes were already in place domestically through existing legislation and FCA guidance.

Whilst there were some changes required to mirror the scope across EU member nations, 6AMLD also helps to spell out what is expected through harmonised conventions around stricter criminal penalties and clarification of some of the terms used across different jurisdictions.

One of the main harmonisation changes was a statement of the predicate offences that bring criminal behaviour within the scope of 6AMLD. The 22 specific offences include environmental crimes, tax evasion and cybercrime, areas that that were only previously taken into account by some countries. This goes some way to avoid the previous cross-border problems of trying to convict a person of money laundering in one state, where there wasn't even a recognition of a crime having taken place in another.

The inclusion of cybercrime in the 6AMLD is the first time this has been mentioned by the EU in relation to money laundering and demonstrates a recognition of a major gap in previous directives.

The Next Steps- Future EU AML Developments

Despite more harmonised laws and increased severity of penalties for money laundering offences across the EU, 2021 was not a good year for our European neighbours. The inter-governmental body, the Financial Action Task Force (FATF), placed EU member state Malta on its 'list of jurisdictions under increased monitoring'. This is the first time an EU member state has been sanctioned in this way, joining the likes of Myanmar, Syria, and Yemen on FATF's List of Countries that have been identified as having strategic AML deficiencies.

Perhaps due to increased scrutiny from the international community, in 2022 we can expect to see a further drive by the European Commission in the Anti-Money Laundering/Countering Terrorist Financing (AML/CTF) space.

Work has already begun on the creation of an overarching AML/CTF authority, which will produce an EU-wide rulebook, in much the same way as the FCA has done with its guidance in the UK.

Although the authority is not going to take control until 2024, UK firms operating across international borders will need to keep up to date with EU requirements. We may live in a post-Brexit world, but we also live in a global financial one.

In a statement by the European Data Protection Supervisor, there are already indications that he wishes privacy and data protection issues to be at the core of the new rulebook. On that basis, firms would be wise to ensure that Know-Your-Customer (KYC) and AML records are stored in such a way that they are both secure and on a platform that is accommodating to legislative change.



United States of America

The US is also looking to make some strategic changes in the fight against financial crime in 2022. At the tail-end of 2021, the Financial Crimes Enforcement Network (FinCEN) said it was seeking ideas from financial institutions on how to improve AML/CTF regulations and guidance.

The formal 'Request for Information' ran until mid-February, with information sought on ways that the Federal Government might evolve the current rules in relation to recent technological advancements.

Although this seems to be an admission of the US authorities playing catch-up with the money launderers, it should be remembered that the Anti-Money Laundering Act 2020 was a big step forward in a country that still places great importance on banking secrecy and the limiting of corporate accounting information to the public. Although there is still quite a way to go, there is now a recognition that fully embracing a risk-based approach to KYC and managing AML/CTF is required, rather the somewhat restricted 'one size fits all' that has been adopted in the past.

There will always be differences between the individual US States, but a clearer federal position will now be far more apparent.

United Kingdom

Like the US, the UK has been consulting on the future of AML/CTF rules. An HM Treasury consultation closed in October 2021, based around the question of how the UK's Money Laundering Regulations (MLRs) should develop in the future. In the Spring of 2022, the UK Government is expected to publish proposed regulations to amend current law.

Although specific details are not yet available, there are already indications that the changes themselves will, ironically, be very specific in themselves. Based on the information to hand at this time, changes can be expected in the following areas of finance.

MLR proposals - Reporting Discrepancies to Companies House

Firms already need to report to Companies House when they identify discrepancies in beneficial ownership at the onboarding phase. Although over 35,000 reports have already been made under this requirement, HM Treasury is seeking views around whether to expand this requirement to cover the lifetime of the ongoing business relationship. How this can be achieved whilst allaying fears around breaching client confidentiality remains to be seen.

MLR Proposals - Cryptoassets

In a similar move to the US plans for ensuring suitable tools are in place for a changing technological ecosystem, the UK's MLR proposals indicate that change is overdue in the world of cryptoassets, exchanges and wallet providers.

Firms that facilitate and operate in this esoteric world will probably be required to hold full KYC information whenever there is a transfer of assets over £1,000. (Given the volatility of some cryptoassets, it will probably be safer for legitimate organisations to have no de minimus limit at all)

MLR Proposals - The Art Market

Modifications are also expected regarding finance in the art world. Acknowledging an inadvertent overreach, HM Treasury is looking for views on how to alter its approach towards artists themselves. Under current legislation, an artist who sells an artwork is 'trading in a work of art' and becomes subject to the Act. Obviously, nothing is ever simple, and bringing Non-Fungible Tokens (NFT) into the mix will certainly complicate things. Given the cryptoassets point above, how much is a certificate showing 'ownership' of a drawing of a monkey really worth? Some say nothing, some say \$250,000!

Property Market - Overseas Beneficial Ownership

Although the Government has been promising a register of beneficial ownership by overseas entities in the UK property market, change has been slow in coming. However, 2022 may see some progress in this area.

Ten years ago, there were fewer than 90,000 properties in England & Wales registered to overseas buyers. In 2022, there are around that many in London alone. An estimated quarter of a million properties now fall within that category, in towns from Abergavenny to Yeovil.

As many of these properties are underutilised (i.e. empty), they contribute to the housing crisis, and there are real fears that the use of less-than-transparent property transactions are playing a part in large-scale money laundering. Sadiq Khan, the Mayor of London, highlighted his concerns in both these areas in a statement made in February 2021 calling for more immediate action.

While the Government has not yet committed to a timescale, there is no doubt that this will become a hot topic during the coming year, particularly as tensions mount with the Russian Federation and its allies over the question of Ukraine's sovereignty.

In Conclusion

2022 seems to be yet another year of ensuring that procedures match up to the anti-money laundering expectations of the territories we operate in, but this time there seems to be slightly more focus than in the previous years.

It may seem strange to say this, given that we have already had to confront and address each of the EU Money Laundering Directives, changes due to Brexit and implementation of more detailed FATF requirements, but bigger change is coming.

7AMLD is on the horizon in the EU, better and more transparent record keeping will be required in the UK and US, and control over technological advances are sought everywhere. There can be no doubt that these are joining together to make the world of AML/CTF just a little bit more interesting in 2022.



Skills & Expertise

Personal development is often forgotten or neglected, as it is not seen as important as the other areas of CPD. In reality it can be the aspect that makes the real difference to your clients and your earning capacity. In each edition of Advice Matters we will discuss potential development areas and ensure any regulator focus that aligns to this area is covered in a very timely manner.

Financial Promotions - the regulatory perimeter

Financial promotions are likely to be the most regular contact consumers have with firms that offer financial services and products. Financial promotions can take many forms including websites, Facebook posts, Tweets, online banners etc. They often play a significant part in shaping a consumer's understanding of products and services and can heavily influence that person's purchasing decision. It's therefore very important that financial promotions meet the basic premise of being fair, clear and not misleading, to enable consumers to make informed decisions.

The regulation of financial promotions is rooted in section 21 (s21) of the Financial Services and Markets Act 2000 (FSMA), which bans the communication of financial promotions that market regulated services or products except those published or approved by an authorised firm.

S21 of FSMA provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity, or to engage in claims management activity unless the promotion has been made, or approved by an authorised person or it is exempt. This is known as the financial promotion restriction.



What's the Financial Conduct Authority's (FCA) definition of a financial promotion?

The FCA Handbook Glossary states that a financial promotion is:

"an invitation or inducement to engage in investment activity (or claims management activity) that is communicated in the course of business"

The term, "Invitation or inducement" is not defined, although the FCA's Perimeter Guidance Handbook (PERG) provides some guidance. An invitation is something which directly invites a person to take a step which will result in their engaging in investment activity and includes direct offer financial promotions and internet promotions where the response by the recipient will initiate the regulated activity.

An inducement may be described as a link in a chain where the chain is intended to lead ultimately to an agreement to engage in investment activity. However, only those links that are a significant step in persuading or seeking to persuade a recipient to engage in investment activity (or to engage in claims management activity) will be inducements under s21.

PERG confirms that only communications containing a degree of incitement will amount to an "inducement" and communications of purely factual information will not.

In this case, the facts must be presented in such a way that they do not also amount to an invitation or inducement; examples include communications which are seeking to inform, or educate, about the risks or mechanics of an investment. However, from a best practice perspective, the firm should still make sure the communication, is clear, fair and not misleading.

When is a promotion a financial promotion?

That's a good question!

Confusion still proliferates around what constitutes a financial promotion. It's particularly true in relation to online communications and there are significant grey areas in this regard.

PERG states that essential elements of an invitation or an inducement under s21 are that it must have the purpose or intent of leading a person to engage in investment activity and be promotional in nature.

However, it should be noted that there are a significant number of exemptions to the financial promotion rules which cover a variety of circumstances. Examples include financial promotions to overseas recipients, generic promotions, financial journalism etc..

Nevertheless, one exemption which is currently very much under the regulatory (and Government) spotlight is the exemption for communications made to high-net-worth individuals. In certain circumstance, approval by an FCA or PRA authorised firm may not be required, provided that the communication meets specific requirements. More about this exemption later.

What does "clear, fair and misleading" mean?

Another good question!

Before an authorised person can communicate or approve a financial promotion, they must first ensure that the promotion complies with the FCA's financial promotion rules. The FCA sets different rules for the various financial services sectors that it regulates, that can involve consideration of five sets of conduct of business rules. However, the basic standard applicable to all the conduct of business rules is underlined in Principle 7 of the FCA's Principles for Businesses which states:



“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.”

As well as approving a financial promotion, if the authorised person becomes aware that an approved financial promotion no longer complies with the financial promotion rules, they must withdraw their approval and notify anyone they know who is relying on it.

Of course, the Treating Customer Fairly outcomes also underline the importance of customer communications being clear, fair and not misleading, and in particular Outcome 3 which confirms the application of the clear, fair and not misleading principle to all information provided to the consumer:

“Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.”

Individual Conduct Rule 4 further reinforces this by stating that:

“You must pay due regard to the interests of customers and treat them fairly”



When considering a financial promotion, firms must understand and be able to use to their advantage FCA rules, Advertising Standard Authority (ASA) codes, and the ordinary law and dictates of good taste. To achieve this, firms need to have a solid understanding of the products and services they offer (as without this, making “clear, fair and not misleading” communications is impossible), their current communication methods, where to find and how to apply the rules that are relevant to them and the way in which outsiders like regulators and the public view the communications.

To assist firms, the FCA publishes guidance that provides examples of compliant and non-compliant promotions; for example, its digital media guidance issued in 2015. There are also dedicated pages on the FCA website which include case studies showing good and bad practice.

What about regulatory scrutiny of financial promotions?

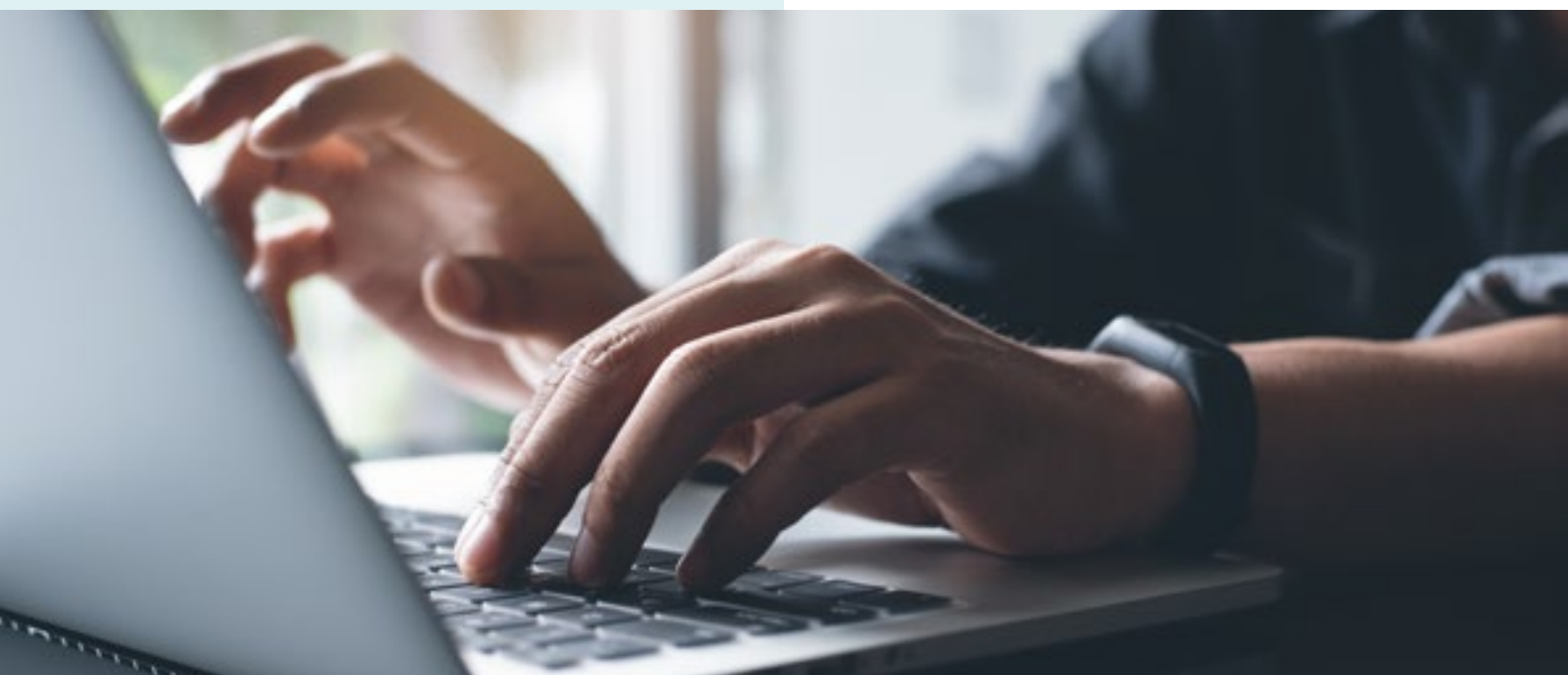
Firms and the buying-public are actively encouraged to report misleading financial promotions to the FCA who will review each one. Where the FCA concludes that a financial promotion is in breach of its Rules, the firm concerned will be asked either to withdraw the advert, or to change it to comply with the requirements. The FCA may also ask the firm concerned to consider whether any customers may have acted on the basis of non-compliant promotions and to take appropriate action to remedy any harm which consumers may have experienced as a result.

In 2021 the FCA began publishing, quarterly, financial promotion review data. For example, in Quarter 3 of 2021, the FCA reviewed 514 financial promotions, and 26 cases resulted in 74 promotions being amended or withdrawn. It should be noted that 69% of the amend/withdraw outcomes related to either website, or social media promotions.

The quality of customer communications has certainly improved in recent years but as the output from FCA's quarterly review demonstrates, there are still numerous instances of what could be seen as mis-leading information and customers not being given sufficient information to enable them to make fully informed purchasing decisions. So, it's clear that firms don't always get it right, and the cost of getting it wrong can be considerable. The FCA enforcement notices are littered with examples of firms that have been fined for getting it wrong – examples include Credit Suisse, fined £2.3M and Yorkshire Building Society, fined £1.4M, both in 2014.

Where does the FCA's proposed Consumer Duty fit in?

As of January 2022, the FCA is consulting on its proposed introduction of a Consumer Duty (see FCA's CP22/36 “A new Consumer Duty”). The proposed Consumer Duty is intended to “set clearer and higher expectations for firms' standards of care towards consumers”, by bringing together one new consumer principle, three cross-cutting rules, and four outcomes.



One of these outcomes relates to customer communication. The regulator wants firms' communications to support and enable consumers to make informed decisions about purchasing financial products and services. It wants consumers to be given the information they need, at the right time, and presented in a way that they should be able to understand.

As well as ensuring individual communications are fair, clear and not misleading, firms will need to consider their overall approach to communicating information to make sure they equip consumers to make effective, timely and properly informed decisions. Firms' considerations of recipients' capabilities should be based on their assessment of the make-up of a product or service's target market. They should also consider what they know, or could reasonably be expected to know, about the sophistication, financial capability and vulnerability of their customers, and the nature of the communication itself.

Firms will need to monitor and, where appropriate, test and adapt their communications so they can demonstrate they have acted to deliver this outcome and support consumers. Clearly the bar is being raised, and firms will need to consider all these aspects as part of their oversight of product governance and the overall customer journey.

What's on the horizon for financial promotions?

As the number of scams and misleading adverts continues to grow, it's evident that the rules and definitions around financial promotions will need to adapt. The focus up until now has been on tightening the rules applicable to regulated firms. However, many firms can get away with misleading activity because of certain exemptions. As explained earlier, financial promotions made to high-net-worth individuals and sophisticated investors are subject to an exemption and this group is increasingly being targeted with inappropriate high-risk investments or scams.

To address this, HM Treasury is proposing to introduce a new regulatory gateway (s21 gateway) for authorised firms who approve the financial promotions of unauthorised firms (s21 approvers), extending the regime to promotions of qualifying cryptoassets as well as potential reforms to the exemption for high net worth and sophisticated investors. The introduction of the s21 gateway means the FCA will assess whether the authorised firm has the necessary competence and expertise to act as an s21 approver before it may approve financial promotions for unauthorised persons.

Changes to legislation takes time. Nevertheless, against this background, the FCA has recently published CP22/2 "Strengthening our financial promotion rules for high-risk investments, including cryptoassets". The investment environment continues to change, with promotions distributed to a mass audience at increasing speed via online platforms and through social media. The FCA's proposals complement the work by HM Treasury to improve the financial promotions regime.



Under the proposed rules, the FCA wants to ensure that firms which approve and communicate financial marketing material have relevant expertise and understanding of the investments being offered; it also wants to improve risk warnings on adverts and to ban incentives to invest, like, for example, new joiner or refer-a-friend bonuses. Those customers looking to make certain types of high-risk investments would also be questioned more robustly about their financial knowledge, understanding of risk and investment experience. The FCA's research found many consumers were investing without being aware of the risks.



These proposals are set against the backdrop of the FCA's more proactive interventions to address harm from high-risk investments, including banning the mass-marketing of speculative illiquid securities, the new InvestSmart campaign and ongoing Supervisory and Enforcement action to address harm in this market.

In Conclusion

It is clear that the net is tightening around the regulation of financial promotions, and more changes are expected in this space in the future.

Links to FCA documents

Relevant Press Releases, Consultation Papers (CP), Policy Statements (PS), Guidance Consultations, Finalised Guidance and Discussion Papers

Reference	Title	Link
Press Release	FCA announces proposals to improve outcomes for non-workplace pension customers	https://www.fca.org.uk/news/press-releases/fca-announces-proposals-improve-outcomes-non-workplace-pension-customers
Press Release	FCA reforms decision-making to tackle consumer harm	https://www.fca.org.uk/news/press-releases/fca-reforms-decision-making-tackle-consumer-harm
Press Release	FCA announces plans for stronger nudge towards pension guidance	https://www.fca.org.uk/news/news-stories/fca-announces-plans-stronger-nudge-towards-pension-guidance
Press Release	FCA proposes stronger requirements on oversight of appointed representatives	https://www.fca.org.uk/news/press-releases/fca-proposes-stronger-requirements-oversight-appointed-representatives
Press Release	FCA to introduce new Consumer Duty to drive a fundamental shift in industry mindset	https://www.fca.org.uk/news/press-releases/fca-introduce-new-consumer-duty-drive-fundamental-shift-industry-mindset
Press Release	NatWest fined £264.8 million for anti-money laundering failures	https://www.fca.org.uk/news/press-releases/natwest-fined-264.8million-anti-money-laundering-failures
Press Release	FCA fines HSBC Bank plc £63.9 million for deficient transaction monitoring controls	https://www.fca.org.uk/news/press-releases/fca-fines-hsbc-bank-plc-deficient-transaction-monitoring-controls

Press Release	FCA's new rules on climate-related disclosures to help investors, clients and consumers	https://www.fca.org.uk/news/news-stories/new-rules-climate-related-disclosures-help-investors-clients-consumers
Press Release	Highlights of the FCA's new approach in 2021	https://www.fca.org.uk/news/press-releases/highlights-fca-new-approach-2021
Press Release	FCA to strengthen financial promotions rules to protect consumers	https://www.fca.org.uk/news/press-releases/strengthen-financial-promotions-rules-protect-consumers
Press Release	FCA publishes guidance consultation for firms who seek to limit their liabilities	https://www.fca.org.uk/news/press-releases/fca-publishes-guidance-consultation-firms-who-seek-limit-their-liabilities
Press Release	Coronavirus (Covid-19) Financial Resilience Survey	https://www.fca.org.uk/news/statements/coronavirus-covid-19-financial-resilience-survey
Policy & Guidance	PS21/17: A new UK prudential regime for MiFID investment firms	https://www.fca.org.uk/publications/policy-statements/ps21-17-new-uk-prudential-regime-mifid-investment-firms
Policy & Guidance	PS21/20: Changes to UK MiFID's conduct and organisational requirements	https://www.fca.org.uk/publications/policy-statements/ps21-20-changes-uk-mifids-conduct-and-organisational-requirements
Research	Research Notes: Improving outcomes for consumers considering investing in high-risk investments	https://www.fca.org.uk/publication/research/behaviourally-informed-risk-warnings.pdf
Research	Going beyond 'capital at risk': Behaviourally informed risk warnings for high-risk investment products	https://www.fca.org.uk/publication/research/behaviourally-informed-risk-warnings.pdf

Research	Pausing, reading, and reflecting: decision points in high-risk investment consumer journeys	https://www.fca.org.uk/publication/research/decision-points-consumer-journeys.pdf
Research	Beyond disclosure for high-risk investments: slow down and think	https://www.fca.org.uk/publications/research/beyond-disclosure-high-risk-investments-slow-down-and-think
Corporate Documents	FCA letter to TSC regarding update on the LF Woodford Equity Income Fund – December 2021	https://www.fca.org.uk/publication/correspondence/woodford-tsc-december-2021-update.pdf
Corporate Documents	Regulatory Initiatives Grid	https://www.fca.org.uk/publications/corporate-documents/regulatory-initiatives-grid

Learning outcomes

By reading this edition of Advice Matters and applying the learning you will be able to:

Describe the new requirements being placed on firms in relation to operational resilience

Understand what is meant by the term 'important business services' and how regulated firms should go about identifying these

Appreciate the importance of firms completing the operational resilience self-assessment

Describe the latest developments in Anti-money laundering regulation in the EU, UK and USA

Explain the reasons for and intentions of the EU 6th Anti-Money Laundering Directive

Appreciate the next steps that are likely to be taken in the fight against money laundering

Understand latest regulatory requirements relating to Financial Promotions

Explain the types of communication that will be deemed to be Financial Promotions

Appreciate the link between Financial Promotions requirements and the new Consumer Duty which will come into effect in the summer of 2022.

The ApEx standards

The ApEx standards addressed in this edition of Advice Matters are:

Core or specialist subject	Learning outcome	Indicative content
FSRE	The UK financial services industry, in its European and global context	<ul style="list-style-type: none"> • Role and structure of the UK and international markets, key participants • The impact of the EU on UK regulation
FSRE	How the retail consumer is served by the financial services industry	<ul style="list-style-type: none"> • Obligations towards consumers and their perception of financial services
FSRE	The regulation of financial services	<ul style="list-style-type: none"> • The role of the Financial Conduct Authority (FCA), HM Treasury and the Bank of England • Financial Services and Market Act (FSMA) 2000, other relevant legislation • The role of EU regulation and relevant Directives
FSRE	The principles and rules as set out in the regulatory framework	<ul style="list-style-type: none"> • Regulated activities and authorisation requirements • Record keeping, reporting and notification requirements • Professionalism and the training and competence requirements • Anti-money laundering and proceeds of crime obligations



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10th May	Better Board Reporting	Richard Galley	2 Hours	£375
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