

10 things firms need to know about the new FCA Financial Promotions Gateway



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1. Who does this new regime impact?

It used to be that a firm with UK authorisation could approve any financial promotion for an unauthorised third party. But this will end very soon.

If a UK authorised firm is currently approving financial promotions for unauthorised third parties under Section 21 of FSMA and wants to continue doing so, it needs to submit an application for approver permission to the FCA. The process is set out in the FCA's recent Policy Statement ([PS23/13](#)) and new chapter SUP 6A of the FCA's Handbook.

There is only a short window in which to submit the application (see question [5](#) - When is the application period?) or the firm will lose the ability to approve (see question [6](#) - What happens if a firm fails to apply during the application period?).

The key questions you need to consider NOW are:

- Does your firm regularly approve financial promotions for others?
- Even if your firm does not do this regularly, do you have **pockets of this approving activity** on which **some clients tend to rely** from time to time?
- Does the group have overseas retail funds that will be approved under the OFR and marketed to UK investors? If so, who is responsible for issuing the financial promotions for those funds? (see question 10 - How do these rules interact with the new Overseas Funds Regime)

These questions need to be checked now because the application window opens on **6 November 2023**.

You also should consider that the Government has consulted on proposals to tighten up the financial promotion exemptions for high net worth individuals and sophisticated investors. This may make these exemptions less useable for unauthorised firms who may then need authorised firms to act as approvers.

2. Why is the FCA introducing this requirement?

The FCA wants much tighter control and oversight of who is approving what, and wants to ensure that approvals are given only by people with the right competence and expertise.

By introducing the new financial promotions gateway, the FCA is hoping to improve the standard of financial promotions in the market.

This requirement follows the introduction of the Consumer Duty in July 2023, as well as more targeted rules and guidance aimed at strengthening the regulatory framework around financial promotions, including the rules around [financial promotions of high risk investments and the application of the rules to cryptoasset promotions \(PS22/10\)](#) and proposed [new guidance for financial promotions on social media \(GC23/2\)](#).

It will be necessary for the UK authorised firm to submit a variation of permission (“VoP”) application on the FCA’s Connect system and complete the financial promotions section.

The application form will need to cover the following areas:

- **The types of promotion the firm intends to approve**

The firm must include how many promotions it expects to approve and the revenue it expect to generate from approving promotions. Where applicable, it will need to specify the marketing restrictions that apply to any of the investment types for which the firm intends to approve promotions.

- **Competence and expertise to approve promotions**

The firm will need to explain in detail what expertise the firm has to approve the type of promotions for which the firm is applying for approval permission. The FCA will consider what professional qualifications or work experience any relevant individuals have, so it's up to the firm to demonstrate that it has sufficient relevant expertise. For example, the FCA wouldn't expect a firm with only consumer credit permissions to apply for permission to approve financial promotions relating to investments such as shares and units in funds.

- **Policies, systems and controls**

The firm must have appropriate policies to ensure the promotions it intends to approve are clear, fair and not misleading, and otherwise comply with applicable financial promotion rules, as well as to withdraw approval from unauthorised persons where required. The firm will need to demonstrate how it will monitor the financial promotions it approves on an ongoing basis.

- **Historic approvals**

The firm will need to provide details of any approvals it has given over the past 12 months. The FCA will use this to assess whether the historic approvals have potentially caused harm, and this could result in the FCA refusing the application.

The FCA has expressly confirmed on its website that it expects firm to submit **comprehensive applications of the highest quality**, as the FCA has the power to reject applications (see question [8](#) – Can the FCA refuse an application?). The assessment process for applications that pose the highest risk of causing harm will involve the FCA conducting more extensive due diligence on the applicant, and may involve conducting interviews with key individuals.

Once the FCA has approved the application, it will update the firm’s Financial Services Register entry to show that the firm has permission to approve financial promotions for unauthorised persons.

4. How long does the FCA take to approve the application and how much does it cost?

The statutory deadline under FSMA for determining applications is 6 months for a complete application and 12 months for an incomplete application.

Assuming that the firm submits their application during the application window, the firm will be able to continue approving all financial promotions until the FCA determines the firm's application. If a firm's application is successful, they will see no interruption to their ability to approve financial promotions. If the FCA refuses the application or the permission granted does not cover approvals for certain types of product for which they have applied for permission, the firm will need to cease the relevant approval activity once the FCA has determined their application.

The application costs £5,000. There are also periodic fees that will apply to the firm.

5. When is the application period?

Existing authorised persons will be able to apply to the FCA for permission during the initial "application period". That period will run from **6 November 2023 to 6 February 2024**.

6. What happens if a firm fails to apply during the application period?

If a firm doesn't apply during the 3-month window, the firm will need to **stop** approving financial promotions for unauthorised persons on **7 February 2024**, other than in the circumstances specified in the exemptions. If the firm wants to approve financial promotions in the future, it will need to apply for permission to approve using a VoP form (see question **3** - What is the application process?).

The firm will need to wait until it has received FCA approval before it can commence approving financial promotions, which can take up to 12 months if the application is deemed incomplete (see question **4** - How long does the FCA take to approve the application).

7. What are the exemptions available to UK authorised firms?

There are three exemptions that operate to exempt UK authorised firms from the requirement to obtain permission through the new regulatory gateway where:

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

8. Can the FCA refuse an application?

Yes. The FCA may refuse an application for permission to approve financial promotions if it appears to them that it is not desirable to do so in order to advance one or more of their operational objectives. The FCA can also grant an applicant permission to approve financial promotions in relation to a narrower range of investment types than that for which they had applied.

9. Are there any ongoing obligations that apply to the firm?

Yes, and this is new.

If a firm is granted permission to approve financial promotions, it will need to comply with the reporting requirements for approvers of financial promotions for unauthorised persons. This involves **ad-hoc notifications** to the FCA about the firm's approval activity and a **bi-annual report**. The FCA also suggests in its policy statement that firms should consider whether a particular matter is one of which they would reasonably expect notice (i.e. a Principle 11 notification). For example, where a firm is approached to approve a financial promotion but they refuse to approve it due to concerns about the legitimacy of the underlying product.

The firm will also need to ensure that it maintains adequate records, including records of approvals, withdrawals of approvals and approvals of amendments to financial promotions.

10. How do these rules interact with the new Overseas Funds Regime

Prior to Brexit, fund managers of UCITS funds that passported into the UK were treated as authorised persons under Schedule 5 of FSMA, meaning they had Part 4A FSMA permission to carry on regulated activities in the UK appropriate to their role in relation to that fund. While this permission was repealed when the UK exited the EU at the end of 2020, such entities were granted temporary authorisation under Part 4A of FSMA provided that the funds had been notified for marketing under the TMPR. As a result of this temporary authorisation, fund managers of funds in the TMPR can make and issue financial promotions to UK retail investors as part of their marketing efforts.

Once a fund has been recognised under the OFR, the fund manager's temporary authorisation ends. The fund manager can no longer issue financial promotions in the UK under its own name. Instead, the fund manager must ensure that:

- a UK authorised person makes / issues the communication in its own name;
- a UK authorised person approves the financial promotion made / issued by the fund manager; or
- the financial promotion falls within the scope of an exemption.

For the most part, firms should be able to make use of the intra-group exemption, meaning a UK authorised firm within the corporate group can approve the financial promotion (see question 7 - What are the exemptions available to UK authorised firms?).

However, this change will present problems for fund managers that are part of corporate groups that do not have a presence in the UK or firms that make use of third-party host management companies – they will need to explore how financial promotions can continue to be made to UK investors once the fund manager obtains approval for marketing under the OFR.

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