

Insights

FINANCIAL PROMOTIONS GATEWAY GOES LIVE – ARE YOU CAUGHT?

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SUMMARY

The much-promised financial promotions gateway has now become law. The UK financial promotions regime is undergoing a large amount of change at the moment, [which we discussed previously](#).

The financial promotions gateway could have a significant impact on corporate finance, fund distribution and other marketing activities that have previously relied on the approval of financial promotions. Once the gateway is introduced, unless the giving of approval falls within an exemption conferred by regulations, it will no longer be possible for an authorised person to approve financial promotions to be issued by unregulated third parties unless the approving firm has permission from the FCA to do so.

The Financial Services and Markets Act 2023 amends the Financial Services and Markets Act 2000 by adding a new sub-section 21(2A) and a new section 55NA to establish a regulatory gateway through which authorised persons must pass before they can approve the financial promotions of unauthorised persons.

The exemptions are set out in the Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023 (SI 2023/966) as follows:

- a. The authorised person that approves the communication also prepared the content of the communication.
- b. The unauthorised person prepared the content of the communication and is in the same group as the authorised person that approves the communication.
- c. The content of the communication is prepared by an appointed representative (that is, the unauthorised person) in relation to any regulated activity for which their principal (that is, the

authorised person) has accepted responsibility, where their principal approves that communication.

The first exemption is broader than the version included in the FCA's December 2022 consultation (CP 22/27). This is potentially good news and may help to reduce the number of firms that will need to apply to be allowed through the financial promotion gateway.

Where an authorised person does not benefit from one of the exemptions listed above, from 6 November 2023, the authorised person will only be permitted to approve third party promotions once it has submitted an application to the FCA. A transition period is then granted. Firms that have submitted an application will be able to continue approving promotions after 6 November whilst the FCA considers the application (subject to complying with the rules contained in the FCA's Conduct of Business Sourcebook 4).

Following a review of an application, the FCA may then either grant the authorised person permission on the terms sought in the application or impose any other terms the FCA considers appropriate (for example, the FCA may restrict the authorised firm to approving financial promotions in their field of expertise).

Importantly, where the FCA does grant permission, the FCA may, on the application of the person to whom it was given or of its own initiative, vary or cancel any permission granted.

The FCA anticipates that, by allowing only those authorised firms that the FCA assess as suitable and with sufficient expertise to approve the promotions of unauthorised firms, the quality of financial promotions communicated by unauthorised firms will improve. While only time will tell if this is to be the case, it is clear that this regulatory gateway will give the FCA greater oversight of the approval of financial promotions.

Firms that approve financial promotions for third parties should carefully consider whether they need to apply to be included in the gateway or whether their activities can instead fall entirely within appropriate exemptions. If they do anticipate needing to submit an application they should start preparing updated policies and procedures to meet the FCA's enhanced expectations and be ready to submit the application as soon as the window opens on 6 November.

RELATED CAPABILITIES

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