

# The Compliance Guide to Communications & Financial Promotions



Why are financial promotions so heavily regulated?

What exactly is a financial promotion?

Financial Promotions - Steps to Approval

Training, Management Information & Records

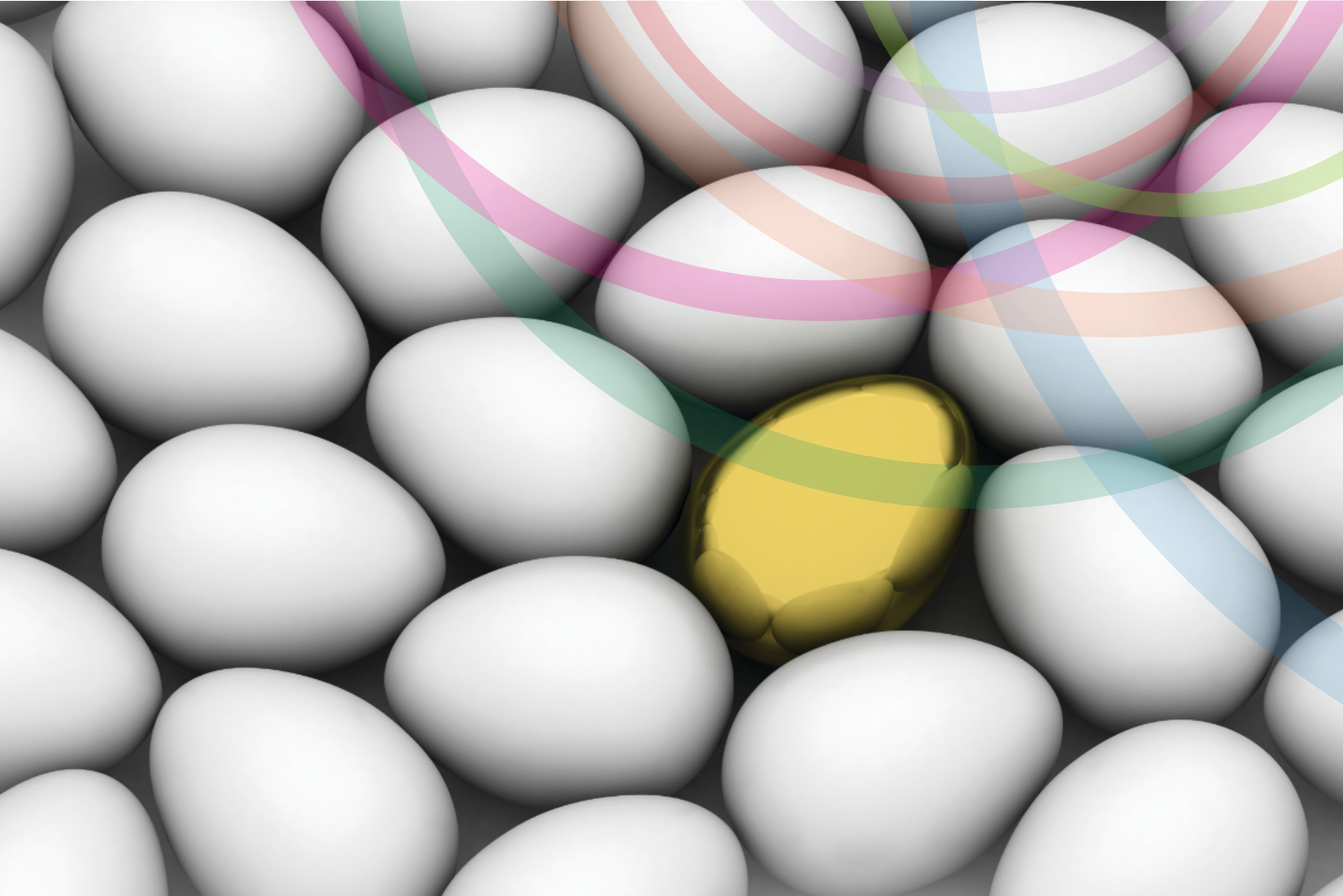
Recent FCA Developments



## About Sturgeon Ventures

Sturgeon Ventures LLP (**Sturgeon**) is the leading Regulatory Incubator in the UK, having pioneered the concept in 2000, incubating people and firms from a regulatory point of view, and then using the Appointed Representative (**AR**) regulatory

structure for these companies to build their own brands. Sturgeon works primarily for clients in the wholesale financial services sector. Sturgeon's first AR was in 2005.



This document is for general guidance only, for advice please get in touch with our team at [hello@sturgeonventures.com](mailto:hello@sturgeonventures.com).

**Note:** Although this document is used as reference material by Sturgeon Ventures LLP and its Appointed Representative firms, the regulations and procedures described also apply to any firm directly authorised by the Financial Conduct Authority (FCA), where acting within the United Kingdom.



## 1. Why are financial promotions so heavily regulated?

According to the UK Financial Conduct Authority (FCA), financial promotions or adverts are likely to be the most regular contact consumers have with firms that offer financial services and products. Financial promotions can take the form of a website, Facebook post, tweet, etc, as discussed in more detail below.

They can form a significant part of a consumer's product knowledge and can influence a consumer's decision making when choosing a product. It's therefore very important that these promotions are fair, clear and not misleading, so that consumers can make informed decisions.



## 2. What is a financial promotion and how does it differ from a communication?

The FCA make the distinction between a **communication** and a **financial promotion** (COBS 4.2.1). A communication might involve the sharing of information that is **not** intended to persuade someone to engage in a specific financial activity or investment. Primarily distributed to inform, educate, or update, it may not necessarily lead to direct financial action. Examples include routine business correspondence, updates on financial services, newsletters to existing investors, educational content, and general market information. While stringent regulatory standards to protect consumers don't apply in the same way as a financial promotion, any such communication must nevertheless be fair, clear and not misleading and therefore requires approval from Sturgeon prior to dissemination.

For financial promotions, Section 21 of the Financial Services and Markets Act 2000 (the Act, and the s21 Restriction) states that:

*"A person must not, **in the course of business**, communicate an **invitation or inducement** to engage in **investment activity** - UNLESS the person communicating is an authorised person, the communication has been approved by an authorised person, or a relevant exemption applies, of which the most frequently used exemption is where financial promotions are issued to High Net Worth or Self-Certified Sophisticated retail investors (see further information on this in Section 3 below)."*

An **invitation** is something which directly invites a person to take a step which will result in their engaging in investment activity.

An **inducement** is a significant link in a chain, where the chain is intended to ultimately lead to an agreement to engage in investment activity. To be an inducement, must have an element of persuasion or incitement.

The '**in the course of business**' test requires a commercial interest on the part of the communicator. It is intended to exclude genuine non-business communications from the category of financial promotions.

**Investment activity** is broadly defined and would, for example, include the buying or selling of shares or units in a collective investment scheme. In practice, investment activity could mean anything that promotes the firm's products or anything that invites or attempts to persuade customers to buy the products marketed, including products produced by our Appointed Representatives (ARs and introducers).

Sturgeon reviews and approves financial promotions for its ARs under this exception to the s21 Restriction. This s21 exception would also apply to any financial promotion issued directly by Sturgeon.





### Invitations to potential customers can take many forms, including:

- Print, online, television and radio adverts
- Marketing brochures and literature
- Direct mail
- Web content
- Email marketing
- Social media
- Sales aids, such as presentations.

### Advertising for new business

What would commonly be regarded as an advertisement is referred to as a 'Financial Promotion' in the FCA's terminology. This definition extends well beyond what might be considered an advertisement at first glance and includes:

- Non-personalised and/some personalised letters, e.g. offering top-up opportunities to particular tranches of customer
- Telephone and status disclosure scripts
- Key features documentation (KFD)
- Any product literature
- Business cards
- Shop signs.

However there are also exclusions granted under the "image advertising" rules details in the FCA Handbook. These can be found in COBS 4.3.1R which exclude communications that consist **only** of one or more of the following:

- The name of the firm
- A logo or other image associated with the firm
- A contact point
- A reference to the types of regulated activities provided by the firm, or to its fees or commissions.

All financial promotions relating to investment activity which are covered by the Act require approval by an authorised person before they can be used. The issuance of any unapproved financial promotion is a breach of the Act. The wide scope of rule needs to be borne in mind, particularly as many firms are making increasing use of social media to promote their firm's image, since such promotions can be an effective method of promoting your website or blog.

### 'Real-time' or 'non-real time' financial promotions

The terms **real time financial promotion** and **non-real time financial promotion** are defined in article 7 of the Financial Promotion Order:

#### **Real time financial promotions:**

A **real time financial promotion** is a financial promotion which is communicated in the course of a personal visit, telephone conversation or other interactive dialogue. These are regulated slightly differently from non-real time financial promotions, since there is recognition by the FCA that real-time conversations - whether in person, by phone or email - cannot be compliance-approved in advance in the same way as published communications.

Since real time financial promotions cannot be pre-approved, it is essential that any member of staff making such a financial promotion:

- Does so in a way which is fair, clear and not misleading
- Does not make any untrue claims
- Makes clear the purpose (or purposes) of the financial promotion at the initial point of communication, and identifies himself and the firm which he represents
- If the time and method of communication were not previously agreed with the recipient:
  - Checks that the recipient wishes him to proceed
  - Terminates the communication if the recipient does not wish him to proceed (but may ask for another appointment)
- Recognises and respects, promptly, the right of the recipient to:
  - End the communication at any time
  - Refuse any request for another appointment
- Gives any recipient with whom he arranges an appointment a contact point and does not communicate with a person:
  - At an unsocial hour; unless the person has previously agreed to such a communication
  - On an unlisted telephone number; unless the person has previously agreed to such calls on that number.

All staff of firms undertaking financial promotion activities should ensure that when soliciting business by phone or in person that they comply with the above requirements.



### Non-real time promotions

A **non-real time financial promotion** is “a financial promotion which does not involve any simultaneous interactive dialogue”. This includes a financial promotion made by letter; e-mail, texting by multimedia messaging service (mms), contained in a newspaper; journal, magazine, other periodical publication, website, television or radio programme, or teletext service, as well as digital media.

The following guidelines must be followed. Staff must ensure that the financial promotion:

- Includes the firm's full name and either address or contact point from which the address is available
- Does so in a way which is fair, clear and not misleading
- Makes clear the purpose (or purposes) of the financial promotion at the initial point of communication
- Does not make any statement of fact, promise or prediction that is unclear, unfair or misleading
- Any relevant assumptions must be disclosed
- Any statement of opinion must be held honestly and, unless impracticable, given with the consent of the person concerned
- Gives no false indications regarding the firm's resources, independence, scale of activities, or the scarcity of service
- Does not cause the design, content or format to obscure or diminish the significance of any statement or warning
- Makes no references to approvals by the FCA/PRA or any government body, unless such an approval has been obtained in writing
- Does not omit any matters that cause the promotion to be unclear, unfair or misleading
- Is able to substantiate the accuracy of statements of facts included; and
- Is approved by Sturgeon's Financial Promotions Team, as appropriately trained staff of a directly authorised FCA Firm.



### Social Media

Communications through social media can reach a wide audience with increasing speed and frequency. Although this has helped firms communicate with consumers more effectively, poor quality financial promotions on social media can lead to significant consumer harm, due to their wide reach and the complex nature of financial services.

When designing their financial promotions, firms should carefully consider the way material on social media is distributed. For example, firms should ensure that their original communication would remain fair, clear and not misleading, even if it ends up in front of a non-intended recipient through third party sharing. In balancing how financial products and services are promoted with both the potential benefits but also any relevant risks, firms should consider whether it is appropriate to use character-limited media as a means of promoting complex features of financial products or services.

Social media shares the characteristic of being digital and can be defined as 'websites and applications that enable users to create and share content or participate in social networking'. This would include the following:

- Blogs
- Microblogs (Twitter)
- Social networks (e.g. Facebook, LinkedIn, Google+)
- Forums
- Image and video-sharing platforms (e.g. YouTube, TikTok, Instagram, Vine, Pinterest).

Many firms try to use social media as a form of advertising and should remember that there are specific rules for this.



### 3. FCA Handbook Rules

The key requirement for an FCA authorised firm which approves a financial promotion for an unauthorised person is to ensure the issued promotion must be “fair, clear and not misleading” (COBS 4.2.1R).

The rule applies in a way that is appropriate and proportionate considering the means of communication, the information the communication is intended to convey and the nature of the client and of its business, if any. Note: the word **client** is used by the FCA for both (i) the company you are representing and (ii) the recipient of the financial promotion.

When providing information to clients, a firm:

- Should pay regard to its target market, including its likely level of financial capability
- Should take account of what information the customer needs to understand the product or service, its purpose and the risks, and communicate information in a way that is fair, clear and not misleading; and
- Should have in place systems and controls to manage effectively the risks posed by providing information to customers.

#### The FCA’s ‘Principles for Business’

- These place a number of high-level obligations on firms regulated by the FCA, and some of these are relevant in the context of financial promotions. These obligations will apply to Sturgeon and its ARs, regardless of whether the financial promotion is being issued under s.21 or an FPO exemption:
- Principle 2 - A firm must conduct its business with due skill, care and diligence

- Principle 3 - A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems
- Principle 6 - A firm must pay due regard to the interests of its customers and treat them fairly (TCF)
- Principle 7 - A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is fair, clear and not misleading
- Principle 12 - A firm must act to deliver good outcomes for retail customers.

It is essential to note that where promotions to Retail customers are involved, whether or not categorised as high net worth or sophisticated under the FCA Rules, Principles 6 and 7 fall away and are replaced by Principle 12, since this is a higher standard than Principles 6 and 7.

#### The FPO Exemptions

Certain promotions are specifically exempt from the s21 Restriction, thanks to the UK Financial Promotion Order (the FPO). This statutory instrument is law, and so applies to everyone in the UK, not just to FCA authorised firms. The most common exempted promotions under the FPO are for promotions made to certified or self-certified sophisticated investors and high net worth individuals. This exemption was brought in by the UK Treasury in order to enable small and medium-sized enterprises to fundraise from sophisticated/high net worth individuals or “angels” without incurring the costs of compliance with the FCA financial promotions regime.





## 4. Financial Promotions - Steps to Approval

Every firm preparing and issuing financial promotions should have a clear and relevant Financial Promotions Policy approved by their governing body. From this policy the appropriate processes can be derived and created. Every AR of Sturgeon must be familiar with and adhere to Sturgeon's Financial Promotions Policy.

### Overview of financial promotion production and approval process

'Marketing' is a term used to describe the initiator/controller of the marketing or advertising campaign or separate department if relevant. The approved person signing off the financial promotions would normally be the Compliance Oversight Control Function.

Every firm should have in place a generic business standard for financial promotions, which the Marketing department or area adopts when developing new promotions or making changes to existing promotions.

The procedure followed to meet this business standard consists of the following stages:

- Create financial promotion/briefing document
- Ownership of financial promotion
- Sign-off responsibilities
- Recording responsibilities
- Issue financial promotion
- Post-issue review
- Use of logos in any presentation or website - there should be written permission for the use of a company's logo from the actual company and a firm must never use the FCA's logo on any of its own marketing.

### Five key stages of the financial promotion production and approval process

#### I. Create financial promotion

When developing promotions, firms need to consider a number of high level design fundamentals. These ensure that new promotions are developed in accordance with the following:

- Fair, clear and not misleading - All promotions initiated by Marketing should meet this requirement
- FCA Handbook requirements - The detailed relevant handbook requirements, depending on the type of product, should be adhered to throughout the process
- ASA/CAP requirements - In addition to FCA regulations, firms must ensure financial promotions comply with The Advertising Standards Authority (ASA)/Committees of Advertising Practice (CAP), Sales Promotions and Distance Marketing Directive throughout the process
- Any corporate requirements - The corporate requirements, specifically the Treating Customers Fairly (TCF) and Conduct Risk standards, should be adhered to throughout the process.

At the end of this activity, the firm will have:

- Completed the requirements checklist(s) detailing all the information required to complete the promotion
- Recorded suitable evidence of any facts, figures or options used
- Created the draft financial promotion; and
- Completed the marketing approval form and marketing/financial promotions sign off - checklist.

It is at this stage in the process that specific FCA Handbook requirements should be fully integrated into the design and delivery of the promotion.



## 2. Ownership of financial promotions

The ownership of financial promotions (i.e. responsibility within the issuing firm) is typically determined by the type of promotion, based on the following categories:

- Existing product promotion
- New product/service promotion
- Corporate advertising (generic)
- Non-product specific press release
- Introducer/client newsletters
- Corporate presentations
- Internet advertising.

Each category may have separate "Sign-off" responsibilities.

## 3. Approval or sign-off

Once the draft promotion has been submitted to the FCA Authorised firm for sign-off, approval by the Financial Promotions team is needed before the promotion can be issued.

For promotions prepared either by Sturgeon or any AR, the FP Approval Form must be completed and sent to [financialpromotions@sturgeonventures.com](mailto:financialpromotions@sturgeonventures.com), attaching the draft promotion.

**Note:** Non-product specific promotions only require sign-off by the Financial Promotions Approved Person.

When approving a financial promotion, the relevant individual within the Financial Promotions team is responsible for considering the following:

- Product design
- Sales process
- Technical content
- Non-financial promotion documents issued at point of sale
- Market and consumer research undertaken.

The creator of the promotion(s) submitted for approval by the Financial Promotions team is responsible for ensuring compliance (as appropriate) with:

- Fair, clear and not misleading promotions
- Relevant FCA Handbook requirements
- ASA/CAP requirements
- The firm's corporate requirements, including Treating Customers Fairly (TCF) standards and the Conduct Risk fair outcomes for consumer's guidelines
- Independent Television Commission Code of Conduct
- Radio Authority Code of Conduct
- Telecommunications (Data Protection and Privacy) Regulations 1999
- Unfair Contract Terms (Now monitored by FCA)
- Consumer Credit Act.

The review of a financial promotion may also involve a number of other key areas in order to ensure that the necessary business and regulatory requirements have been met. These include:

- Legal (if required)
- Technical
- Compliance/Quality Assurance.

## 4. Issue financial promotion

Once sign-off has been completed for the promotion, the business is then able to proceed with issuing the financial promotion.







## 5. Post-Issue review

The firm should pro-actively manage the duration and withdrawal of financial promotions to ensure that they are current and are still required by the business areas. From a TCF (Principle 6) viewpoint, this should focus on ensuring compliance with the following requirements:

- Communications are fair, clear and not misleading; and
- Communications are current and do not contain out of date information
- Disclaimers should be dated at the end to maintain version controls. Disclaimers must be in writing that can be read not in mini writing below a document.

A promotion is to be withdrawn if it does not meet the criteria above.

The originator should maintain a register of all approved financial promotions and assign an appropriate review or closure date, whichever is applicable.

The originator must review the firm's financial promotions register on a monthly basis, to identify any financial promotion due for imminent review on a monthly basis, complete the review and assign the next expiry date. Failure to comply with this will result in Sturgeon, as the FCA authorised approver, requiring the financial promotions to be withdrawn, or categorised as expired.

### Specialist areas - Promoting High Risk Investments to Retail customers

FCA's Consumer Investment Strategy identified increasing harm to consumers caused by high-risk investments not aligned with every consumer's risk tolerance. Commissioned research showed that:

- More consumers than ever are buying high risk investments that do not always meet their needs

- Promotions of high-risk investments are being disseminated in ever faster and more savvy ways that can generate strong emotional pressures to invest (e.g. trading apps, FOMO)
- Higher inflation rates have resulted in negative real returns across many mainstream investments, pushing consumers into high-risk investments in a search for higher returns
- Investors don't understand the risks (first-time investors confusion over even the possibility of losing money).

In response, the FCA introduced new rules and updated guidance which came into effect on 1 December 2022 and 1 February 2023 to strengthen financial promotions rules for high-risk investments.

Previously called 'Non-Readily Realisable Securities', investment such as shares or bonds in a company not listed on an exchange, will now fall under the banner of '**Restricted Mass Market Investments**' while previously Non-Mainstream Pooled Investments, being e.g. units in an unregulated collective investment scheme (UCIS), or certain securities issued by SPVs, are now known collectively as '**Non-Mass Market Investments**'.

Please read the separate document: '**Procedures for Categorising a Potential Investor - Investing in High-Risk Investments**'.



## 5. Training and competency requirements

Whilst there are no specific FCA training and competence requirements, there is a general expectation that staff involved in financial promotions have appropriate skills to enable them to fulfil their duties and responsibilities.

See the Competent Employee Rule under (Senior Management Systems and Controls (SYSC) 5.1.1R):

“A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them”.

**There are ongoing T&C requirements for those signing off Financial Promotions. Always check for updates:**

**Who is the Client:**

COBs 3.2.1 (R) updated 1.1.2021

**What Amounts to MIFID business:**

PERG 13 (1.1.2021)

**General Rule that must be applied to all Financial Promotions:**

COBs 4.5.2 (R) (1.2.2023)



## 6. Management information (MI)

Each firm should proactively create pertinent and relevant management information (MI), which enables it to monitor the performance of its promotions and ensure that the financial promotions related elements of the TCF/Conduct Risk policy are being met. MI is produced on a weekly/quarterly basis.

The Compliance Monitoring Program of an FCA authorised firm will be able to then document that a Financial Promotions Register is up to date and its disclaimers are appropriate in their size, presentation and clarity for the correct audience in each case.





## 7. Record Keeping

The FCA Rules require that all firms must keep adequate record of any financial promotion it communicates, approves, or of which it confirms compliance, other than a financial promotion made in the course of a personal visit, telephone conversation or other interactive dialogue (COBS 4.1.1). As a result, both the issuing firm and Sturgeon must retain appropriate and complete records.

The FCA authorised firm must not confirm the compliance of a financial promotion unless it is satisfied that the financial promotion complies with the financial promotion rules and the individual or individuals responsible for providing that confirmation has or have appropriate competence and expertise.

Most records relating to financial promotions should be kept for at least three years and, in cases relating MiFID (the Markets in Financial Instruments Directive) or “equivalent third country business,” they have to be kept for five years.

### Records should include:

- The material as approved
- The material as published
- The evidence to substantiate any claims made in the material
- Evidence of the name of the approver and date
- Ideally when the material was “valid until” and the evidence of its withdrawal at that point.

The current sign-off and record-keeping provisions in the relevant chapters of the conduct of business sourcebook in the FCA Handbook apply to digital (including specifically social) media in the same way as to print, broadcast and outdoor media.



## 8 FCA Recent Guidance

The FCA's Policy Statement PS23/13 introduced a new regulatory gateway (the s21 gateway) for all authorised firms that want to approve financial promotions for unauthorised persons (s21 approvers). This initiative, taken in response to the Financial Services and Markets Act 2023, aims to address concerns regarding the approval of non-compliant promotions, particularly those related to high-risk investments, and the quality and relevance of these promotions.

Firms wishing to continue approving financial promotions for unauthorised firms had a three month window starting from

6 November 2023 to apply for the necessary permissions. Following the 7 February 2024 expiry of that three month window, firms without this approval are now unable to approve such financial promotions, except where specific exemptions apply. It will not affect authorised persons that only approve their own financial promotions for communication by an unauthorised person, the financial promotions of their appointed representatives ARs for the regulated activities they have accepted responsibility for, or the financial promotions of unauthorised persons within their corporate group.

### Further reading can be found in

Financial promotions on social media GC23/2 July 2023

[www.handbook.fca.org.uk/handbook/glossary/G421.html](http://www.handbook.fca.org.uk/handbook/glossary/G421.html)

[www.handbook.fca.org.uk/handbook/PERG/8/9.pdf](http://www.handbook.fca.org.uk/handbook/PERG/8/9.pdf)

[www.handbook.fca.org.uk/handbook/PERG/8/11.html](http://www.handbook.fca.org.uk/handbook/PERG/8/11.html)

[www.handbook.fca.org.uk/handbook/PERG/8/12.html](http://www.handbook.fca.org.uk/handbook/PERG/8/12.html) (Exemptions) (financial promotions to overseas recipients)

[www.legislation.gov.uk/ukpga/2000/8/section/21](http://www.legislation.gov.uk/ukpga/2000/8/section/21)

[www.handbook.fca.org.uk/handbook/COBS/4/10.html](http://www.handbook.fca.org.uk/handbook/COBS/4/10.html)

### Financial Promotions Approval Reminders from the FCA

Important to read and note in your CPD, including the links relating to Promotions of Regulated and Unregulated Businesses within a Regulated Firm or its ARs:

Dear CEO Letter from the FCA to the Senior Management of Regulated Firms 9 January 2019

[www.fca.org.uk/publication/correspondence/dear-ceo-letter-promotions-regulated-unregulated-business.pdf](http://www.fca.org.uk/publication/correspondence/dear-ceo-letter-promotions-regulated-unregulated-business.pdf)

(11 April 2019)

[www.fca.org.uk/publication/correspondence/dear-ceo-letter-firms-approvals-financial-promotions-fcas-expectations.pdf](http://www.fca.org.uk/publication/correspondence/dear-ceo-letter-firms-approvals-financial-promotions-fcas-expectations.pdf)

Further information on Financial Promotions and Approvals please email [hello@sturgeonventures.com](mailto:hello@sturgeonventures.com) to speak to a member of our Financial Promotions Team





Sturgeon Ventures LLP  
Unit D, Heathmans House  
19 Heathmans Road  
London SW6 4TG

The Sturgeon Group Limited  
Unit D, Heathmans House,  
19 Heathmans Road  
London SW6 4TG

Contact: [Compliance@sturgeonventures.com](mailto:Compliance@sturgeonventures.com) or [hello@sturgeonventures.com](mailto:hello@sturgeonventures.com)

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Version June 2024

