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By Email only

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Dear Mr Lawes

Industry Response to the FSA's Guidance Consultation on Financial Promotions

This response to the FSA's Guidance Consultation on Financial Promotions is made by the British Private Equity and Venture Capital Association ("**BVCA**"). The BVCA represents the overwhelming majority of UK-based private equity and venture capital firms.

The BVCA supports the FSA's proposal to issue additional guidance to firms in relation to financial promotions and how to ensure promotions are clear, fair and not misleading.

We would like to propose two amendments to the text. Both are intended to ensure that the guidance is clear and not misleading for firms who consult it.

Retail Clients

The guidance relates to the rules on communications contained in COBS 4 and specifically COBS 4.2.1R, 4.5.2R, 4.5.6R and 4.6.2R. Whilst the obligation to ensure materials are clear, fair and not misleading relates to all firms, the other specified COBS rules only relate to communications made to or directed at retail clients.

We understand that the FSA's intention with this guidance is to target those firms with retail clients. For the purpose of clarification we propose that the introduction to the guidance includes a brief statement that it is directed at those firms making, communicating or approving financial promotions which are being made to, or directed at, retail clients.

Image Advertising

The guidance around the rules which apply to brand advertising and image advertising is confusing and we believe it needs reworking in order to avoid confusion amongst readers. We would like to highlight two issues.

First, the guidance does not make clear that the COBS 4 rules on communications apply both to financial promotions and to other communications with clients relating to DIB. The guidance refers in a number of places to "financial promotion rules", whilst alluding to differences in treatment between financial promotions and other communications subject to COBS 4 without ever clarifying the difference between the two types of promotion. We think it would help the reader if the guidance more clearly explained that image advertising may be subject to COBS 4 as a communication to a client relating to DIB or as a financial promotion and that different rules within COBS 4 may apply depending on which of these is the case.

The guidance is also potentially confusing in places as to how the rules apply to image advertising. For instance, the guidance states that "When a communication goes beyond the definition of image advertising, it must comply with all relevant financial promotion rules". That could be interpreted as suggesting that if a communication falls within the definition of an image advertisement, it is not a financial promotion, which is not the case. Similarly it implies that a communication which goes beyond image advertising is a financial promotion. This will not always be the case (as is noted in PERG 8.4).

We would be delighted to discuss any of these issues with you.

Yours faithfully



Margaret Chamberlain
Chair – BVCA Regulatory Committee