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FCA Consultation GC23/2 Financial Promotions on Social Media

1. Introduction and Summary

1.1 The UK Shareholders' Association (UKSA) and the UK Individual Shareholders' Society (ShareSoc) are pleased to have the opportunity to comment on the proposed updates to the FCA's guidance on financial promotions on social media. We are responding to this consultation from the point of view of the consumer rather than as a provider of financial products or services to consumers.

1.2 The consultation document gives plenty of good examples of acceptable and, equally importantly, unacceptable social media posts. It also contains many useful, relevant and interesting links to research and current regulation relating to the use of social media for financial promotions.

1.3 However, it fails to address some important issues. For example, while it discusses the advent of the 'finfluencers' it does not mention the dramatic advances in the algorithms now used by the social media platforms. These allow very precise targeting of messages to consumers based on detailed insights into their perceived wants, needs and preferences. The targeting is designed to ensure that the recipient will be disposed towards acting on the message. This coupled with the way in which initial, short content is presented can make the messaging highly manipulative. The arrival of artificial intelligence (AI) is likely to reinforce this trend in future.

1.4 Promotions on social media are very attractive to the financial services industry. It is an easy way to reach younger consumers; it is inexpensive, efficient and very effective. However, many promotions using social media are not in the spirit of the New Consumer Duty. The Consume Duty requires financial services firms to act in ways that are, first and foremost, deigned to achieve good outcomes for retail customers. Much of what is presented on social media and the way it is presented, simply plays to consumers' biases, concerns, worries, ignorance and greed. It is also designed to encourage an impulsive response.

1.5 We have serious doubts about the likely effectiveness of the FCA's proposals for improving the standard of financial promotions on social media. We see little chance of this helping the FCA to meet its statutory consumer protection objective set out in para 1.14 of the consultation document. We discuss our reasoning for this in Section 3 of our response below.

1.6 In section 4 below we have briefly described what we believe would be a better solution, which would be to ban financial promotions on social media unless the consumer already had a relationship with the promoter and had agreed to receive financial promotions from them. This would be in line with proposals recently published by the Treasury to ban cold calling for consumer financial services and products.

1.7 In section 5 below we have answered the six questions that you specifically ask in the consultation document.

2. About UKSA and ShareSoc

UKSA (United Kingdom Shareholders' Association)

2.1 UKSA is the oldest shareholder organisation in the UK, with 12,000 members. We are a not-for-profit membership organisation led solely by volunteers. We believe that investors have responsibilities to society, as well as rights, and our interests extend to enabling and encouraging the investors of the future.

2.2 UKSA is constituted as a company limited by guarantee, answerable only to our full members. We are resolutely independent of the financial and corporate sectors and funded only by individual donations

2.3 Our Policy Team[1], all experienced investors, includes individuals with deep practical experience of accounting, taxation, regulation, and corporate management, without personal conflicts of interest, and mostly retired. See www.uksa.org.uk

ShareSoc (UK Individual Shareholders Society)

2.4 ShareSoc, a not-for-profit company, is the UK's largest membership organisation for individual investors with more than 16,000 members and followers. It represents the interests of individual investors to regulators and government, and offers a range of investor education, information and networking services.

2.5 As well as lobbying government and regulators, ShareSoc campaigns on specific company issues and on individual investors' wider concerns. It ShareSoc has had notable success in delivering change at a number of companies and has influenced government policy and legislation. ShareSoc aims to ensure that individual investors have their proper say in the businesses in which they invest.

2.6 ShareSoc's Member Services include in-depth company reports, investor education resources and networking opportunities with other investors. It also promotes Shareholder Engagement with quoted companies through the many events organised for members. And provides online forums for the exchange of views between investors. See www.sharesoc.org

3. Why we question the likely effectiveness of the FCA's proposals for improving financial promotions on social media.

Current issues with financial promotions on Social media.

3.1 We read with interest the FCA survey published in 2021, 'Young investors driven by competition and hype'. Key findings included:

- 76% of those aged under 40 who have invested in high-risk products such as cryptocurrency and forex say they are driven by competition with friends, family and acquaintances and their own past investments.

[1] The Policy Team members are listed with short biographies at https://www.uksa.org.uk/sites/default/files/2023-02/PTBIO.pdf

- Hype on social media and in the news is driving new investors to take up high-risk investments. 58% of respondents agreed that constantly hearing about a certain investment on the news, on social media and from other people encouraged them to purchase specific investments.
- Of the 1000 people surveyed, three quarters (76%) said they felt a sense of competitiveness when placing their money in an investment, with over two thirds (68%) likening it to gambling. Few of those surveyed were investing for the long haul.
- The regulator is concerned that new investors are increasingly accessing higher-risk investments which may not be right for them, or reflect their risk tolerance.
- The FCA's Financial Lives research found that the majority of those who purchased forex or crypto (57% and 69% respectively) incorrectly believed these to be regulated by the FCA. As a result, they were unlikely to understand the lack of investor protection and the risk to their money.

3.2 This confirms our own observations that many young people who use social media to inform their investment strategies are not actually 'investing' in the accepted sense of the word. They have little interest in or understanding of the underlying asset/s. If they invest in shares these will often be 'meme' stocks such as Tesla or GameStop in which they hope to make a profit over the short / very short term because everyone else appears to be investing in it as well - i.e. encouraging a 'herd mentality'. In this respect social media has simply resulted in the 'gamification' of investing, reducing it to little more than a form of gambling. In many cases, users have little or no understanding of the risks they are taking.

3.3 The best that can be said is that if, as the research suggests, many young people see this as a form of gambling then they must by definition accept that they could lose all their money. However, an issue that should give the FCA pause for thought in this respect is that its role is not to regulate gambling. That is the role of the Gambling Commission. In this respect it might be appropriate for the FCA to consult the Gambling Commission on the subject of financial promotions on social media.

3.4 We note the FCA's concerns about these issues and about action taken following the research in late 2021 with BMX gold medallist Charlotte Worthington to try to highlight the pitfalls of high-risk activities, and the need for proper preparation before attempting them. We suspect that initiatives of this sort from the FCA will already have been overtaken (and probably overwhelmed) by the rapid increase in the popularity of finfluencers on social media.

3.5 In GC23/2 the FCA mentions its concerns about 'finfluencers'. The Young Money Report 2022 reveals that 62% of 18 - 29 year-olds follow social media influencers with 74% of them saying they trust their advice. As the FCA notes in the consultation document (para 1.11):

'Often these influencers have little knowledge of what they are promoting. This lack of expertise is reflected in the large number of promotions that are either illegal or non-compliant, making it likely that consumers will see poor quality information on social media'.

3.6 We note the comment by the FCA in the consultation document (para 41) that:

'We have seen consumers on social media be repeatedly bombarded by financial promotions from the same service or firm. Vulnerable consumers may be more susceptible on social media to the type of behavioural biases that excessive targeting tries to exploit'.

3.7 CG23/2 points to further concerns on the part of the FCA about the extent to which current regulation and advice is being followed and applied by the financial services industry. For example, para 21 states:

'We have seen examples of firms lacking proper systems and controls to manage how their promotions are used on social media'.

Para 21 goes on to outline where detailed advice and guidance from the FCA is already available to firms.

3.8 Paras 22 and 23 suggest that there are concerns within the FCA about the suitability of social media as a platform for promoting certain types of product and service, such as debt counselling. The consultation document refers to specific guidance in this area.

3.9 Similarly GC23/2 refers to the failure of firms when using social media to make clear the risks of the products / services they are promoting. In many cases, it seems, the claimed benefits and attractions of the service are prominently shown in the social media posts but the risks are either not appropriately flagged or are require further action ('read more') for the consumer to see them.

Current regulation and guidance

3.10 GC23/2 makes it clear that there is already a significant body of guidance and regulation around many of the promotions and products appearing on social media. It refers to:

- The existing FG15/4 guidance (which the FCA now plans to update);
- The rules under Section 21 of the Financial Services and Markets Act 2000 (FSMA) governing financial promotions;
- FCA guidance on approving financial promotions
- The rules governing cryptoasset promotions (summarised in PS23/6);
- The extensive guidance on the scope of the financial promotion regime in Chapter 8 of the Perimeter Guidance Manual (PERG) with further guidance in Chapter 3 on the 'business test' and cases in which the communicator is not making a communication in the context of a direct commercial relationship;
- The different rules for different sectors including:
    - Banking
    - Claims management
    - Consumer credit
    - Funeral plans
    - Insurance
    - Mortgages and home finance

- Rules on High Risk Investments (HRIs) contained in COBS 4.12A, 4.12B and COBS 22.

3.11 Overarching all this is the New Consumer Duty (PS22/9) consisting of over 90 pages of rules and guidance on the FCA's expectations for the standards of care that firms give to consumers. This is supported by the Finalised Guidance (FG22/5) – a further 120 pages of 'non-handbook guidance' on the Consumer Duty itself.

3.12 The opening paragraphs (1.4) of the New Consumer Duty make it clear that:

'Even before cost of living pressures emerged, consumers were being asked to make an increasing number of complex and important decisions in a faster and increasingly complex environment. This makes it even more important that consumers can make informed, effective decisions, act in their interests and pursue their financial objectives.'

3.13 Social media is a prime example of a form of communication which sits very uneasily with the concerns and aspirations that the FCA sets out for better consumer protection in the New Consumer Duty.

3.14 Even though financial services firms that are authorised by the FCA will certainly have familiarised themselves with the New Consumer Duty along with all the other regulation and guidance on financial promotions, it is very hard to imagine the rapidly growing band of social media finfluencers giving it anything more that the most cursory attention – regardless of their formal relationship (or lack if it) with the firms whose products and services they are promoting.

Social media and artificial intelligence (AI)

3.15 As the FCA notes, social media has developed rapidly over the last seven years since FG 15/4 was published in March 2015. The rise of financial influencers is well trailed in the GC23/2. However, it pays almost no attention to the dramatic advances in the algorithms that now drive a lot of social media targeting. Facebook, TikTok and all the other social media platforms now have extremely sophisticated algorithms which are capable of targeting consumers very precisely using up-to-the-minute data on wants, needs, preferences, likes, dislikes, where they have been, what they have bought, websites they have visited and a wide range of other information.

3.16 While very precise targeting can be of benefit to both the sender and the receiver of a communication it is also open to abuse. It is now very easy for firms and influencers to bombard consumers with promotional material on which they are very likely to be predisposed to act. In some cases the recipients may be vulnerable (e.g. already having debt problems or simply worried that they are going to have difficulty paying for their basic needs). This abuse of precise targeting is not a problem that is going to go away. If anything, with the recent appearance of commercially available and very effective artificial intelligence (AI) systems, it is only going to make the opportunities for 'manipulative messaging' even more pronounced.

Social media - a powerful successor to cold calling

3.17 Our own conclusions from all of the above are that financial promotions on social media are little more than a form of electronic cold calling. Social media also offers the added advantage for the promoter of enabling very precise targeting. While precise targeting might sound like a benefit for the consumer (fewer irrelevant messages) all too often it is being used to manipulate young consumers into taking decisions that are impulsive, ill-considered, and thanks to the content-limitations on social media, ill-informed.

3.18 Our conclusions from careful consideration of GC23/2 are that the proposals from the FCA will have little impact in ensuring better protection for consumers. Much of what is proposed relies on reminding firms and finfluencers of their responsibilities under the New Consumer Duty while drawing attention to current guidance on good practice in the use of social media for financial promotions. It pays no attention to the fact that most consumers themselves have little or no understanding of the FCA's rules and guidance, how this applies to providers of financial products and services and the extent to which they are protected or exposed when responding to social media promotions.

4 A proposal for a more effective solution

4.1 The Treasury has recently released a consultation and call for evidence on proposals to ban cold calling for consumer financial services and products. https://www.gov.uk/government/consultations/ban-on-cold-calling-for-consumer-financial-servic

4.2 The Treasury consultation notes the importance of the financial services sector to the UK economy. Importantly, it adds (para 1.5):

> *"However, many financial products are complex and carry risk as well as opportunity. It is imperative that consumers are provided with clear information in a non-pressured environment when making choices about these products and services, so they can consider what is the right product or service for them."*

4.3 It continues (para 1.6):

"The practice of cold calling to market a financial service or product does not align with these conditions."

4.4 Historically, the paradigm of a financial promotion has been a display advertisement in a newspaper or a billboard poster. Apart from selecting the newspaper in which to advertise, or selecting the location for the billboard poster, in both cases based on demographic data, the advertisement is not aimed at anyone in particular.

4.5 Social media advertising is fundamentally different. Facebook, for example, is able to micro-target the audience for any advertisement based on Facebook holding reams of data about each user's interests, preferences, personal profile etc. Accordingly a promotion on social media is quite different from a billboard poster, and has far more of the characteristics of direct mail (or telephone calling) being directed at a known individual where the sender (or the sender's agent) has very detailed information about the recipient individual.

4.6 Accordingly, we believe that the FCA should adopt a similar approach to that of the Treasury and ban financial promotions on social media. We believe the only exceptions should be in cases where:

- The consumer already has or has recently had a contractual / business relationship with the product / service provider and,
- Has agreed to being sent promotions on social media by the provider.

4.7 This is the only way in which the FCA is likely to be able to meet its statutory consumer objective as set out in para 1.14 of GC23/2 in respect of promotions on social media.

4.8 A ban will not stop financial promotions on social media but, if properly publicised, it will send a clear message to consumers that the practice is illegal and that they should ignore any promotions that they receive on social media for financial services.

4.9 FCA authorised firms should be encouraged to support the ban and help in publicising it to consumers.

5. Answers to the Consultation questions

Q1: Do you agree with our approach to the prominence of required information in various social media settings? Please explain your answer, highlighting any other issues that would be useful to consider.

This is a reasonable proposal but we do not believe that it is going to result in significantly better outcomes for consumers who receive financial promotions on social media.

It certainly puts a 'tick in the box' for FCA guidance and it may well be taken up by firms that are authorised by the FCA. The difficulty is that it doesn't help the consumer who will continue to receive promotions from unauthorised firms and who has little or no idea how to distinguish the 'appropriate' from the 'wholly inappropriate' in terms of the messages they are receiving.

Q2: Do you have any comments on our proposed expectations under the Consumer Duty for communications on social media? Please highlight any other issues it would be useful to consider.

Again, this is all aimed at the firms that are regulated by the FCA. It provides no help for the consumer who will continue to receive promotions on social media from firms and 'finfluencers' that are outside the perimeter and unregulated.

Q3: Do you agree with our approach to affiliate marketing? Please explain your answer, highlighting any other issues that would be useful to consider.

No, because it is not helpful. Basically, it tells the authorised firms to make sure that they remain compliant with the requirements of S21 in their interaction with their affiliate marketers – many of whom may not be authorised by the FCA and hence unfamiliar with the FCA's regulation and guidance.

It is very unclear how effective this guidance on affiliate marketing is going to be in helping the FCA to achieve its statutory consumer protection objective of ensuring an appropriate degree of protection for consumers.

Q4: Do you have any comments on the use of shared social media profiles between UK and non-UK entities? Please highlight any issues that would be useful to consider.

We have no comment to make on this.

Q5: Do you have any comments on the proposed guidance we have set out on the financial promotion perimeter? Please highlight any other issues that would be useful to consider.

It is difficult to see what is being added to the guidance that is already in place and is covered by existing S21 requirements and the guidance set out in Chapter 8 of the Perimeter Guidance Manual. Apart from some reminders for authorised firms there seem to be no proposals for change which would significantly reduce the likelihood of consumers suffering harm or detriment.

Q6: Do you have any additional comments on our proposed guidance or think there are any other topics we should consider?

As outlined above, we believe that a major re-think is required by the FCA on its approach to minimising consumer harms as a result of poor quality and/ or non-compliant promotions on social media. The approach outlined in the consultation document is neither adequate nor proportionate. It appears to be one of 'tinkering around the edges' of current guidance while, at the same time, pushing responsibility back onto the authorised firms to independently try to tighten up the way in which guidance is applied in their own businesses and the other affiliates and influencers with whom they have a relationship.

Much of the background information contained in CG23/2 about financial promotions on social media suggests that the FCA believes that there are some serious issues to be addressed if consumer harms are to be minimised in this area in future. The response that the FCA is proposing is not commensurate with this.

We believe that a much more proactive and robust stance is needed from the FCA. It should follow the lead from the Treasury regarding cold calling for consumer financial service and products and, with a few very specific exceptions, it should ban financial promotions on social media.

Charles Henderson – ***Chairman, UK Shareholders' Association***

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