

Chapter 4

Communications and financial promotions

4.1 Application

- 4.1.1

R

This section applies to a *firm*:

(1)

communicating with a customer or covered individual under a new funeral plan or subsisting funeral plan in relation to its regulated funeral plan activity; and

(2)

communicating or approving a financial promotion in relation to a funeral plan contract or a regulated funeral plan activity unless that financial promotion could lawfully be communicated by an unauthorised person without approval.
- 4.1.2

G

A *firm* is required to comply with the *financial promotion rules* in relation to a *financial promotion communicated* by its *appointed representative* even where the *financial promotion* does not require *approval* because of the exemption in article 16 of the *Financial Promotion Order* (Exempt persons).

[Note: section 39 of the Act]

4.2 Communications and financial promotions: the obligations

Fair, clear and not misleading rule

- 4.2.1** **R** A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.
- 4.2.2** **G** ■ FPCOB 4.1.1R(2) does not limit the application of the *fair, clear and not misleading rule* under ■ FPCOB 4.1.1R(1). So, for example, a *financial promotion* that could lawfully be *communicated* by an *unauthorised person* without *approval* will still be subject to the *fair, clear and not misleading rule* to the extent that it is a communication with a *customer* or *covered individual* in relation to *regulated funeral plan activity*.
- 4.2.3** **G** If a communication or a *financial promotion* names the *FCA*, the *PRA* or both as the regulator of a *firm* or other provider, and refers to matters not regulated by the *FCA*, the *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, the *PRA* or both.
- 4.2.4** **G** Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 creates criminal offences relating to certain misleading statements and practices.
- 4.2.4A** **G** A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it *communicates* or *approves* a *financial promotion* that references the *sustainability characteristics* of a product or service.

Financial promotions to be balanced and with appropriate warnings

- 4.2.5** **R** A *firm* must ensure that a communication or *financial promotion*:
- (1) includes the name of the *firm*;
 - (2) is accurate;
 - (3) is balanced and, in particular, does not emphasise any potential benefits without also giving a fair and prominent indication of any relevant risks;

		<ul style="list-style-type: none"> (4) is appropriate for, and presented at a level and in a form that is comprehensible to the average <i>funeral plan customer</i>; (5) does not disguise, omit, diminish or obscure important items, statements or warnings; and (6) where it contains a comparison or contrast, presents the comparison or contrast in a fair and balanced way and ensures that it is meaningful.
4.2.6	G	A <i>firm</i> should consider whether the omission of any relevant fact will result in a communication or <i>financial promotion</i> being insufficient, unclear, unfair or misleading.
4.2.7	R	<p>Marketing communications</p> <p>A <i>firm</i> must ensure that a <i>financial promotion</i> in relation to a funeral plan or <i>regulated funeral plan activity</i> is clearly identifiable as such.</p>
4.2.8	R	<p>Approving financial promotions</p> <ul style="list-style-type: none"> (1) Before a <i>firm</i> approves a <i>financial promotion</i>, it must take reasonable steps to ensure that the <i>financial promotion</i> complies with the <i>financial promotion rules</i>. (2) If, subsequently, a <i>firm</i> becomes aware that a <i>financial promotion</i> no longer complies with the <i>financial promotion rules</i>, it must withdraw its <i>approval</i> and notify any <i>person</i> that it knows to be relying on its <i>approval</i> as soon as reasonably practicable.
4.2.9	R	A <i>firm</i> must not approve a <i>financial promotion</i> to be made in the course of a personal visit, telephone conversation or other interactive dialogue.
4.2.9A	G	<ul style="list-style-type: none"> (1) The effect of section 55NA of the <i>Act</i> is that a <i>firm</i> is unable to approve a <i>financial promotion</i> unless: <ul style="list-style-type: none"> (a) the <i>firm</i> is a <i>permitted approver</i> in relation to the <i>financial promotion</i>; or (b) an <i>approver permission exemption</i> applies. (2) ■ SUP 6A contains <i>guidance</i> on applying for <i>approver permission</i>.
4.2.10	R	<p>The reasonable steps defence to an action for damages</p> <p>If, in relation to a particular communication or <i>financial promotion</i>, a <i>firm</i> takes reasonable steps to ensure it complies with the <i>fair, clear and not misleading rule</i>, a contravention of that <i>rule</i> does not give rise to a right of action under section 138D of the <i>Act</i>.</p>
4.2.11	R	<p>Cold calling</p> <p>A <i>firm</i> must not make a <i>cold call</i> unless the recipient has an established existing client relationship with the <i>firm</i> and the relationship is such that the recipient envisages receiving <i>cold calls</i>.</p>

Promotions that are not in writing

- 4.2.12
- R
- A firm must not communicate a solicited or unsolicited *financial promotion* that is not in writing, to a *client* outside the *firm's* premises, unless the *person communicating* it:
- (1)

only does so at an appropriate time of the *day*;
- (2)

identifies themselves and the *firm* they represent at the outset and makes clear the purpose of the communication;
- (3)

clarifies if the *client* would like to continue with or terminate the communication, and terminates the communication at any time that the *client* requests it; and
- (4)

gives a contact point to any *client* with whom they arrange an appointment.

Record keeping: financial promotions

- 4.2.13
- R
- (1)

A firm must make an adequate record of any *financial promotion* it communicates or approves, other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.
- (2)

For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.
- (3)

A *firm* must retain the record in relation to the *financial promotion* for six years.
- 4.2.14
- G
- A firm should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.

