

**FINANCIAL PROMOTION (APPROVER PERMISSION) INSTRUMENT 2023**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 55U (Applications under this Part);
  - (2) section 137A (The FCA’s general rules);
  - (3) section 137R (Financial promotion rules);
  - (4) section 137T (General supplementary powers);
  - (5) section 139A (Power of the FCA to give guidance);
  - (6) section 395 (The FCA’s and PRA’s procedures); and
  - (7) paragraph 23 (Fees) in Part 3 (Penalties and fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 6 November 2023.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

| (1)   | (2)     |
|---|---------|
| Glossary of definitions   | Annex A |
| Fees manual (FEES)  | Annex B |
| Conduct of Business sourcebook (COBS)                             | Annex C |
| Insurance: Conduct of Business sourcebook (ICOBS)                 | Annex D |
| Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) | Annex E |
| Banking: Conduct of Business sourcebook (BCOBS)                   | Annex F |
| Claims Management: Conduct of Business sourcebook (CMCOB)         | Annex G |
| Funeral Plan: Conduct of Business sourcebook (FPCOB)              | Annex H |
| Supervision manual (SUP)  | Annex I |
| Decision Procedure and Penalties manual (DEPP)                    | Annex J |
| Consumer Credit sourcebook (CONC)                                 | Annex K |

- E. The FCA confirms and remakes in the Glossary of definitions the defined expression ‘Act’.

**Amendments to material outside the Handbook**

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex L to this instrument.

**Notes**

- G. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” and “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- H. This instrument may be cited as the Financial Promotion (Approver Permission) Instrument 2023.

By order of the Board  
26 October 2023

## Annex A

### Amendments to the Glossary of definitions

In this Annex, all of the text is new and is not underlined.

Insert the following new definitions in the appropriate alphabetical position.

|  |   |
|--|---|
| <i>approver permission</i>                                   | a permission given by the <i>FCA</i> following determination of a <i>firm's</i> application under section 55NA of the <i>Act</i> , which entitles that <i>firm</i> to <i>approve</i> certain <i>financial promotions</i> for the purposes of section 21 of the <i>Act</i> , whether generally or subject to terms set by the <i>FCA</i> .   |
| <i>approver permission exemption</i>                         | an exemption from the <i>approver permission requirement</i> , provided under the <i>Financial Promotion Requirement Exemption Regulations</i> , which enables a <i>firm</i> to <i>approve</i> a <i>financial promotion</i> in prescribed circumstances without the need for <i>approver permission</i> .   |
| <i>approver permission requirement</i>                       | the general requirement imposed on a <i>firm</i> by section 55NA(1) of the <i>Act</i> not to <i>approve</i> (or purport to <i>approve</i> ) the content of a <i>financial promotion</i> for the purposes of section 21 of the <i>Act</i> without <i>approver permission</i> .   |
| <i>Financial Promotion Requirement Exemption Regulations</i> | the Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023 (SI 2023/966).   |
| <i>notifiable concern</i>                                    | has the meaning in <i>SUP</i> 16.31.7R.   |
| <i>permitted approver</i>                                    | in relation to a <i>financial promotion</i> , a <i>firm</i> that is entitled to <i>approve</i> that <i>financial promotion</i> under the terms of its <i>approver permission</i> or because it benefits from the transitional provision in regulation 3 of the Financial Services and Markets Act 2023 (Commencement No. 2 and Transitional Provisions) Regulations 2023 (SI 2023/936). |

**Annex B**

**Amendments to the Fees manual (FEES)**

In this Annex, underlining indicates new text.

**3 Application, Notification and Vetting Fees**

...

**3.2 Obligation to pay fees**

...

Method of payment

...

3.2.5 G (1) (a) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part 4A permission* or *approver permission*, authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*, registration under article 8(1) of the *MCD Order*, authorisation under regulation 7 of the *DRS Regulations* or verification under regulation 8 of the *DRS Regulations* or notification or registration under the *AIFMD UK regulation*, registration or certification under the *CRA Regulation*, registration or recognition under *EMIR* or the *Securities Financing Transactions Regulation*, or registration under the *Securitisation Regulation*.

...

...

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

| Part 1A: Application, notification and vetting fees |  |                               |
|---|--|-------------------------------|
| (1) Fee payer                                       | (2) Fee payable (£) by reference to the pricing category in <i>FEES 3</i> Annex 1AR. | Due date                      |
| ...   |  |                               |
| (e) Any applicant                                   | Pricing category   | As specified in <i>FEES 3</i> |

|   |   |                  |
|---|---|------------------|
| <p>making an application set out in <i>FEES 3 Annex 14R - Other FCA application fees:</i></p> <p>...</p> <p>(xi) an application for authorisation as a <i>third party verifier</i>;</p> <p><u>(xii) an application for, to vary or cancel an approver permission.</u></p> | <p>applicable to the application set out in <i>FEES 3 Annex 14R</i></p> | <p>Annex 14R</p> |
| ...   |   |                  |

...

**3 Annex Other FCA application fees 14R**

|     | <b>Application type</b> |  | <b>Pricing category in FEES 3 Annex 1AR</b>  | <b>Due date</b>                                   |
|-----|-------------------------|--|--|---|
| ... |                         |  |  |   |
| (8) | (a)                     | <p><u>An application for approver permission for the purposes of:</u></p> <p>(i) <u>section 55NA(3)(a) of the Act (where that application is made by an authorised person);</u><br/>or</p> <p>(ii) <u>section 55NA(3)(b) of the Act (where that application is made by an applicant for Part 4A permission that has yet to be determined).</u></p> | <p><u>5</u></p> <p><u>In respect of both the application for Part 4A permission and the application for approver permission, one fee is payable being the higher of:</u></p> | <p><u>On the date the application is made</u></p> |

|  |     |   |  |  |
|--|-----|---|--|--|
|  |     |   | (i) <u>5; and</u>  |  |
|  |     |   | (ii) <u>the tariff applicable to the application for Part 4A permission set out in FEES 3 Annex 1AR.</u> |  |
|  | (b) | <u>An application to vary an approver permission already granted under section 55NA of the Act, by way of an extension to the scope of that permission for the purposes of section 55NA(5)(a) of the Act.</u> | <u>50% of 5</u>  |  |
|  | (c) | <u>An application to:</u>   | <u>No charge</u>   |  |
|  |     | (i) <u>vary an approver permission by way of a reduction in the scope of that permission; or</u>  |  |  |
|  |     | (ii) <u>cancel an approver permission,</u>  |  |  |
|  |     | <u>for the purposes of section 55NA(5)(a) of the Act.</u>   |  |  |

## Annex C

## Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 4 Communicating with clients, including financial promotions

...

#### 4.10 Approving and confirming compliance of financial promotions

...

Approving financial promotions

4.10.1A G ...

4.10.1B G (1) The effect of section 55NA of the Act is that, with effect from 7 February 2024, 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) SUP 6A contains guidance on applying for approver permission.

(3) The requirements in this section that apply to a firm after it has approved a financial promotion continue to apply even where the firm ceases to be entitled to approve that financial promotion, for example because it ceases to be a permitted approver in respect of that financial promotion. This includes the requirement to monitor continuing compliance of the financial promotion. In such a scenario, if the firm became aware that the financial promotion no longer complied with the financial promotion rules, it could withdraw its approval but could not approve amendments to the financial promotion.

...

Relying on another firm's confirmation of compliance

4.10.10 R (1) A firm (A) will not contravene any of the financial promotion rules if it communicates a financial promotion which has been produced by another person and:

(a) A takes reasonable care to establish that another firm (B) has confirmed that the financial promotion complies with the financial promotion rules;

- (b) A takes reasonable care to establish that it *communicates* the *financial promotion* only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise; ~~and~~
- (c) so far as A is, or ought reasonably to be, aware:
  - (i) the *financial promotion* has not ceased to be fair, clear and not misleading since that time; and
  - (ii) B has not withdrawn the *financial promotion*; and
- (d) A takes reasonable care to establish that B did not breach the *approver permission requirement* in the context of confirming compliance.

...

...



## Annex D

## Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text.

**2 General matters**

...

**2.2 Communications to clients and financial promotions**

...

Approving financial promotions

2.2.3 R ...

- 2.2.3A G (1) The effect of section 55NA of the Act is that, with effect from 7 February 2024, 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) SUP 6A contains guidance on applying for approver permission.

...

## Annex E

**Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook  
(MCOB)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**3A Financial promotions and communications with customers**

**3A.1 Application and purpose**

...

Other relevant ~~handbook rules~~ provisions

3A.1.11 G ...

3A.1.11 G (1) *Firms are also reminded that the effect of section 55NA of the Act is that, with effect from 7 February 2024, 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) *SUP 6A contains guidance on applying for approver permission.*

...

## Annex F

## Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text.

**2 Communications and financial promotions**

**2.1 Purpose and Application: Who and what?**

...

2.1.4 G ...

Approving financial promotions: permission

- 2.1.5 G (1) The effect of section 55NA of the Act is that, with effect from 7 February 2024, 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) SUP 6A contains guidance on applying for approver permission.

...

## Annex G

## Amendments to the Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, underlining indicates new text.

### 3 Financial promotions, and communications with customers

...

#### 3.2 Financial promotions and communications – general standards

The fair, clear and not misleading rule

3.2.1 R ...

- 3.2.1A G (1) The effect of section 55NA of the Act is that, with effect from 7 February 2024, 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) SUP 6A contains guidance on applying for approver permission.

...

## Annex H

## Amendments to the Funeral Plan: Conduct of Business sourcebook (FPCOB)

In this Annex, underlining indicates new text.

**4 Communications and financial promotions**

...

**4.2 Communications and financial promotions: the obligations**

...

Approving financial promotions

...

4.2.9 R ...

4.2.9A G (1) The effect of section 55NA of the Act is that, with effect from 7 February 2024, 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) SUP 6A contains guidance on applying for approver permission.

...

## Annex I

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new chapter, SUP 6A, after SUP 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements). The text is not underlined.

#### **6A Permission to approve financial promotions**

##### **6A.1 Application and purpose**

###### Application

- 6A.1.1 G This chapter applies to a *firm*:
- (1) that wishes to apply to the *FCA* for *approver permission*; or
  - (2) with *approver permission*.
- 6A.1.2 G This chapter will also be of interest to a *person* who is applying, or is considering applying, for *Part 4A permission* and who may also wish to apply for *approver permission*.

###### Purpose

- 6A.1.3 G Under sections 21(2A) and 55NA of the *Act*, with effect from 7 February 2024, a *firm* is unable to *approve* a *financial promotion* for the purposes of section 21 of the *Act* unless:
- (1) the *firm* has obtained *approver permission* entitling it to *approve* that *financial promotion*; or
  - (2) an *approver permission exemption* applies.
- 6A.1.4 G A *firm* that *approves*, or purports to *approve*, a *financial promotion* other than:
- (1) in accordance with the terms of its *approver permission*, if it has such a permission; or
  - (2) within the scope of an *approver permission exemption*,
- is taken to have contravened a requirement imposed on the *firm* under the *Act*.
- [**Note:** section 55NA(2) and (11) of the *Act*]
- 6A.1.5 G This chapter explains how:

- (1) a *firm* can apply for *approver permission*;
- (2) a *firm* with *approver permission* can apply to the *FCA* to vary the terms of that *approver permission* or to cancel it; and
- (3) the *FCA* assesses and determines those applications.

6A.1.6 G This chapter also outlines the *FCA*'s power, on its own initiative, to vary the terms of a *firm*'s *approver permission* or to cancel it.

6A.1.7 G This chapter also includes a *rule* that requires a *firm* to keep the *FCA* informed of its plans to *approve financial promotions of investments* subject to marketing restrictions (*SUP* 6A.2.19R).

#### Interaction with other powers

6A.1.8 G Apart from the *FCA*'s power to grant, vary or cancel *approver permission*, section 55NA(12) of the *Act* confirms that the *FCA* may exercise other powers under the *Act* to restrict a *firm*'s ability to *approve financial promotions* beyond the restriction imposed by section 55NA. For example, the *FCA* may exercise its power to impose requirements under section 55L of the *Act* to restrict a *firm*'s ability to *approve financial promotions* for which it would not otherwise require *approver permission* (see *SUP* 6.3 and *SUP* 7).

## 6A.2 Applications relating to approver permission

### Applying for approver permission

- 6A.2.1 G
- (1) The following *persons* may apply to the *FCA* for the grant of *approver permission*:
    - (a) a *firm*; or
    - (b) a *person* whose application for *Part 4A permission* has yet to be determined.
  - (2) In the case of an applicant for *Part 4A permission*, the *FCA* is likely to consider the application for *approver permission* alongside the application for *Part 4A permission*.

### Determination of applications for approver permission

- 6A.2.2 G
- (1) The *FCA* may grant *approver permission* to a *firm* enabling it to *approve*:
    - (a) any *financial promotions*; or
    - (b) only certain *financial promotions*.
  - (2) In relation to (1)(b), the *FCA* may grant *approver permission* subject to any terms the *FCA* considers appropriate. This may, in particular,

provide for the *approver permission* to cover only *financial promotions* relating to certain kinds of *controlled investment*.

- (3) Where the *FCA* grants *approver permission* only in relation to certain *financial promotions* this may be:
- (a) in accordance with the *firm's* own application; or
  - (b) because the *FCA* determines that it is appropriate to grant *approver permission* on terms which are different to those applied for.

[**Note:** section 55NA(4) of the *Act*]

- 6A.2.3 G If the *FCA* grants or varies *approver permission*, the *FCA* will set out the terms on which the permission is granted, in particular, by describing what kinds of *financial promotion* the *firm* is entitled to *approve* and any conditions applicable to the exercise of the *approver permission*.

[**Note:** section 55NA(6) of the *Act*]

- 6A.2.4 G (1) The *FCA* may refuse to grant an application for *approver permission* under section 55NA of the *Act*, or refuse an application to vary or cancel an existing *approver permission*, if it appears to the *FCA* that it is desirable to do so in order to advance one or more of its *operational objectives*.
- (2) The *FCA* can only grant an application for *approver permission* made by an applicant for *Part 4A permission* if the applicant obtains *authorisation*.

[**Note:** section 55NA(7) of the *Act*]

- 6A.2.5 G The *FCA* will assess an application for *approver permission* by reference to its *operational objectives*. In making this assessment, the *FCA* is likely to have particular regard to:

- (1) the applicant's systems, controls and resources (including relevant personnel) relating to the *approval of financial promotions*;
- (2) the competence and expertise of relevant individuals;
- (3) the applicant's processes (or intended processes) for *approving financial promotions*; and
- (4) the applicant's readiness to comply with the relevant *financial promotion rules*.

[**Note:** for the *FCA's* guidance on *approving financial promotions* see: <https://www.fca.org.uk/firms/financial-promotions-and-adverts/approving-financial-promotions>]



## Applicant's competence and expertise to approve financial promotions

- 6A.2.6 G (1) The *FCA* ordinarily expects to grant permission only to *approve financial promotions* relating to *controlled investments* (or, where relevant, *controlled claims management activity*) of a kind in relation to which the applicant can demonstrate that it has appropriate competence and expertise to assess compliance with the applicable *financial promotion rules*.
- (2) In assessing an applicant's expertise in (1), the *FCA* will have regard, among other factors, to the *regulated activities* for which the applicant has applied for, or for which the applicant has, *Part 4A permission*.
- 6A.2.7 G (1) The *FCA* expects a *person* applying for *approver permission* to apply only for permission to *approve financial promotions*:
- (a) of a kind which the *person* anticipates they will, in fact, assess for the purposes of giving, or refusing to give, *approval* (if *approver permission* is granted); and
- (b) relating to *controlled investments* (or, where relevant, *controlled claims management activity*) of a kind in relation to which the *person* reasonably believes they have appropriate competence and expertise to assess compliance with the applicable *financial promotion rules*.
- (2) In accordance with (1), the *FCA* discourages applicants from applying for blanket *approver permission* in respect of *financial promotions* generally.

## Preparing for an application

- 6A.2.8 G A *firm* that intends to apply for:
- (1) *approver permission*;
- (2) a variation of its *approver permission*; or
- (3) cancellation of its *approver permission*,
- should, consistent with *Principle 11* (Relations with regulators), discuss its plans with its supervisory contact at the *FCA* as early as possible before making an application. These discussions will help the *FCA* and the *firm* to agree the correct approach for the *firm's* application.

## Making an application

- 6A.2.9 D (1) A *firm* wishing to apply for *approver permission*, or for a variation or cancellation of its *approver permission*, must apply online using the relevant form specified on the *online notification and*

*application system.*

- (2) Until the application has been determined, a *firm* which submits an application must inform the *FCA* of any significant change to the information given in the application immediately after it becomes aware of the change.
  - (3) If the *online notification and application system* fails 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 form in *SUP 6 Annex 5D* in the way set out in *SUP 15.7.4R* to *SUP 15.7.9G* (Form and method of notification).
- 6A.2.10 G (1) If the *online notification and application system* fails 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 15.7.4R* to *SUP 15.7.9G* (Form and method of notification) should be used.
- (2) Where *SUP 6A.2.9D(3)* applies to a *firm*, *GEN 1.3.2R* (Emergency) does not apply.
- 6A.2.11 G An applicant for *Part 4A permission* that also wishes to apply for *approver permission* should refer to the *FCA*'s website for information on how to make this application.
- 6A.2.12 G As soon as possible after receipt of an application for *approver permission*, the *FCA* will advise the applicant of any additional information which is required as part of its application. The amount of information required will vary depending on the type of *financial promotions* in relation to which the applicant is seeking *approver permission* and the related risk profile of the application.
- 6A.2.13 G The fees payable by a *person* applying for *approver permission*, or an extension of *approver permission*, are set out in *FEES 3 Annex 14R*.

How long will an application take?

- 6A.2.14 G (1) Under section 55V(1) of the *Act* (Determination of applications), the *FCA* has 6 months to consider a completed application from the date of receipt.
- (2) If the *FCA* receives an application which is incomplete (that is, if information or a document required as part of the application is not provided), section 55V(2) of the *Act* requires the *FCA* to determine that incomplete application within 12 months of the initial receipt of the application.
- (3) If the *FCA* fails to determine an application within the time period specified in section 55V of the *Act*, this does not mean that *approver*

*permission* is deemed to be granted.

How will an application be determined?

- 6A.2.15 G (1) A decision to grant an application will be taken by appropriately experienced staff at the *FCA*. However, if the staff dealing with the application recommend that a *firm's* application for *approver permission*, or for a variation of its *approver permission*, be either refused or granted on terms other than those applied for, the decision will be subject to the *FCA's* formal decision-making process.
- (2) *DEPP* gives *guidance* on the *FCA's* decision-making procedures, including the procedures it will follow if it proposes to refuse an application for *approver permission* either in whole or in part.

Consultation with other regulators

- 6A.2.16 G Before granting *approver permission*, or varying or cancelling a *firm's approver permission* in response to an application under section 55NA of the *Act*, the *FCA* will consult:
- (1) the *PRA*, if the applicant is a *person*:
- (a) who is, or on the granting of an application for *Part 4A permission* will be, a *PRA-authorised person*; or
- (b) who is a member of a *group* which includes a *PRA-authorised person*;
- (2) the Gibraltar regulator, if the applicant or *firm* is a Gibraltar-based person (in each case within the meaning of Schedule 2A of the *Act*).

[**Note:** section 55NA(9) and (10) of the *Act*]

Threshold conditions

- 6A.2.17 G In granting *approver permission*, the *FCA* is required by section 55B(3) of the *Act* to ensure that the applicant or *firm* satisfies, and will continue to satisfy, the *threshold conditions* for which the *FCA* is responsible in relation to all the *regulated activities* for which the applicant or *firm* has, or will have, *Part 4A permission*.

Approvals of financial promotions of investments subject to marketing restrictions

- 6A.2.18 G (1) A *firm* that applies for permission to *approve financial promotions* relating to certain types of *investment* will be asked whether it expects to *approve financial promotions* relating to:
- (a) *restricted mass market investments*; and

- (b) *non-mass market investments*.
  - (2) Reference to these categories of *investment* subject to marketing restrictions is unlikely to form part of a *firm's approver permission*.
  - (3) Nevertheless, the *FCA* expects *firms* to keep it informed of changes to their plans to *approve financial promotions* relating to *restricted mass market investments* and *non-mass market investments*.
- 6A.2.19 R (1) A *firm* must give the *FCA*:
- (a) reasonable advance notice if it intends to begin *approving financial promotions* relating to *restricted mass market investments* or *non-mass market investments* for the first time; or
  - (b) notice if it ceases *approving financial promotions* relating to *restricted mass market investments* or *non-mass market investments*.
- (2) A notification in accordance with (1) must be made in the manner set out in *SUP 15.7*.

### 6A.3 FCA's own-initiative power

- 6A.3.1 G Where the *FCA* grants *approver permission* to a *firm* under section 55NA of the *Act*, the *FCA* may vary the terms of that permission, or cancel it:
- (1) on the application of the *firm* to whom it was given; or
  - (2) on the *FCA's* own initiative, if it appears to the *FCA* that:
    - (a) the *firm* has failed, during a period of at least 12 months, to give, or to refuse to give, any *approvals* in accordance with its *approver permission*. In practice, this might arise where:
      - (i) the *firm* does not appear to have assessed any *financial promotions* for the purposes of potential *approval* for a period of at least 12 months; or
      - (ii) the *firm* has only *approved* (or refused to *approve*) *financial promotions* of a substantially narrower description than the kinds for which it has *approver permission*; or
    - (b) it is desirable to do so in order to advance one or more of its *operational objectives*.

[**Note:** section 55NA(8) of the *Act*]

- 6A.3.2 G In deciding whether to vary or cancel a *firm's approver permission* on its own initiative, the *FCA* will take into account all relevant factors in relation

to the *firm's* business. This may include its business model, the commercial environment and any legitimate explanation for the manner in which the *firm* has used its *approver permission* or for its failure to use its *approver permission*.

- 6A.3.3 G (1) The *FCA* will consult the *PRA* before varying or cancelling, on the *FCA's* own initiative, the terms of the *approver permission* of a *PRA-authorized person* or a member of a *group* which includes a *PRA-authorized person*.
- (2) Where the *FCA* varies the terms of, or cancels, the *approver permission* of a Gibraltar-based person on its own initiative, the *FCA* is not obliged to consult with the Gibraltar regulator but the *FCA* will inform the Gibraltar regulator in writing of the variation or cancellation.

[**Note:** section 55NA(9) and (10) of the *Act*]

- 6A.3.4 G (1) If the *FCA* exercises its power to vary the terms of a *firm's approver permission* on its own initiative, it will do so by issuing a *supervisory notice*.
- (2) If the *FCA* proposes to cancel a *firm's approver permission* on its own initiative, it will give the *firm* a *warning notice* and, where the *FCA* decides to cancel, it will give the *firm* a *decision notice*.
- (3) The procedure that will be followed in each case is set out in *DEPP* 2.
- 6A.3.5 G A *firm* has a right of referral to the *Tribunal* in respect of the *FCA* exercising its power to vary or cancel a *firm's approver permission* on its own initiative.

Amend the following text as shown.

**16 Reporting requirements**

**16.1 Application**

...

- 16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.22 and SUP 16.26)

| (1) Section(s) | (2) Categories of firm to which section applies | (3) Applicable rules and guidance |
|----------------|---|-----------------------------------|
| ...            |   |                                   |

|                         |   |                       |
|-------------------------|---|-----------------------|
| <i>SUP 16.28</i>        | ...   | ...                   |
|                         | to the extent that the <i>firm</i> and its business falls within the scope of <i>SUP 16.28.8R</i> . |                       |
| <u><i>SUP 16.29</i></u> | <u><i>A MIFIDPRU investment firm other than in the circumstances specified in SUP 16.29.1R.</i></u> | <u>Entire section</u> |
| <u><i>SUP 16.30</i></u> | <u>[to follow]</u>  |                       |
| <u><i>SUP 16.31</i></u> | <u><i>A firm with approver permission.</i></u>  | <u>Entire section</u> |
| ...                     |   |                       |

...

### 16.3 General provisions on reporting

...

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

...

- (22) value measures data reporting (*SUP 16.27*); ~~and~~
- (23) ~~Home~~ *home insurance* and *motor insurance* pricing reporting (*SUP 16.28*);
- (24) MIFIDPRU remuneration reporting (*SUP 16.29*);
- (25) [to follow]
- (26) *financial promotion approval reporting (SUP 16.31)*.

...

Insert the following new section, SUP 16.31, after SUP 16.30 (Baseline Financial Resilience Report). The text is not underlined.

[*Editor's note:* SUP 16.30 is inserted by FCA 2023/17 and comes into force on 1 January 2024.]

## 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, with effect from 7 February 2024, 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 R (1) 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*.
- (2) 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*.
- (3) 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 R This is the table referred to in *SUP* 16.31.5R.

|     | <b>Approving a financial promotion</b>  | <b>Approving amendments to a financial promotion</b>   | <b>Withdrawing approval of a financial promotion</b> |
|-----|---|--|--|
| (1) | The reason for making the notification. |  |  |
| (2) |   | The reference number for any previous notification submitted pursuant to <i>SUP</i> 16.31.5R relating to the <i>approval</i> of the <i>financial promotion</i> . |  |



|      |  |   |  |
|------|--|---|--|
| (3)  | The name of the <i>controlled investment</i> (or <i>person</i> engaging in <i>controlled claims management activity</i> ) to which the <i>financial promotion</i> relates.   |   |  |
| (4)  | The kind of <i>investment</i> (or <i>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</i> or <i>non-mass market investment</i> .  |   |  |
| (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:<br>(a) the size, or potential size, of the offer (expressed in sterling); and<br>(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 R 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 G (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 R (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.

- 16.31.1 R The information in *SUP* 16.31.9R(1) is, for the relevant reporting period:  
0
- (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.
- 16.31.1 R Reference in *SUP* 16.31.10R to a *firm's* revenue is to a *firm's* income  
1 (before expenses). Total revenue refers to all income received across a *firm's* entire business, both regulated and unregulated.

#### Guidance

- 16.31.1 G (1) For the purposes of this section, reference to a *firm approving*, or  
2 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

- |              |   |   |
|--------------|---|---|
| 16.31.1<br>3 | R | <ol style="list-style-type: none"> <li>(1) A <i>firm</i> must submit the notifications and reports required by this section to the <i>FCA</i> online through the appropriate systems accessible from the <i>FCA's</i> website.</li> <li>(2) If the <i>FCA's</i> 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 <i>firm</i> must submit the</li> </ol> |
|--------------|---|---|

relevant notification or report in the way set out in *SUP* 16.3.9R (Method of submission of reports).

- 16.31.1 G If the *FCA*'s information technology systems fail and online submission is  
4 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

- 16.31.1 G *Firms* are reminded of the need to maintain adequate records which are  
5 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.

After *SUP* 16 Annex 54 (Guidance notes on the data items for FIN073 (the Baseline Financial Resilience Report)), insert the following new Annex 55. The text is not underlined.

[*Editor's note*: Annex 54 is inserted by FCA 2023/17 and comes into force on 1 January 2024.]

### **16 Annex 55R** Categories of investment for notifications and reports relating to approvals of financial promotions

This Annex belongs to *SUP* 16.31.6R and *SUP* 16.31.10R.

| Type of investment   |
|--|
| Deposit  |
| Life policy  |
| Non-investment insurance contract  |
| Listed share   |
| Unlisted share promoted on an investment-based crowdfunding platform                       |
| Unlisted share (not including those promoted on an investment-based crowdfunding platform) |
| Debenture promoted on an investment-based crowdfunding platform                            |
| Debenture (not including those promoted on an investment-based crowdfunding platform)      |

|  |
|--|
| platform)  |
| Alternative debenture                              |
| Government and public security                     |
| Warrant  |
| Certificate representing certain security          |
| Unit   |
| Pension (personal or stakeholder pension scheme)   |
| Option   |
| Future   |
| Contract for differences                           |
| Emissions allowance                                |
| Lloyd's syndicate capacity and membership          |
| Funeral plan contract                              |
| Regulated mortgage contract                        |
| Home reversion plan                                |
| Home purchase plan                                 |
| Regulated sale and rent back agreement             |
| Credit agreement (buy now pay later)               |
| Credit agreement (not including buy now pay later) |
| Consumer hire agreement                            |
| Qualifying cryptoasset                             |
| Peer-to-peer agreement                             |
| Rights to or interests in investment               |
| Claims management activity                         |
| Other  |

Insert the following new transitional provision, SUP TP 14, after SUP TP 13 (Transitional provisions relating to appointed representatives). The text is not underlined.

**TP 14 Transitional provisions relating to financial promotion notifications and reports**

| (1)  | (2)  | (3) | (4)  | (5)                                    | (6)                                   |
|------|--|-----|--|--|---------------------------------------|
|      | Material to which the transitional provision applies |     | Transitional provision   | Transitional provision: dates in force | Handbook provision: coming into force |
| 14.1 | SUP 16.31.5R   | R   | <p>(1) This transitional provision applies to a <i>firm</i> that applies for <i>approver permission</i> on or before 6 February 2024 and whose application has yet to be determined.</p> <p>(2) The requirement to submit notifications to the <i>FCA</i> for the purposes of SUP 16.31.5R applies to a <i>firm</i> in (1).</p>  | From 7 February 2024                   | 6 November 2023                       |
| 14.2 | SUP 16.31.5R   | G   | <p>The effect of the transitional provision in 14.1 is that a <i>firm</i> that applies for <i>approver permission</i> on or before 6 February 2024 must begin complying with the notification requirements in SUP 16.31.5R from 7 February 2024. Ordinarily, a <i>firm</i> applying for <i>approver permission</i> would only begin submitting such notifications following the grant of its <i>approver permission</i>.</p> | From 7 February 2024                   | 6 November 2023                       |
| 14.3 | SUP 16.31.9R   | R   | (1) This transitional provision applies to a   | From 7 February                        | 6 November                            |

|      |                     |   |   |                      |                 |
|------|---------------------|---|---|----------------------|-----------------|
|      |                     |   | <p><i>firm</i> that applies for <i>approver permission</i> on or before 6 February 2024 and whose application has yet to be determined.</p> <p>(2) The requirement to submit bi-annual reports to the <i>FCA</i> for the purposes of <i>SUP</i> 16.31.9R applies to a <i>firm</i> in (1).</p> <p>(3) A <i>firm</i> in (1) must submit its first bi-annual report for the purpose of <i>SUP</i> 16.31.9R in respect of the reporting period beginning on 7 February 2024 and ending on the earlier of:</p> <p>(a) the <i>firm's</i> <i>accounting reference date</i>; or</p> <p>(b) the date falling 6 <i>months</i> after the <i>firm's</i> <i>accounting reference date</i>.</p> | 2024                 | 2023            |
| 14.4 | <i>SUP</i> 16.31.9R | G | <p>The effect of the transitional provision in 14.3 is that a <i>firm</i> that applies for <i>approver permission</i> on or before 6 February 2024 must comply with the bi-annual reporting requirement while its application is being determined. The <i>firm</i> must submit its first bi-annual report to cover the period from 7 February 2024 to the date that would otherwise mark the</p>  | From 7 February 2024 | 6 November 2023 |



|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  |  | end of a reporting period. Ordinarily, a <i>firm</i> applying for <i>approver permission</i> would be required to submit its first bi-annual report only following the grant of its <i>approver permission</i> . |  |  |
|--|--|--|--|--|--|

## Annex J

## Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Statutory notices and the allocation of decision making

...

### 2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk \* (see *DEPP* 2.4)

| Section of the Act | Description  | Handbook reference | Decision maker                     |
|--------------------|--|--------------------|------------------------------------|
| ...                |  |                    |                                    |
| 55X(1)(e)          | ...  |                    | ...                                |
| <u>55X(1)(f)</u>   | <u>when the <i>FCA</i> is proposing to grant an application for <i>approver permission</i> but subject to terms which were not sought in the application</u>                             | <u>SUP 6A</u>      | <u><i>Executive procedures</i></u> |
| <u>55X(1)(g)</u>   | <u>when the <i>FCA</i> is proposing to grant an application to vary the terms of a <i>firm's approver permission</i> but making different changes to those sought in the application</u> |                    | <u><i>Executive procedures</i></u> |
| ...                |  |                    |                                    |

|                   |   |               |                                    |
|-------------------|---|---------------|------------------------------------|
| 55X(2)            | when the <i>FCA</i> is proposing to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i> |               | <i>Executive procedures</i>        |
| <u>55X(2)</u>     | <u>when the <i>FCA</i> is proposing to refuse an application for <i>approver permission</i></u>   | <u>SUP 6A</u> | <u><i>Executive procedures</i></u> |
| <u>55X(2)</u>     | <u>when the <i>FCA</i> is proposing to refuse an application for the variation or cancellation of a <i>firm's approver permission</i></u>                                       |               | <u><i>Executive procedures</i></u> |
| ...               |   |               |                                    |
| 55X(4)(e)         | ...   |               | ...                                |
| <u>55X(4)(ea)</u> | <u>when the <i>FCA</i> is deciding to grant an application for <i>approver permission</i> but subject to terms which were not sought in the application</u>                     | <u>SUP 6A</u> | <u><i>Executive procedures</i></u> |
| <u>55X(4)(eb)</u> | <u>when the <i>FCA</i> is deciding to grant an application to vary the terms of a <i>firm's approver permission</i> but</u>   |               | <u><i>Executive procedures</i></u> |

|                  |  |               |                                    |
|------------------|--|---------------|------------------------------------|
|                  | <u>making different changes to those sought in the application</u>   |               |                                    |
| ...              |  |               |                                    |
| 55X(4)(f)        | When the <i>FCA</i> is deciding to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i>                     |               | <i>Executive procedures</i>        |
| <u>55X(4)(f)</u> | <u>when the <i>FCA</i> is deciding to refuse an application for <i>approver permission</i></u>   | <u>SUP 6A</u> | <u><i>Executive procedures</i></u> |
| <u>55X(4)(f)</u> | <u>when the <i>FCA</i> is deciding to refuse an application for the variation or cancellation of a <i>firm's approver permission</i></u>   |               | <u><i>Executive procedures</i></u> |
| 55Z(1)<br>55Z(2) | when the <i>FCA</i> is proposing or deciding to cancel a <i>firm's Part 4A permission</i> <u>or <i>approver permission</i></u> otherwise than at <del>its</del> <u>the <i>firm's</i></u> request * |               | <i>Executive procedures</i>        |
| ...              |  |               |                                    |

2 Annex Supervisory notices  
2G

| Section of the Act            | Description   | Handbook reference            | Decision maker  |
|-------------------------------|---|-------------------------------|---|
| ...                           |   |                               |   |
| 55XA(1)(f)                    | ...   |                               |   |
| 55Y(4)<br>55Y(7)<br>55Y(8)(b) | when the <i>FCA</i> is <u>proposing to exercise, is deciding to exercise or is, with immediate effect, exercising its own-initiative variation power to vary a firm's <i>firm's Part 4A permission or its power to vary the terms of a firm's approver permission or is deciding, after considering any representations made by the firm, not to rescind a variation of either sort</i></u> | <i>SUP 6A</i><br><i>SUP 7</i> | <i>Executive procedures</i><br>See <i>DEPP 2.5.7G</i> |
| ...                           |   |                               |   |

## Annex K

## Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

**3 Financial promotions and communications with customers**

...

**3.2 Financial promotion general guidance**

...

3.2.3 G ...

Approving financial promotions: permission

3.2.4 G (1) The effect of section 55NA of the Act is that, with effect from 7 February 2024, 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) SUP 6A contains guidance on applying for approver permission.

...

## Annex L

## Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 8 Financial promotion and related activities

...

### 8.2 Introduction

8.2.1 G (1) The effect of section 21 of the *Act* (Restrictions on financial promotion) is that in the course of business, an *unauthorised person* must not *communicate* an invitation or inducement to *engage in investment activity* or to *engage in claims management activity* unless either the content of the communication is *approved* for the purposes of section 21 by an *authorised person* or it is exempt.

(2) By virtue of section 21(2A) of the *Act*, with effect from 7 February 2024, an *authorised person* is unable to *approve* the content of a communication for the purposes of section 21 of the *Act* unless:

(a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or

(b) an *approver permission exemption* applies.

(3) With effect from 7 February 2024, references in this chapter to *financial promotions being approved by an authorised person* should be read as referring to *approval by an authorised person who is either a permitted approver in relation to that financial promotion or where the approval falls within the scope of an approver permission exemption.*

(4) Under section 25 of the *Act* (Contravention of section 21), a *person* commits a criminal offence if ~~he carries~~ they carry on activities in breach of the restriction in section 21 of the *Act*. A *person* who commits this criminal offence is subject to a maximum of two years imprisonment and an unlimited fine. However, it is a defence for a *person* to show that ~~he~~ they took all reasonable precautions and used all due diligence to avoid committing the offence.

...

8.2.5 G (1) If the answer to *PERG 8.2.4G(8)* is yes, then the appropriate *financial promotion rules* will potentially apply (subject to the relevant application provisions ~~in *COBS 1* and *COBS 4*~~).

(2) If the answer to *PERG 8.2.4G(8)* is no, then the promotion must be *approved* by an *authorised person* if it is a *non-real time financial*

*promotion. Authorised persons are not allowed to approve:*

- (a) financial promotions other than within the scope of:
  - (i) approver permission given by the FCA under section 55NA of the Act; or
  - (ii) an approver permission exemption (see PERG 8.9.1AG);
- (b) real time financial promotions (see COBS 4.10.4R).
- (3) PERG 8.36.1G contains a flowchart explaining these steps.

...

### **8.3 Financial promotion**

8.3.1 G ...

8.3.1A G The effect of section 21(2A) of the Act is that, with effect from 7 February 2024, an authorised person is unable to approve the content of a communication for the purposes of section 21 unless:

- (1) the firm is a permitted approver in relation to the financial promotion; or
- (2) an approver permission exemption applies.

...

### **8.9 Circumstances where the restriction in section 21 does not apply**

8.9.1 G ...

8.9.1A G (1) Section 21(2A) of the Act specifies that (with effect from 7 February 2024) the content of a financial promotion can only be approved for the purposes of section 21 by an authorised person:

- (a) who is a permitted approver in relation to the financial promotion; or
- (b) within the scope of an approver permission exemption.
- (2) Exemptions in the Financial Promotion Requirement Exemption Regulations allow an authorised person (A) to approve the content of a financial promotion where the content has been prepared by:
  - (a) A (for the purposes of communication by an unauthorised person) (see PERG 8.9.3G);
  - (b) an unauthorised person (U), where both A and U are members



of the same group;

(c) an appointed representative of A, in relation to any regulated activity comprised in the carrying on of the business for which A has accepted responsibility.

(3) In relation to PERG 8.9.1AG(2)(c), the relevant exemption allows a firm to approve a financial promotion prepared by its appointed representative where that financial promotion is made for the purposes of the appointed representative's exempt activities.

...

8.9.3 G An *unauthorised person* may wish to pass on a *financial promotion* made to ~~him~~ them by an *authorised person*. In this case, the fact that the *financial promotion* was made to ~~him~~ them by an *authorised person* will not be enough for the restriction in section 21 not to apply to ~~him~~ them. The *authorised person* must also both have *approved* its content and have done so for the purpose of section 21 of the *Act*. If an *authorised person* wishes to ensure that an *unauthorised person* can *communicate* a *financial promotion* made by the *authorised person* to third parties, it may *approve* its own *financial promotion* for the purposes of section 21 of the *Act* (see COBS 4.10.3G(2)). An approver permission exemption allows an authorised person to approve its own financial promotion without requiring approver permission.

...

## 10 Guidance on activities related to pension schemes

...

### 10.5 Employers and affinity groups (such as trade unions)

...

**Q47. As an employer, are there restrictions on my providing staff with details of pension schemes?**

Yes, but in most circumstances you should be able to make use of an exemption.

If you make an invitation or inducement to your staff to join a *personal pension scheme* or a nominated *stakeholder pension scheme*, you are likely to be making a *financial promotion*. This is prohibited under section 21 of the ~~Financial Services and Markets Act 2000~~ Act unless:

- you are an ~~authorised person~~ authorised person; or
- its contents are ~~approved~~ approved by an *authorised person* with the necessary approver permission or within an approver permission exemption; or

- it falls within a relevant exemption.

...

...

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