

Chapter 2

Communications and financial promotions



2.2 The fair, clear and not misleading rule

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A *firm* or other provider must take reasonable steps to ensure that a communication, *financial promotion* or *payment service* or *electronic money promotion* is fair, clear and not misleading.
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The fair, clear and not misleading *rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information that it is intended to convey. So a communication addressed to a *banking customer*, a *payment service customer* or an *electronic money customer* who is not a *consumer* may not need to include the same information, or be presented in the same way, as a communication addressed to a *consumer*.
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The *rules* in ■ SYSC 3 (Systems and Controls) and ■ SYSC 4 (General organisational requirements) require a *firm* to put in place systems and controls or policies and procedures in order to comply with the *rules* in ■ COBS 4.6 (Past, simulated past and future performance), ■ COBS 4.7.1 R (Direct offer financial promotions), ■ COBS 4.10 (Approving and confirming compliance of financial promotions) and this chapter of *BCOBS*.
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Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 create criminal offences relating to certain misleading statements and practices.
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A communication, *financial promotion* or *payment service* or *electronic money promotion* should not describe a feature of a product or service as "guaranteed", "protected" or "secure", or use a similar term unless:

(1) that term is capable of being a fair, clear and not misleading description of it; and

(2) the *firm* or other provider communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.
- 2.2.5A

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A communication, or *payment service* or *electronic money promotion* relating to a *currency transfer service* is likely to be misleading if it presents an exchange rate in a way that is likely to give the impression that the rate is available to a *person* or a class of *persons* if that rate is unlikely to be

obtained by that *person* or class of *persons* with respect to a typical transaction.

2.2.5B G The inclusion of wording in a communication or *payment service or electronic money promotion* to the effect that an exchange rate shown is not available to particular *customers* will not necessarily prevent the presentation of the exchange rate being misleading.

2.2.6 G A communication or a *financial promotion* that refers to sums available by way of an *authorised non-business overdraft agreement* should make clear that such sums constitute borrowing or credit.

2.2.7 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.