

Chapter 16

Reporting requirements



16.31 Financial promotion approval reporting

Application – who?

16.31.1 **R** This section applies to a *firm* (including a *Gibraltar-based firm*) with *approver permission*.

Application – what?

16.31.2 **R** This section applies to a *firm* in relation to its *approval* of *financial promotions* for which it requires *approver permission*.

16.31.3 **G** The effect of **■ SUP 16.31.2R** is that the *rules* in this section do not:

- (1) apply in relation to any *financial promotions* which a *firm* *approves* within the scope of an *approver permission exemption*;
- (2) require a *firm* to notify, or include within a bi-annual report details of, such *financial promotions*.

Purpose

16.31.4 **G**

- (1) The effect of section 55NA of the *Act* is that a *firm* is unable to *approve* a *financial promotion* unless:
 - (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
 - (b) an *approver permission exemption* applies.
- (2) The *rules* in this section impose requirements on *firms* with *approver permission* to provide the *FCA* with information about their *approval* of *financial promotions* (other than in reliance on an *approver permission exemption*).
- (3) The purpose of these requirements is to enable the *FCA* to:
 - (a) effectively monitor the compliance of *approved financial promotions* with its *financial promotion rules*;
 - (b) identify where *firms* which have *approved financial promotions* *approve* amendments to, or withdraw *approvals* of, *financial promotions* for reasons which might give rise to a risk of harm to *consumers*; and
 - (c) identify any emerging risks to *consumers*.

- (4) The *rules* in this section include requirements to:
 - (a) notify the *FCA* in a timely manner of each:
 - (i) *approval of a financial promotion relating to a qualifying cryptoasset or non-mass market investment; or*
 - (ii) *amendment or withdrawal of a prior approval of any financial promotion by reason of a notifiable concern; and*
 - (b) provide a report to the *FCA* on a 6-monthly basis relating to the *firm's* activity of *approving financial promotions*.

Approval notification requirement

16.31.5

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A *firm* must submit the information in (3) to the *FCA* within 7 days of *approving a financial promotion* relating to:

- (a) a *qualifying cryptoasset; or*
- (b) a *non-mass market investment*.

A *firm* must submit the information in (3)(a) to the *FCA* within 7 days of:

- (a) *approving amendments to a financial promotion made because of a notifiable concern; or*
- (b) *withdrawing approval of a financial promotion because of a notifiable concern*.

The information is:

- (a) the information in the table at ■ SUP 16.31.6R; and
- (b) a copy of each of the communications comprising the *financial promotion* (see ■ SUP 16.31.12G(1)) that is the subject of the *financial promotion*.

16.31.6

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This is the table referred to in ■ SUP 16.31.5R.

	Approving a financial promotion	Approving amendments to a financial promotion	Withdrawing approval of a financial promotion
(1)	The reason for making the notification.		
(2)	The reference number for any previous notification submitted pursuant to SUP 16.31.5R relating to the <i>approval of the financial promotion</i> .		
(3)	The name of the <i>controlled investment (or person engaging in controlled claims management activity)</i> to which the <i>financial promotion</i> relates.		
(4)	The kind of <i>investment (or controlled claims management activity)</i> to which the <i>financial promotion</i> relates (selected from the list in SUP 16 Annex 55R).		
(5)	Whether the <i>investment</i> that is the subject of the <i>financial promotion</i> is subject to a restriction on its promotion as a <i>restricted mass market investment or non-mass market investment</i> .		

	Approving a financial promotion	Approving amendments to a financial promotion	Withdrawing approval of a financial promotion
(6)	The name of the <i>unauthorised person</i> or <i>persons</i> who has or have prepared the content of the <i>financial promotion</i> for which <i>approval</i> is sought.		
(7)	Whether the <i>unauthorised person</i> or <i>persons</i> in (6) carry on their business from a place of business outside the <i>UK</i> and, if so, the primary country from which that business is carried on.		
(8)	Where the <i>unauthorised person</i> or <i>persons</i> in (6) is or are <i>bodies corporate</i> , their Companies House number(s) (or international equivalent(s)).		
(9)	Where the <i>financial promotion</i> may be addressed to, or disseminated in such a way that it is likely to be received by, <i>retail clients</i> and where relevant: (a) the size, or potential size, of the offer (expressed in sterling); and (b) the maximum rate of return included in the <i>financial promotion</i> (expressed as a percentage).		
(10)	The date of the <i>approval</i> .		The date of the withdrawal of the <i>approval</i> .
(11)		The date on which the <i>financial promotion</i> was first <i>approved</i> .	
(12)	The medium (or media) by which the <i>financial promotion</i> will, or is intended to, be <i>communicated</i> .	The medium (or media) by which the amended <i>financial promotion</i> will, or is intended to, be <i>communicated</i> .	The medium (or media) in relation to which <i>approval</i> of the <i>financial promotion</i> has been withdrawn.
(13)		The reason(s) for the amendments to the <i>financial promotion</i> .	The reason(s) for the withdrawal of the <i>approval</i> .

Definition of notifiable concern

16.31.7

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A notifiable concern is a concern:

- (1) that an element of an *approved financial promotion* risks causing harm to *consumers*; or
- (2) relating to the integrity or propriety of an *unauthorised person* or *persons* for whom a *firm* has *approved a financial promotion*.

16.31.8

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- (1) A notifiable concern may arise, for example, where a *firm* that has *approved a financial promotion*:
 - (a) becomes aware that the *financial promotion* does not comply, or no longer complies, with applicable *financial promotion rules* such that it risks causing harm to *consumers*; or

- (b) receives information which suggests that the *unauthorised person* or *persons* for whom the *financial promotion* was approved have provided misleading information in connection with that approval.
- (2) In deciding whether to notify the FCA of approval of amendments to, or withdrawal of approval of, a *financial promotion*, a *firm* should consider the purpose of the notification rule (■ SUP 16.31.4G(3)).

Bi-annual reporting requirement

16.31.9

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- (1) A *firm* must submit the information in ■ SUP 16.31.10R to the FCA half yearly within 30 *business days* of the end of each reporting period.
- (2) Except as specified in (3), the reporting periods for the purpose of (1) are:
 - (a) the 6 *months* immediately following a *firm's accounting reference date*; and
 - (b) the 6 *months* immediately preceding and including a *firm's accounting reference date*.
- (3) A *firm* must submit its first report for the purpose of (1) in respect of the reporting period beginning on the date on which *approval* is granted to the *firm* and ending on the earlier of:
 - (a) the *firm's accounting reference date*; and
 - (b) the date falling 6 *months* after the *firm's accounting reference date*.
- (4) A *firm* must submit a return even if it has not *approved any financial promotions* or received any relevant complaints during a reporting period.

16.31.10

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The information in ■ SUP 16.31.9R(1) is, for the relevant reporting period:

- (1) the total number of *financial promotions approved*;
- (2) the number of *financial promotions* relating to each of the *investment types* in ■ SUP 16 Annex 55R *approved*;
- (3) the number of *financial promotions approved* relating to:
 - (a) *restricted mass market investments*; and
 - (b) *non-mass market investments*;
- (4) the number of complaints received relating to the *firm's approval of financial promotions*;
- (5) the total revenue (expressed in sterling) generated by the *firm's activity of approving financial promotions*;
- (6) unless the *firm* has reported no revenue for the purpose of (5), the total revenue (expressed in sterling) generated by the *firm's regulated activities*;

(7) unless the *firm* has reported no revenue for the purpose of (5), the *firm's* total revenue.

16.31.11 **R** Reference in **■ SUP 16.31.10R** to a *firm's* revenue is to a *firm's* income (before expenses). Total revenue refers to all income received across a *firm's* entire business, both regulated and unregulated.

Guidance

- 16.31.12** **G**
- (1) For the purposes of this section, reference to a *firm approving*, or *withdrawing approval of*, a '*financial promotion*' is to a *firm approving*, or *withdrawing approval of*, one or more communications which can together be considered to form part of a single invitation or inducement to *engage in investment activity* or to *engage in claims management activity*.
 - (2) This means that where a *firm approves* the content of more than one communication, including across multiple media, in respect of the same investment activity and conveying a consistent message, the *FCA* would only expect:
 - (a) to receive one notification in respect of those communications for the purposes of **■ SUP 16.31.5R**; and
 - (b) the *firm* to report one *approval* for the purposes of **■ SUP 16.31.10R**.
 - (3) An example of the scenario in (2) would be where a *firm approves* a number of communications relating to the same product or service as part of a single marketing campaign.
 - (4) Where a *firm has approved* one or more communications comprising a single '*financial promotion*' relating to a particular product or service as described in (2), and is later approached to *approve* a substantively different communication or communications relating to the same product or service, this should be considered as a new '*financial promotion*' for the purposes of this section.
 - (5) For the purposes of **■ SUP 16.31.5R(2)(a)**, the *FCA* considers that amendments to an *approved financial promotion* are likely to require further *approval* where those amendments relate to the communication's substance as an invitation or inducement to *engage in investment activity* or *engage in claims management activity*.
 - (6) This means that changes to administrative information, such as contact details, within a communication are unlikely to require *approval*. However, changes to information which may affect a recipient's assessment of whether to respond to, or act upon, the communication are likely to require further *approval*.
 - (7) Even where a *firm* is not required to make a notification to the *FCA* under the *rules* in this section, the *firm* should consider whether a particular matter is one of which the *FCA* would reasonably expect notice (*Principle 11*), having regard to the purpose of the *rules* in this section (**■ SUP 16.31.4G(3)**). For example, where a *firm* is approached to *approve a financial promotion* relating to an *investment* which risks causing harm to *consumers*.

(8) ■ SUP 16.31.10R(4) refers to the number of complaints received relating to a firm's approval of financial promotions. This figure should include complaints received directly by the firm about financial promotions which it has approved and any complaints about approved financial promotions received by persons for whom it has approved such financial promotions. To this end, a firm should maintain arrangements for those unauthorised persons for whom it approves financial promotions to forward any complaints, or relevant parts of complaints, relating to approved financial promotions to the firm.

Method of submission

16.31.13 R

- (1) A firm must submit the notifications and reports required by this section to the FCA online through the appropriate systems accessible from the FCA's website.
- (2) If the FCA's information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a firm must submit the relevant notification or report in the way set out in ■ SUP 16.3.9R (Method of submission of reports).

16.31.14 G

If the FCA's information technology systems fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 16.3.9R (Method of submission of reports) should be used.

Record-keeping

16.31.15 G

Firms are reminded of the need to maintain adequate records which are sufficient to enable the FCA to monitor compliance with requirements under the regulatory system (■ SYSC 9). Firms should therefore maintain appropriate records of approvals, withdrawals of approvals and approvals of amendments to financial promotions even where formal notification to the FCA (pursuant to ■ SUP 16.31.5R) is not required. Firms subject to the rules in ■ COBS 4 should also refer to ■ COBS 4.11.