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FCA warns firms about misleading financial promotions for unregulated products

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Last week, the Financial Conduct Authority (“**FCA**”) published a letter addressed to the CEOs of all regulated firms concerning financial promotions. In particular, the FCA highlighted its concerns over financial promotions that falsely implied that all of a firm’s activities were regulated by the FCA or the Prudential Regulation Authority (“**PRA**”), when in fact they were not.

Jonathan Davidson, FCA Executive Director of Supervision – Retail and Authorisations, commented that it was unacceptable for firms to market unregulated investments by implying that all of their business was regulated and said that the

FCA is committed to stamping out this practice.

The FCA also took the opportunity to remind firms of its various powers to act if a financial promotion did not conform with the FCA's rules.

Rules relating to financial promotions

Financial promotions are invitations or inducements by firms to customers to engage in investment activity. These promotions can include all forms of communication by firms, including through advertising, websites and social media.

The FCA requires that such communications must be fair, clear and not misleading.

A key requirement of not misleading those targeted with a promotion is to be clear about the extent of the firm's regulation by the FCA or PRA. It is often the case that firms have some part of their business which is regulated, and some which is not regulated. In that case, a firm must make clear in its promotions which parts are *not*regulated. Otherwise, the FCA could find the promotion misleading.

FCA powers

As the FCA does not pre-approve promotions, it is incumbent on senior management to make sure that firms are compliant.

If firms fall short in their responsibilities, the FCA has the power to withdraw the promotion, to prevent it from being used in the first place and/or take enforcement action against the firm and senior management.

The "Dear CEO" letter warns that the FCA actively monitor adverts in a variety of media across the UK. There is also an online reporting form on the FCA website, which anyone can complete if they think an advert is misleading.

There are potentially more serious consequences, of course. Misleading statements can amount to a criminal offence and there is a right of action for damages for anyone suffering a loss as a result of the misleading information.

Comment

All regulated firms should carefully reflect on the "Dear CEO" letter and the regulatory messages that the FCA is sending in it. Firms must make sure that they understand the FCA's financial promotion rules otherwise they could be in trouble with the FCA. As if to illustrate this, the letter comes shortly after the FCA directed London Capital & Finance Plc ("**LCF**") to withdraw all of its marketing material in relation to LCF's fixed rate ISA and bond and launched an investigation into LCF's affairs. And the letter is yet another regulatory reminder to senior managers that they must take a proactive role in ensuring their firm is compliant with the FCA's rules otherwise they risk personal disciplinary action by the FCA.

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