

### A fair deal for consumers by raising standards in financial promotions

One of our key priorities is to help retail customers in the financial services market to achieve a fair deal. Our work on financial promotions is an important part of delivering this outcome. It forms part of our overarching Treating Customers Fairly (TCF) initiative. Over the past two years, we have seen improvements in the quality of financial promotions, particularly in higher-risk areas, but we continue to see deficiencies which we expect firms to address.

This bulletin aims to help firms understand our requirements to issue 'clear, fair and not misleading financial promotions', and help raise standards further. We also encourage you to visit the financial promotions section of our website <http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/index.shtml> for further information.

Following on from the commitments we made in August in 'Financial Promotions: Progress Update and Future Direction', we report here on our work on direct mail, mortgage brokers, spread betting, general insurance and Venture Capital Trusts (VCTs).

We have also assessed the standard of financial promotions issued by firms for products which we do not yet regulate, but soon will. In this edition of the bulletin we report on some of our findings in our review of Self-Invested Personal Pension Schemes (SIPPs) and Home Reversion Plans financial promotions.

Our work in all these areas has shown that to issue promotions that are clear, fair and not misleading, firms should still consider the following from the point of view of a customer:

- **Clarity of product/service** – Does the promotion clearly describe the nature of the

product or service, including the commitment required on the part of the customer?

- **Target audience** – Is the information and its presentation appropriate for the target audience?
- **Balance** – Does the promotion provide a fair and adequate description of the risks and drawbacks of the product or service?
- **Percentages and misleading headline claims** – If a percentage or headline claim is used, is it realistic or misleading?

As we show in this bulletin, all too often we find promotions which do not reflect what the product delivers. We also see some that are not balanced enough, reflecting only the benefits and not the drawbacks. Others have a headline claim that gives a misleading or unrealistic expectation of what a product can deliver.

We have also found that poor financial promotions can indicate wider issues with a firm – as, for example, in our mortgage broker work we found problems with systems and controls in firms with inadequate financial promotions.

It is senior management's responsibility to enable firms to produce clear, fair and not misleading promotions. We expect to see improvement in all these areas – where we do not, we will take regulatory action.

#### Nausicaa Delfas

Head of Department,  
Retail Markets Business  
Unit, FSA



### THEMATIC REVIEWS – ISSUES ON THE HORIZON

We conducted thematic work in two areas that are to be regulated from 6 April 2007: SIPPs and Home Reversion Plans. In both areas we found that, had they been regulated by us now, we would have significant issues with their financial promotions. We therefore urge firms to consider the issues below when producing their financial promotions.

#### SIPP financial promotions

In Consultation Paper 06/05 (3 April 2006), we stated that we would be monitoring SIPP financial promotions in the period leading up to formal regulation on 6 April 2007 and that we would encourage firms to adopt our standards before this.

We assessed a sample of 34 press financial promotions issued over a 12-month period and 18 website financial promotions. The promotions were from 33 firms with FSA authorisation for other activities, and firms which were then unauthorised. Only 50% of the press financial promotions and 22% of the website financial promotions met the standards which will apply from 6 April 2007.

Common problems we found included:

- Lack of balance – promotions gave the perceived advantages of a SIPP (tax efficiency, flexibility, wide range of investments available etc) without mentioning the disadvantages and risks. These include that active management and investment expertise are needed for a SIPP, that charges may be higher than for a personal pension or stakeholder plan, and that commercial property may be illiquid at certain times.
- Encouraging transfers into SIPPs (sometimes described as consolidation of all pension rights under a SIPP wrapper), but failing to mention that not all transfers may be suitable and that it may be best to seek advice.

- Suggestions that SIPPs are a superior form of pension provision by making unproven statements that most industry professionals or most professional investors have taken out a SIPP.
- Offering inducements – such as no set-up charge – without mentioning that other charges will apply or that commissions will be charged.
- Promoting the fact that retirement benefits may be taken via income drawdown, but failing to mention the risks of drawdown.

We will review promotions after the onset of regulation and take appropriate action if we find shortcomings.

#### Equity release via Home Reversion Plans

We already regulate Lifetime Mortgages which are one of the two types of equity release products. The other is Home Reversion Plans which we will be regulating from 6 April 2007.

We will expect firms to take reasonable steps to ensure that any Home Reversion Plan financial promotion they produce meets our requirements to be clear, fair and not misleading.

We have reviewed a sample of Home Reversion Plan financial promotions (press adverts and websites) to assess the standards before regulation. The adverts issued by firms we authorise were of a much better quality than those of unauthorised firms. Firms entering into regulation need to make sure they quickly come up to the standards we expect.

We observed the following examples of good and poor practice and found that firms did not always present the features of Home Reversion Plans in a balanced way. The examples below illustrate this:

## Good practice

- \* A press advert which suggests releasing equity to improve a consumer's standard of living through either a Lifetime Mortgage or a Home Reversion Plan. The promotion also highlights the associated drawbacks including that the consumer's estate may be reduced and State benefits may be affected.
- \* A website which clearly sets out that the firm arranges both Lifetime Mortgages and Home Reversion Plans. The site contains a fair description of the features of Home Reversion Plans including that consumers will receive less than the asking price for their property and that Home Reversion Plans may reduce the value of the consumer's estate.

## Poor practice

- \* A firm's website that makes several promotional statements about its Home Reversion Plan yet qualifies the statement in a separate Frequently Asked Questions (FAQ) link. This is unlikely to be clear, fair and not misleading because (a) the qualifying statements were hidden in the FAQs link and (b) the qualifying text was lost among other text.

The following link includes an explanation of the changes we have made to MCOB and the new terms we will be using:

[http://www.fsa.gov.uk/Pages/Doing/small\\_firms/mortgage/home\\_finance/index.shtml](http://www.fsa.gov.uk/Pages/Doing/small_firms/mortgage/home_finance/index.shtml)

The key financial promotion requirements are that a promotion should:

- describe any Home Reversion Plan as a 'Home Reversion Plan' and not use any other expression to describe it;
- prominently state it relates to a Home Reversion Plan and the customer should ask for a personalised illustration to understand its features and risks;
- if it describes a feature of any Home Reversion Plan – give no less prominence to the possible disadvantages than to the benefits associated with that feature; and

- not use design, content or format that disguises, obscures or diminishes the significance of any statement, warning or other matter which the promotion is required to contain.

We expect firms which will be joining us from 6 April 2007 to fully comply with our rules, and we will continue to monitor promotions to ensure that firms meet our standards. We will take action against firms that issue misleading promotions.

## OTHER THEMATIC REVIEWS

In addition to our work on SIPPs and Home Reversion financial promotions, we have also carried out recent thematic reviews in areas that we already regulate and below we provide an overview of our findings:

### General Insurance financial promotions and price claims in a price-sensitive market

*'This work demonstrates that firms in the home, travel and car insurance markets must shape up and ensure that the claims they make don't mislead.'* Vernon Everitt, FSA Retail Themes Director, January 2007.

In January we reported on our review of the press adverts making savings or price claims by 57 firms – which collectively accounted for over 75% of the total press spend in 2006 across home, motor, and travel insurance. We found that over 50% of motor advertisements with savings claims were either unclear or misleading, and 25% of home insurance advertisements gave rise to concerns.

The quality of travel insurance promotions was of a higher standard, although we still found examples of poor practice – such as a policy which does not cover winter sports using an image of a skier in its advertising.

We were especially concerned with promotions which claimed that most customers would be eligible for a price saving when the saving was based on a very small or unrepresentative sample of the target audience. Examples of good practice included promotions where it was made clear who would be eligible for a saving such as,

in the case of motor insurance, women drivers, an over-50s age group, or drivers with a history of no claims.

As part of our thematic work, we contacted the senior management of firms to highlight our concerns and to obtain clear plans for how they would improve the standards in their firms.

We will report on progress once we have carried out our three-month review at the end of April. However, early signs are encouraging: we are already seeing firms amending their promotions with an overall decrease in inadequate promotions, and a number of other firms have agreed to amend their promotions in respect of future campaigns. If we still find promotions that are not clear, fair and not misleading after our review, we will take regulatory action.

You can find full details of this thematic review at:

[http://www.fsa.gov.uk/pages/Doing/Regulated/Promo/key\\_issues/savings\\_claims.shtml](http://www.fsa.gov.uk/pages/Doing/Regulated/Promo/key_issues/savings_claims.shtml)

### **Sub-prime mortgages financial promotions and wider problems**

We consider mortgage promotions, and in particular those for sub-prime products, to be an area of higher risk because of the vulnerable nature of the target audience – and because taking out a mortgage is one of the most important transactions anyone makes during their life.

Over the past year, we have worked with mortgage firms to improve the standards of their promotional materials and reviewed several hundred financial promotions including flyers and classified advertisements in directories, regional papers and websites. We have told more than 200 mortgage firms to withdraw or amend misleading promotional materials, and visited the worst offenders.

During our visits we reviewed firm processes and quality of advice, and found a link between poor promotional materials and problems in these areas.

Some of the problems we found during our visits included:

- fee disclosure where the range of fees advertised was very different from the fees the consumers ended up paying; and

- consumers being sold mortgages with sub-prime rates where there was no evidence that they had impaired credit.

Our press release is at:

<http://www.fsa.gov.uk/pages/library/communication/PR/2006/125.shtml>

A number of firms that we visited have now been referred to the FSA's enforcement division for further action.

Follow-up work carried out during January and February 2007 identified that financial promotions from the worst firms had improved.

Non-compliance in other websites had reduced from 48% in August 2006 to 29% in February this year. The level of compliance of national tabloid mortgage financial promotions is around 90%.

Although we are pleased with this progress, we expect further improvement from firms in this area and will be following up with firms continuing to issue inadequate promotions.

### **Direct mail: all-importance of balance and careful targeting**

Direct mail promotions for all types of products pose a potentially significant risk because consumers may be able to buy a product directly relying on the information in the direct mail pack. If that material is misleading or unclear, then there is a risk that the consumer will buy a product which is not appropriate for them.

Direct mail has grown by 87% in the past ten years, with financial services firms playing a major role in using this channel – a channel which has featured in the sale of a number of high risk products – such as structured capital at risk products.

Our concern with the general standard led us to carry out a review of direct mail promotions.

We looked at the direct mail financial promotions for investment products issued by 44 different firms, ranging from major retail firms to smaller financial advisers. We wanted to see if direct mail promotions were clear, fair and not misleading.

We were pleased to see that about two-thirds of the promotions were clear, fair, not misleading

and presented a balanced impression. However, the remaining third exhibited a number of failings, so we have listed below some points for firms to consider when developing direct mail financial promotions:

- Prominence of risk and drawbacks: a direct mail promotion may be unbalanced if it contains all the benefits of the product in the covering letter, but only gives the disadvantages and key risks of the product in an accompanying brochure or key features document.
- We would not regard a direct mail financial promotion which is also a direct offer and contains the risk warnings on a tear-off-slip as clear, fair and not misleading. This is because when the consumer returns the slip, they will not have any information about the risks of the product.
- Target audience – careful targeting is critical when planning a direct offer financial promotion mailing campaign. In 2006 we fined the Ancient Order of Foresters (detailed further below) for failings. These included targeting older and unsophisticated consumers with an over-50s with-profits policy while failing to include in the pack a prominent statement that any customers in doubt about its suitability should seek advice.
- It follows that firms should consider whether, in relation to the nature of the product and its target audience, it is appropriate to market a particular product to their target customer via direct offer, and if it considers it appropriate to use direct offer, the firm should include information relevant to that target audience.

The proposed Conduct of Business rules for investment products which are expected to apply from 1 November 2007 (see below for further details) take a new approach to direct offer financial promotions. This offers greater flexibility over the timing of when disclosure material is given to consumers in a non-advised sale. However, the high-level rules such as to be fair, clear and not misleading, to provide enough information and not to disguise, diminish or obscure important items will, of course, remain.

### Venture Capital Trusts

VCTs are complex products where promotions have potential to cause consumers significant detriment.

In December 2006, we wrote to firms – providers and intermediaries – which have been active in the VCT market over the past tax year, to draw attention to the areas of concern highlighted in our previous thematic work. We will shortly be reviewing VCT promotions from both investment firms and intermediaries and will, if we encounter failures, take regulatory action, including enforcement action.

The following link gives you details of our work to date into VCTs:

<http://www.fsa.gov.uk/pages/about/media/notes/bn002.shtml>

Further areas of potential risk include:

- If a VCT does not meet the full subscription offer, it may be difficult to achieve a spread of investments and diversity, causing it to be a higher risk product.
- When describing the risks, firms should bear the target customer in mind and adapt the language so it is clear and meaningful from their point of view. It is unlikely that these requirements would be met by the common practice of grouping of all risks into one long paragraph and displaying risks in a position which does not take account of the customer journey on a website.
- Product disclosure: we still see some cases where firms place reliance on key information and risks being set out in product disclosure documentation, rather than upfront in the financial promotions. The disclosure documentation may be part of the financial promotion, as with a direct offer financial promotion. However, the financial promotion may still be considered unbalanced if it contains all the benefits of the product in the covering letter or in the content of the website, and explains the disadvantages and key risks only in the prospectus or key features document.

### Spread betting

We identified spread betting as a key area of focus in our August 2006 publication as it is a higher-risk

area for consumers. Our recent review of the financial promotions of the 12 spread betting firms looked broadly at the disclosure of risk in these promotions and the assessment of whether spread betting may be suitable for the customer. We have now posted this review on our website:

[http://fsa.gov.uk/pages/doing/regulated/promo/key\\_issues/spread\\_betting.shtml](http://fsa.gov.uk/pages/doing/regulated/promo/key_issues/spread_betting.shtml)

We report on how firms have interpreted the requirement that direct offer promotions for spread betting be made only to customers it may be suitable for, and we set out examples of good practice in this area. We also look ahead to the requirements coming into effect in November this year under the new Conduct of Business Manual. Firms promoting spread betting will need to carry out a test of appropriateness for the customer. Although the appropriateness test is not identical to the 'may be suitable' assessment, firms using the material on our website will be well placed to meet the requirements of the appropriateness test.

## ENFORCEMENT

We have referred a number of firms to Enforcement for further investigation, including four from our work with sub-prime mortgage brokers. Completed enforcement cases have resulted in 12 firms being fined for promotions failings since December 2004; the fines amounted to over £1.5m. We have also taken other action against firms in the same period including requiring firms to amend or withdraw promotions and to carry out remedial action. Below we provide details of some of our recent enforcement cases:

### The Ancient Order of Foresters

In August 2006 we fined the Ancient Order of Foresters (Foresters) £55,000 for financial promotions failings including sub-standard television advertisements and direct offer packs which targeted older consumers. The products featured in the promotions were the Autumn Gold with-profits whole-of-life insurance policy, the TeddyTrust Child Trust Fund (CTF) and the TeddyTrust tax-exempt savings plan (for children not eligible for a CTF).

This is the first time we have fined a friendly society for financial promotions failings. The firm was also found to have inadequate risk management systems in place for financial promotion compliance.

### Key points:

- Consider your target audience – the seriousness of Foresters' failings was made worse because its target market was elderly consumers and it did not tell them to seek advice if they were unsure about the suitability of the Autumn Gold policy.
- Provide a fair and adequate description of the risks and drawbacks of the product.
- Do not use misleading names – Foresters had described its 'Autumn Gold' whole-of-life insurance policy as a funeral plan in one of its promotions when it was not a funeral plan.
- Promptly identify and rectify breaches or potential breaches – Foresters' failings, which occurred over a long period of time (1 January 2004 to June 2005), were discovered as a result of our investigation rather than through Foresters' internal systems or procedures.
- Take clear steps to ensure compliance with our rules and take remedial action for consumers (which may act to reduce any potential fine).

### Langtons (IFA) Limited

In September 2006 we fined Langtons £63,000 for failing to allocate responsibilities among its senior management effectively and for systems and controls failures, including those relating to their financial promotions. The firm had approved 18 inadequate financial promotions for a number of products including: Individual Savings Accounts, Venture Capital Trusts, Traded Endowment Policies and Property Funds, and communicated these promotions via the press, direct mail and email. Some (but not necessarily all) of the promotions: failed to include a fair and adequate description of the nature of the investment; failed to include enough information about the commitment required for the product; gave inadequate risk warnings; and did not contain suitable text about past performance.

## OTHER ISSUES

### Changing regulatory climate

#### NEWCOB – new Conduct of Business sourcebook for investment products

Our Consultation Paper 06/20 published in October 2006 sought views on our proposals to implement a more principles-based regime for financial promotion and other communications. It also proposed rules and guidance to implement the conduct of business obligations in the Markets in Financial Instruments Directive (MiFID) for ‘all information’ and ‘marketing communications’.

Respondents to the one month consultation on our proposed implementation of MiFID raised several issues. For example, the definition of ‘marketing communications’, the practical implications of the requirement to clearly identify marketing or financial promotions, the presentation of past performance information, and Financial Promotion Order exemptions.

Full details of the feedback are contained in our Policy Statement 07/02:

[http://www.fsa.gov.uk/Pages/Library/Policy/Policy/2007/07\\_02.shtml](http://www.fsa.gov.uk/Pages/Library/Policy/Policy/2007/07_02.shtml)

#### Mortgage promotions

We have seen great variety in the mortgage arrangement fees charged for fixed and discount rate mortgages. It is important that promotions for such products are clear, fair and not misleading, and are balanced in that when they describe a feature of a product, they give no less prominence to the possible disadvantages as to the benefits. Therefore, where a financial promotion describes a low initial rate in a stepped-rate mortgage, it should:

- give no less prominence to the disadvantages, such as early repayment charges and arrangement fees;
- clearly describe an annual percentage rate (APR), which is the overall cost of the mortgage, including any arrangement fees and different interest rates charged. This information enables

consumers to assess the true cost of the mortgage and compare such cost with other products;

- avoid any misleading headline claims about the nature of the rate being offered.

#### FSA-OFT joint action plan

As part of the FSA-OFT joint action plan we are exploring opportunities for better joint working. We aim to:

- reduce the administrative burden on firms;
- improve the way we make information available to consumers; and
- deliver risk-based regulation.

In the area of mortgage promotions we will be working closely with the Office of Fair Trading to share experiences, remove unnecessary overlaps, and achieve coherence and clarity of approach.

### COMMON ISSUES AND QUESTIONS

Finally, we provide answers to common issues that we see and questions we are asked.

#### *Are websites financial promotions?*

Websites are financial promotions, so they need to comply with our rules and principles. You can find further information on our website at:

[http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/key\\_issues/web.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/key_issues/web.shtml)

#### *FSA authorisation*

There is a common misunderstanding about when and how you need to disclose that you have FSA authorisation. Generally, financial promotions do not need to state that the firm has FSA authorisation **unless** the promotion is:

- a **direct offer** for an investment product (COB 3.9.6R and Appendix 1 of COB, to which that rule refers), or
- an internet-based promotion (refer to the rule at ECO 3.2.1R and Annex 1 of ECO).

## **FOR MORE INFORMATION**

Our website provides more general information on our financial promotions regime. You can find it at:

[www.fsa.gov.uk/financialpromotions](http://www.fsa.gov.uk/financialpromotions).

## **Hotline – 08457 300 168**

If you see a promotion for any regulated product or service that you think is unclear, unfair or misleading, you can report it to us using our Hotline number (above) or web reporting form:

([www.fsa.gov.uk/pages/Doing/Regulated/Promo/Report/form.shtml](http://www.fsa.gov.uk/pages/Doing/Regulated/Promo/Report/form.shtml)).

For more information, please see the 'Reporting a misleading promotion' page on our website:

[www.fsa.gov.uk/financialpromotions](http://www.fsa.gov.uk/financialpromotions).