

**Introducing a gateway for firms
who approve financial
promotions.**

JOINT RESPONSE FROM:

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&

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Introducing a gateway for firms who approve financial promotions.

Consultation Paper CP22/27**

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1. Introduction

1. We welcome the FCA's proposals to introduce a gateway for firms who approve financial promotions on behalf of unauthorised providers. We also welcome the requirement that firms which are authorised to approve financial promotions should submit information to the FCA about approvals they have given and monitor the products they have approved to ensure their ongoing compliance with the FCA rules.
2. We support the FCA's proposals on the criteria that firms will have to demonstrate for admission to the S21 gateway.
3. We also support the requirement for firms that are authorised to carry out approvals to notify the FCA of approvals that they have granted, refused or for any reason withdrawn. The requirement to notify the FCA when a promotion is amended (and an approval is granted for the amendment) is also good. The requirement for notifications to be made to the FCA within one week of approval taking place is very good.
4. Similarly, we like the proposed system of biannual reporting to the FCA by approvers.
5. We agree that the information that firms are required to provide about themselves and the approvals they have carried out will provide the FCA with valuable market intelligence which should help it to monitor market developments and respond promptly and appropriately to developments in the FS market and the industry itself.
6. In addition to the above, however, we would like to see the FCA carrying out spot checks on approvers and approvals to ensure that the systems in place for registration on the gateway and for approving promotions are working as intended and that they are being rigorously applied. For example, every year the FRC, which oversees the audit industry, carries out a number of reviews of audit of audit quality. The results of these reviews are published and are valuable to the audit industry, companies, investors and other stakeholders – and to the FRC in exercising its regulatory duties. A similar system of routine checks by the FCA to monitor approvals of financial promotions would be similarly valuable to everyone with an interest in ensuring that high regulatory standards are maintained in this area.
7. Finally, although we support the proposals put forward in the consultation document, it is not clear why unauthorised firms should be allowed to promote and sell their products at all in the UK. Current legislation allows them to do so but with the forthcoming introduction of the Financial Services and Markets Bill it should be possible to change the legislation so that any firm wishing to sell or

promote financial products and / or services in the UK must be authorised by the FCA. This would ensure that all firms selling financial products in the UK were regulated. It would therefore avoid the uncertainties caused by the fact that, as financial approvals given by authorised firms are not considered to be a regulated activity, consumers have no right of redress through the FoS if things go wrong.

2. About Us

8. UKSA and ShareSoc represent the views of individual investors. Between us we have over 23,000 members. In addition to our own members, 6 million people own shares or have investment accounts with platforms in the UK.
9. The Office for National Statistics estimates that at the end of 2018 UK-resident individuals held 13.5% of the UK stock market, up by 1.2% from 2016 and moving away from the historical lows of 10.2% in 2008. In 2020, the Financial Times estimated that 15% of the UK stock market is held by individual shareholders. In addition to this there are many more who have money invested in shares via funds, pensions and savings products such as employee share ownership schemes. See <https://www.sharesoc.org/investor-academy/advanced-topics/uk-stock-market-statistics/>

United Kingdom Shareholders' Association (UKSA)

10. UKSA was originally formed to provide individual shareholders with a voice, influence and an opportunity to meet like-minded fellow investors. It is structured as a non-profit making company with annual subscriptions. An elected Chairman and Board of Directors (all volunteers and individuals with a wide range of backgrounds and experience) monitor a regional organisation. Each region benefits from oversight by an elected regional Chairman and Committee.
11. There are many agents and intermediaries in financial markets. Unlike them, UKSA represents solely those people who are investing their own money. UKSA and ShareSoc work together to build relations with regulators, politicians and the media to ensure that the voices of individual shareholders and their interests in the long term public good are reflected in the development of law, regulation, and other forms of public policy. See www.uksa.org.uk.

UK Individual Shareholders Society (ShareSoc)

12. ShareSoc is a not for profit company. It is dedicated to the support of individual investors (private shareholders as opposed to institutional investors). It aims to make and keep investors better informed to improve their investment skills and protect the value of their investments. It engages with companies, the Government or other institutions if we think individual shareholders are not being treated fairly.
13. ShareSoc actively campaigns to seek redress for private shareholders in cases where they have been the victims of unfair or unscrupulous treatment by companies and / or the financial services industry. See www.sharesoc.org

Next steps

14. If you wish to clarify any of our comments or discuss our thoughts further, please contact Dean Buckner at dean.buckner@uksa.org.uk and Cliff Weight at cliff.weight@sharesoc.org.

3. Answers to your numbered questions

Q1: Do you agree with our proposed approach to assessing applications?

Yes, we believe that the proposed approach looks thorough and, in principle, rigorous.

However, in our response to Question 6 (notifications and bi-annual reporting) we have suggested that the FCA should instigate pro-active checks of its own to monitor the thoroughness and rigour with which eligible firms are applying their stated procedures and processes when approving financial promotions.

Q2: Do you agree with our proposed approach to determining whether to refuse an application or to grant permission on terms which are different from those for which application has been made?

We agree with the approach set out in paragraphs 4.7 – 4.11 of the Consultation (Refusing applications).

Q3: Do you agree with our proposal not to make changes to the Financial Ombudsman Service's CJ for complaints about the approval of a financial promotion?

We think that this is likely to be a more practical and pragmatic approach than making changes to the Compulsory Jurisdiction of the FOS.

Our understanding is that at present if a consumer buys a product from a firm that is not authorised by the FCA then the consumer has no right of redress through the FOS if he / she suffers loss or harm. We believe that under the new approvals arrangements this principle should still stand.

Having said that, as we have stated in Paragraph 6 of our Introduction above, it is not clear why the FCA is allowing unauthorised firms to sell financial products and services in the UK at all. Surely a simpler and more clear-cut alternative would be to make it a legal requirement that any firm that wanted to sell financial products in the UK had to be authorised by the FCA. We assume that if this were the case consumers would be able to seek redress through the FoS should they feel that they had a legitimate cause for complaint.

However,

- It must be made clear to consumers (with the message reinforced if necessary) that they will not have rights of redress through the FOS when buying from an unauthorised provider. Unauthorised providers should be required to state this clearly on all their literature, and penalised if they fail to do so.;

- If consumers do suffer losses above and beyond what they might reasonably have expected then the FCA should:
 - be obliged to investigate and review the approval of the product and, if appropriate,
 - sanction the firm that gave the approval.

Sanctions might include a fine and / or the withdrawal of approving firm's authorisation to carry out any further approvals of financial promotions for unauthorised providers. The sanction/s applied and the reasons for the FCA's decision to apply sanctions (or **not** to take any further action) should be placed in the public domain (probably on the FCA's website) within one month of the decision being made.

This requirement is important for transparency and for maintaining consumer confidence in the approvals procedures.

Q4: Do you agree with our proposal for s21 approvers to submit a notification to us within 1 week of every approval, withdrawal or amendment of a financial promotion?

Yes, we believe that this is both necessary and appropriate.

Q5: Do you agree with our proposal for s21 approvers to submit regular reports to us on financial promotions approved for unauthorised firms?

We agree with this proposal.

Q6: Do you agree with the proposed metrics and bi-annual report frequency?

We agree with the metrics and the bi-annual report frequency. The information contained in the notifications (paragraphs 4.26 – 4.31) and the biannual reports will be valuable in monitoring market activity and should help the FCA to exercise better market oversight. It should also help to provide useful market and product insights

However, we believe that the FCA should do more than simply gather and analyse information as proposed. Based on information from notifications and the biannual reports the FCA should carry out a more detailed review each year of a number of approvals to check on the rigour and thoroughness of them – rather in the same way that the FRC reviews a selection of company audits each year. The outcomes of the reviews should be used not only to provide feedback to individual approvers as necessary / appropriate but also to identify improvements that could be made to the whole process of reviewing financial promotions and issuing approvals.

Q7: Do you intend to apply for permission to approve financial promotions?

No. The UK Shareholders' Association and ShareSoc are not providers of financial services.

Q8: Do you agree with our proposed changes to the non-Handbook guidance for the approval of financial promotions for unauthorised firms?

Yes. We believe that the updated guidance is clear and generally comprehensive. We accept that the guidance given by the FCA for approving financial promotions cannot be exhaustive and that firms need to use their own judgment in ensuring that they comply with both the letter and the spirit of the guidance (Paragraph 54).

There are however a few instances where greater clarity could be provided. For example, in Paragraph 37 it is stated that an *'s21 approver is expected to monitor each financial promotion it has approved **periodically** to assess whether'* any changes have taken place which affect the clarity, legality and compliance of the promotion as well as its compliance with more recent regulation. The term 'periodically' also appears again in Paragraph 42.

The term 'periodically' is too vague and needs further qualification. Paragraph 39 states that *'firms that have approved promotions for unauthorised firms are also required to collect quarterly attestations of 'no material change' from the unauthorised firms for whom they have approved promotions'*.

We suggest that firms should be encouraged to monitor financial promotions they have approved on a quarterly basis along with the collection of the quarterly attestations from the unauthorised firms.