

# **Strengthening our financial promotion rules for high risk investments, including cryptoassets**

**Consultation Paper**

CP22/2\*\*\*

January 2022

## How to respond

We are asking for comments on this Consultation Paper (CP) by **23 March 2022**.

You can send them to us using the form on our [website](#).

A document containing an editable copy of all questions in this CP can be found [here](#).

If you need to submit your response in an alternative format due to accessibility reasons, please contact us at [queries-2022-financial-promotions-CP@fca.org.uk](mailto:queries-2022-financial-promotions-CP@fca.org.uk)



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# 1 Summary

## Why we are consulting

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- 1.1** We want to deliver a consumer investment market that works well for people who want to invest with confidence, save for planned and unexpected life events and for the businesses in the real economy for which it provides essential funding. Our Consumer Investments Strategy, published on 15 September 2021, sets out our plan to achieve this.
- 1.2** A key part of the strategy is addressing the harm from consumers investing in high-risk investments that do not match their risk tolerance. This can lead to unexpected and significant losses for consumers and undermine wider confidence in investments, making it harder for all firms to raise capital. We do not want to unnecessarily restrict consumers who want to invest, but we want them to be able to access and identify investments that suit their circumstances and attitude to risk.
- 1.3** Since the start of the COVID-19 pandemic, we have seen a rapid growth in the proportion of consumers holding high-risk investments. Our consumer research suggests many of these new investors are driven by social and emotional factors. They do not always fully understand the risks involved, making them particularly vulnerable to unexpected losses.
- 1.4** One of the main ways consumers build their understanding of the risks and regulatory protection for investments is through the information they get in financial promotions. For high-risk investments, even a good financial promotion may not be enough to adequately protect consumers. It may meet our requirements to be clear, fair and not misleading, but a consumer may still not understand when the underlying investment does not meet their needs. In these cases, we can use our financial promotion rules to give consumers further protections.
- 1.5** We are publishing this CP now to ensure our financial promotion regime is robust and remains fit for purpose. The investment environment has changed, with promotions distributed to a mass audience at increasing speed via online platforms and through social media. These proposals complement work by the Treasury to improve the financial promotions regime. This work includes the proposed new regulatory gateway (s21 gateway) for authorised firms who approve the financial promotions of unauthorised firms (s21 approvers), extending the regime to promotions of qualifying cryptoassets and consulting on reforms to the exemptions for high net worth and sophisticated investors.
- 1.6** This CP follows, and should be considered alongside, our recent interventions to address harm from high-risk investments, including banning the mass-marketing of speculative illiquid securities, our new InvestSmart campaign and our ongoing Supervisory and Enforcement action to address harm in this market (as detailed in our Consumer investments data review 2021).

## Scope of this consultation

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- 1.7** The proposals in this CP primarily relate to financial promotions for high-risk investments. 'High-risk investments' refers to those investments which are subject to marketing restrictions under our rules. This includes investment based-crowdfunding (IBCF), peer-to-peer (P2P) agreements, other non-readily realisable securities (NRRSs), non-mainstream pooled investments (NMPs) and speculative illiquid securities (SISs). They will also include cryptoassets when they are brought within the financial promotions regime (see Chapter 6).
- 1.8** As we stated in PS 21/14, we will consult on potential changes to the distribution rules for Long Term Asset Funds (LTAF) later in the year. Given this upcoming consultation, we have generally excluded the LTAF from the scope of the proposals in this CP. However, paragraphs 4.45 – 4.48 of this consultation are relevant to the LTAF as we intend to apply the proposed changes to the investor declaration to them. This is to avoid there being duplicative rules for investor categorisation in our Handbook.
- 1.9** The issues discussed in Chapter 5 are relevant to any financial promotion for investment business issued by an unauthorised person which is approved by an authorised firm, whether for a high-risk investment or otherwise. The proposals for a 'Competence and Expertise' requirement are also relevant to any financial promotion for investment business issued by an authorised firm (see paragraphs 5.19 – 5.28).

## Who this applies to

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- 1.10** This consultation will primarily be of interest to:
- consumers and consumer organisations
  - authorised firms which approve financial promotions for unauthorised persons (section 21 approvers), whether for high-risk investments or otherwise
  - authorised firms which communicate financial promotions relating to investment business
  - issuers of non-mainstream pooled investments, speculative illiquid securities and non-readily realisable securities
  - investment-based crowdfunding platforms and other intermediaries distributing investments to consumers
  - peer-to-peer platforms
  - firms operating in the cryptoasset market
  - trade bodies for the IBCF, P2P and cryptoasset sector
- 1.11** The consultation will also be of interest to:
- any authorised firm in the consumer investments sector
  - investment companies, and trade bodies for this sector
  - issuers of other types of investments
  - financial advisers
  - asset managers with experience of managing illiquid, long-term assets
  - potential investors in long-term asset funds

## What we want to change

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**1.12** Building on responses to our [Discussion Paper](#) (DP21/1) and wider evidence base, we propose to make changes in the following areas:

- **Our classification of high-risk investments** (Chapter 3). Firms have told us that our existing marketing restrictions are difficult to navigate and to understand what restrictions apply. We intend to rationalise our rules in COBS 4 under the terms 'Restricted Mass Market Investments' and 'Non-Mass Market Investments.' To fully consider the issues raised by respondents to DP21/1 we do not propose to extend the application of our Speculative Illiquid Securities rules in this consultation. We will revisit this issue later in the year.
- **The consumer journey into high-risk investments** (Chapter 4). We are concerned that too many consumers are just 'clicking through' and accessing high-risk investments without understanding the risks involved. Our existing marketing restrictions are intended to ensure consumers only access high-risk investments knowingly. However, our consumer research shows this approach isn't working as well as it should. We propose a package of measures to strengthen it by making changes to the following areas: strengthening risk warnings, banning inducements to invest, introducing positive frictions, improving client categorisation and stronger appropriateness tests.
- **Strengthen the role of firms approving and communicating financial promotions** (Chapter 5). We want to strengthen the role of a section 21 (s21) approver as they play an important role in enabling unauthorised issuers of high-risk investments to reach consumers. We want to develop a robust regime to complement the proposed s21 gateway which, when implemented, will hold s21 approvers to high standards. This will ensure approving firms have the relevant expertise in the promotions they approve and the overall quality of financial promotions in the market is high.
- **Applying our financial promotion rules to qualifying cryptoassets** (Chapter 6). The Treasury has [confirmed](#) it intends to extend the scope of the financial promotion perimeter to include qualifying cryptoassets. We are consulting on how we will categorise these cryptoassets once they are brought into the financial promotion regime. We intend to generally apply the same rules to cryptoassets as currently apply to Non-Readily Realisable Securities and Peer-to-Peer agreements (collectively this category will be referred to as 'Restricted Mass Market Investments', see Chapter 3). However, we do not propose that it should be possible for 'Direct Offer' Financial Promotions of qualifying cryptoassets to be made to self-certified sophisticated investors. Financial promotions relating to cryptoassets will need to comply with our existing financial promotion rules in COBS 4, including the requirements for the promotion to be clear, fair and not misleading. They will also need to comply with the changes proposed in Chapter 4.

## Measuring success

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**1.13** These proposals are a key part of our [Consumer Investment Strategy](#). The Strategy sets out our 3-year plan to address harm in the consumer investment market. We have published metrics against each of the four outcomes of the strategy so that people can judge whether we are achieving them and to ensure that both we and the firms we regulate are called to action when things are not going right. Therefore, the key success measure is whether these proposals help achieve our target of a 50%

reduction in the number of consumers investing in high-risk investments who indicate a low risk tolerance or demonstrate the characteristics of vulnerability by 2025. We will use consumer research, such as our Financial Lives Survey, to monitor progress against this target.

## Next steps

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- 1.14** We welcome feedback on our proposals by 23 March 2022. We will consider all feedback and, depending on the responses, intend to publish a Policy Statement and final Handbook rules in summer 2022.
- 1.15** We propose to give firms 3 months from publishing final rules to comply with the new requirements for the consumer journey outlined in Chapter 4 and the new requirements for s21 approvers outlined in Chapter 5.
- 1.16** For requirements relating to cryptoasset promotions outlined in Chapter 6, we propose that any changes apply from the date qualifying cryptoassets are brought within the financial promotion regime.

## 2 The wider context to this consultation

### The consumer experience

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- 2.1** As we set out in our [Call for Input on the Consumer Investments Market](#), long-term social and economic changes have made the consumer investment market more important than ever. Consumers are increasingly responsible for making complex decisions about how they invest their long-term savings for life events and to support themselves in later life. There is more choice of products and services than ever before.
- 2.2** The pandemic has accelerated many of these trends. Our [Financial Lives Survey](#) data suggests that 6% of adults with investments increased their holdings of high-risk investments between February and October 2020. Data from IPSOS MORI suggests there has been further growth in the ownership of high-risk investments since then. For example, the proportion of consumers owning cryptoassets increased 83% between March 2020 and June 2021.
- 2.3** Alongside this rapid increase in ownership is growing evidence that consumers do not fully understand the risks involved. Research we commissioned from [BritainThinks](#) found that 45% of new self-directed (i.e. non-advised) investors said they did not view 'losing some money' as a potential risk of investing. An [Opinium survey](#) of 1,000 people aged 18 – 40 who had invested in high risk products found 69% of those who purchased cryptoassets wrongly believed they are regulated by the FCA.
- 2.4** The research also points to a new emerging group of self-directed investors who appear to be driven by social and emotional factors, for example three-quarters (76%) of those surveyed by Opinium felt a sense of competitiveness when placing their money in an investment, with over two thirds (68%) likening it to gambling.
- 2.5** More information on the research we commissioned can be found in paragraphs 4.6 – 4.10 below.

### The existing regulatory landscape

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- 2.6** We have limited powers over many issuers of high-risk investments where they are not carrying out a regulated activity. This means that we cannot generally impose requirements on the issuers of high-risk investments themselves if these issuers are unauthorised and not subject to our rules. However, if these investments are marketed then it is likely that they will have to meet the requirements of the Financial Promotions regime. Ensuring this regime is fit for purpose is therefore vital in protecting consumers and helping them make informed investment decisions.
- 2.7** A [financial promotion](#) is an invitation or inducement to [engage in investment activity](#) (or [claims management activity](#)), that is communicated in the course of business. They can take many forms, including adverts in print, broadcast or online media, marketing brochures, emails, websites or social media posts. For the purposes of this

consultation, we are only concerned with financial promotions for investment business which are subject to the financial promotion rules in Chapter 4 of the Conduct of Business Sourcebook (COBS 4).

**2.8** The financial promotions regime consists of three core elements that work together to govern the marketing of financial services.

- Section 21 (s21) of the Financial Services and Markets Act 2000 (FSMA) sets out 'the financial promotion restriction'. This prohibits the communication of a financial promotion unless it is communicated or approved by an authorised person. A breach of s21 is a criminal offence.
- The FSMA (Financial Promotion) Order 2005 (FPO) includes a number of exemptions from the financial promotion restriction. These permit an unauthorised person to communicate a financial promotion in certain circumstances and subject to certain conditions.
- FCA Handbook rules prescribe the requirements relating to financial promotions that apply to authorised firms when they communicate or approve them (financial promotion rules).

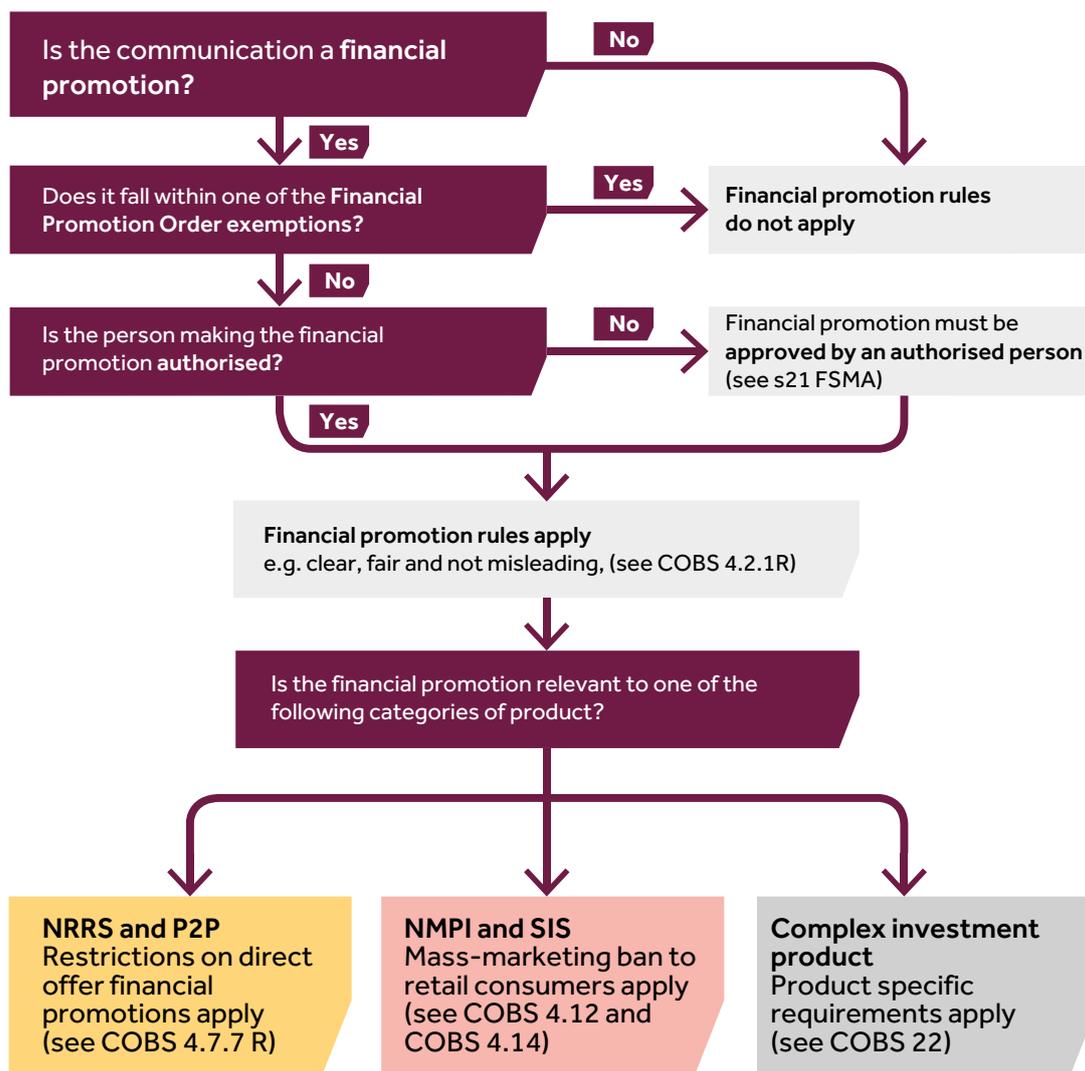
### **The three routes to legally communicating a financial promotion**

**2.9** First, authorised firms can communicate financial promotions but must comply with FCA Handbook rules. This includes the overarching standard that a financial promotion must be clear, fair and not misleading. They must also ensure they comply with any marketing restrictions which apply to particular types of investment.

**2.10** Second, authorised firms can approve financial promotions for communication by unauthorised persons. The authorised firm must only approve the financial promotion if it complies with FCA Handbook rules and must withdraw approval if it becomes aware that the promotion no longer complies. Our Handbook rules and guidance for section 21 approvers are supplemented by our guidance for section 21 approvers, published in November 2019.

**2.11** Third, unauthorised persons can communicate financial promotions without any approval if they comply with the conditions of an exemption in the FPO. If a promotion can be made within the scope of an exemption, our financial promotion rules do not then apply to that promotion.

**Figure 1: Do our financial promotion rules apply?**



## The FPO exemptions

### 2.12

Some commonly used exemptions in the FPO are those enabling promotions to 'high net worth' (Article 48 of the FPO), self-certified 'sophisticated' (Article 50A of the FPO) and certified 'sophisticated' (Article 50 of the FPO) investors. In this CP, we call these the 'FPO exemptions'. The effect of the FPO exemptions is that unauthorised persons can communicate financial promotions for certain types of investments without regulatory oversight, as long as they are only promoted to investors that satisfy the criteria for these exemptions and otherwise satisfy the conditions for the relevant exemption to apply.

### 2.13

We have previously discussed these exemptions in detail, including in our [2020/21 Perimeter Report](#) (see Chapter 6). We still believe that there needs to be significant changes to the FPO exemptions, particularly to the relevant thresholds and consumers' ability to self-certify, issues on which the Government has recently consulted. Leaving this aspect of legislation unchanged will continue to result in significant consumer harm that we are unable to mitigate.

- 2.14** The proposed changes to our rules in this CP will have no impact where an unauthorised person uses an FPO exemption to promote investments. We welcome the Government's consultation on reforming these exemptions. It is an important step forward in ensuring the financial promotions regime is fit for purpose.

### **Marketing restrictions for high-risk investments**

- 2.15** For high-risk investments, a good quality financial promotion may not be enough to protect consumers. It may meet our requirements such as being clear, fair and not misleading, but the underlying product may still be inappropriate for most retail investors and unlikely to meet their needs. To reduce this risk, our financial promotion rules apply varying levels of restrictions to financial promotions for certain types of investment. We discuss these restrictions in more detail in Chapter 3.
- 2.16** As well as the categories discussed in Chapter 3, in COBS 22 we apply restrictions to specific complex investment products, including some sales restrictions. The restrictions in COBS 22 are not a unified category, but represent interventions made in response to specific harms. For example, we have banned the sale, marketing and distribution of cryptoasset derivatives and binary options to retail clients. We have also put restrictions on selling, marketing and distributing contracts for difference to retail clients.

### **Regulating cryptoassets**

- 2.17** Cryptoassets and cryptoasset-related activities often sit outside the regulatory perimeter. For example, cryptoassets, unless they also amount to a controlled investment, are not currently in scope of the financial promotions regime, so our rules do not currently apply to marketing these investments. In addition, consumers are unlikely to have access to the Financial Services Compensation Scheme (FSCS) or Financial Ombudsman Service (FOS) if something goes wrong.
- 2.18** To combat money laundering and terrorist financing, certain cryptoasset firms are now subject to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs). Under this regime, cryptoasset firms conducting certain activities are required to register with the FCA. Aside from this, cryptoassets are largely unregulated; our Guidance on Cryptoassets (PS19/22) provides more detail on the regulatory perimeter and how it specifically applies to cryptoassets.
- 2.19** We recognise the potential benefits cryptoassets could have, particularly for payments. In January 2021 the Treasury published a consultation and call for evidence on the UK regulatory approach to cryptoassets and stablecoins for payments. This seeks views on how the UK can ensure its regulatory framework harnesses the benefits of new technologies to support innovation and competition, while managing risks to consumers and ensuring stability.
- 2.20** Our Innovate function, including through our regulatory sandbox, has continued to engage with many cryptoasset businesses and we remain committed to supporting these firms and encouraging innovation in financial services.
- 2.21** The proposed changes in this consultation represent the first 'conduct of business' regulation for cryptoassets in the UK and are part of a wider strategic approach developed by the Cryptoassets Taskforce (CATF), in relation to cryptoassets.

## Taking action against firms and individuals who cause harm

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- 2.22** We supervise firms to ensure they comply with our rules and we take action against those who cause harm to consumers. We regularly report on these activities to ensure transparency (see our latest [Consumer investment data review 2021](#)).

### Preventing harm at the authorisation gateway

- 2.23** We will refuse to authorise a firm if it does not satisfy us that it meets, and will continue to meet, Threshold Conditions. We expect firms to be ready, willing and organised when submitting an application for authorisation. Whilst we do support firms during the authorisation application, this is not an open-ended process. We must determine the application within statutory deadlines.

- 2.24** We stopped 48 new firms from entering the consumer investment market between 1 April 2020 and 31 March 2021, where the potential for consumer harm was identified. This represents almost 1 in 5 applications where the applicant sought permissions related to consumer investments.

### Supervising the market

- 2.25** We supervise firms and individuals managing firms by monitoring the way they conduct business. As of 31 March 2021, we supervised 6,568 firms in the Consumer Investment market. These firms also acted as principals for 8,510 unique registered [appointed representatives](#).

- 2.26** We have recently brought together specialist areas to continue to work collectively to reduce actual or potential retail consumer harm by tackling scams, breaches of our perimeter and non-compliant financial promotions. This is in response to an observed increase in both the actual and potential consumer harm we are seeing in these areas.

- 2.27** In the two months of September 2021 and October 2021, these specialists have issued 22 amendments to/withdrawals of financial promotions, accepted 5 applications from firms for the imposition of requirements relating to financial promotions, and imposed requirements on one other firm. This is in addition to issuing 156 warnings about unauthorised firms relating to their unauthorised business more generally.

- 2.28** We have increased the number of alerts issued about unauthorised firms and individuals believed to be engaging in unlawful financial services activity. From April 2020 to March 2021, we issued 1,317 alerts (up 77%) about unauthorised firms and individuals. Around a third of these were about 'clone' firms where fraudsters pretend to be authorised firms.

### Enforcement action

- 2.29** Our enforcement work aims to ensure there are real and meaningful consequences for firms and individuals who do not follow our rules and who cause actual or potential harm to consumers or to market integrity. We use a wide range of enforcement powers – criminal, civil and regulatory – to protect consumers and act against firms and individuals that don't meet our standards. More information about our approach to enforcement can be found in our [Enforcement Guide](#) and our [Approach to Enforcement](#).

- 2.30** Where we suspect there has been serious misconduct, we will open an investigation. We had 50 live investigations at 31 March 2021 involving unauthorised business, most of which also involve scams. Between April 2020 and March 2021, our enforcement work led to approximately £21.7 million being awarded under restitution orders for unauthorised investment business and nearly £7m being frozen on behalf of investors pending court judgments.
- 2.31** We also have 31 live investigations or proceedings relating to the conduct of authorised firms and individuals where consumers have invested in potential scams or unsuitable higher risk investments. These investigations often involve multiple subjects (firms and individuals), and so the total number of firms and individuals under investigation is significantly higher.
- 2.32** We have taken enforcement action against 2 firms and 4 individuals related to higher risk investments between April 2020 to March 2021. During that period, we fined, or decided to fine the subjects of our investigations more than £300k.

## Related developments

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### Online harms

- 2.33** We continue to work with online platforms to try and ensure they deliver on their public commitment to prevent harm from online advertising and take a more active role in stopping scams. We continue to believe the protection of consumers from illegal online scams would be strengthened through clear legal obligations on platform operators within the Government's Online Safety Bill (OSB) and that the duties in the OSB should extend to paid-for advertising, as well as user-generated/search content. We also continue to make the case for content relating to fraud offences to be designated as 'priority' illegal content and so require monitoring and preventative action by platforms.

### InvestSmart Campaign

- 2.34** In October 2021 we launched our £11m InvestSmart campaign which aims to help investors identify investments that might suit their circumstances and attitude to risk, providing impartial information on basic investment principles and encouraging a longer-term, more diversified investment approach. The campaign targets those who are inexperienced at investing, possibly investing for the first time. The campaign aims to reach those investors through social media and online, where much of the promotion of these investments happens. The campaign asks investors to consider their appetite for risk and to ignore the 'hype', directing them instead to information available on the FCA's website.

### A new Consumer Duty

- 2.35** On 7 December 2021, we published our second consultation on a new Consumer Duty. As we said in that paper, we want to set a higher expectation for the standard of care that firms give consumers. For many firms, this will require a significant shift in both culture and behaviour.

- 2.36** The proposed Consumer Duty would apply proportionately and is underpinned by the concept of reasonableness, taking account of the firm's role in relation to the product or service, the nature of the product or service and the characteristics of consumers. All authorised firms would need to comply with the Consumer Duty for retail business for their own activities. In general, firms would be responsible only for their own activities and would not need to oversee the actions of other firms in the distribution chain except when required to under our existing rules, such as principals being responsible for ensuring Appointed Representatives comply with our rules. We would generally expect firms with a direct relationship with the retail customers to have greatest responsibility under the Consumer Duty. However, all firms that have an impact on consumer outcomes will need to consider their obligations.
- 2.37** Authorised firms will need to consider their responsibilities under the proposed Consumer Duty when approving promotions for unauthorised persons. We acknowledge, however, that the s21 approver may not have a direct relationship with the retail customer. Therefore, it may not be appropriate for the Consumer Duty to apply in these circumstances. For example, when monitoring communications that are not financial promotions, the timing of the communication by an unauthorised firm or requiring the unauthorised firm to test its communications. More detail on the Consumer Duty and the obligations proposed for authorised firms can be found in [CP21/36](#).

### **Marketing of the Long-Term Asset Fund (LTAF)**

- 2.38** In October 2021 we finalised our rules for a new category of authorised open-ended fund designed to facilitate investment in long-term, illiquid assets. These rules mean that the LTAF can only be marketed to professional, sophisticated and high net worth investors. Later in the year we will consult on allowing a broader range of retail investors to invest in LTAFs in a controlled way. Given this upcoming consultation we have generally excluded the LTAF from the scope of the proposals in this CP. However, we propose to include the LTAF within scope of the changes to the investor declaration form discussed in paragraphs 4.45 – 4.48. This is to avoid there being duplicative rules in our Handbook.

## **How it links to our objectives**

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### **Consumer protection**

- 2.39** Our proposals aim to advance our consumer protection objective by seeking to reduce and prevent the harm to consumers from investing in high-risk investments that do not match their risk appetite. Our extensive consumer research (discussed in paragraphs 4.6 – 4.10) shows that without further changes this harm will continue.

### **Market integrity**

- 2.40** Our proposals are also relevant to our integrity objective. Failures and unexpected losses for retail investors undermine confidence in UK financial markets. This may impact the soundness, stability and resilience of the UK financial system. Facilitating consumer understanding and good investment decisions increases trust in the system, and ultimately encourages further use.

## Competition

- 2.41** We do not consider it to be in consumers' interests for firms or businesses to compete to sell them products that do not meet their needs and are inappropriate for them. We recognise that some of the proposed changes could lead to some investments no longer being offered to retail investors or to a reduced take-up from retail investors. However, that would be the inevitable consequence of what we are trying to achieve, namely preventing retail investors from making inappropriate investments. In considering these proposals we have had regard to our duty to promote effective competition in the interests of consumers.

## Wider effects of this consultation

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- 2.42** Our proposals are aimed at preventing consumers from investing in inappropriate products. We have considered the following other potential issues when deciding on these proposals:
- Fewer consumers investing in high-risk investments could reduce the sources of funding for some businesses. However, businesses are not well served by consumers investing in products they do not understand and do not match their risk tolerance. This undermines confidence and trust in investments generally, harming the ability of all firms to raise capital. We want the market for high-risk investments to work well, including that it is only used by consumers who understand the risks of the investment and can bear potential losses.
  - Any increased difficulty in raising funds may affect existing investors. If an issuer of securities is already in financial difficulty, our rules could exacerbate the risk that they fail, even if this is ultimately caused by weakness in the investment proposition. However, if an issuer is heavily reliant on new capital raising to be able to repay existing investors, it may suggest the product or business model was already unsustainable and likely to lead to losses.
  - As discussed in paragraphs 2.12-2.14, we must also bear in mind the impact of the FPO exemptions when considering changes to our rules. Rule changes may result in increased use of the exemptions, as we saw following the introduction of our SIS rules.

## Equality and diversity considerations

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- 2.43** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. Overall, we do not consider that the proposals materially negatively impact any of the groups with protected characteristics under the Equality Act 2010. Recent research suggests that consumers newly investing in high-risk investments (those investing for less than 3 years) are more likely to be female, younger, more ethnically diverse and to be in a lower socioeconomic group compared with traditional investors. These groups will benefit from the protections we are proposing.
- 2.44** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules. In the meantime, if you have any views on this, please include them in your response to this consultation.

## 3 Our classification of high-risk investments

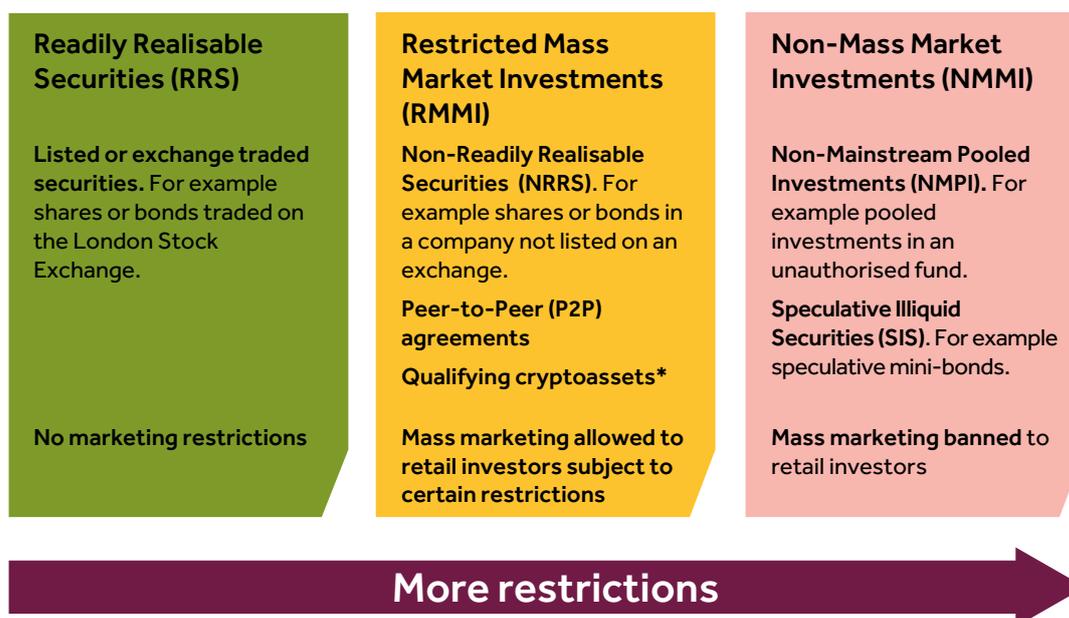
### Introduction

- 3.1** Our proposals in this CP seek to rationalise the way we currently categorise high-risk investments to ensure products with similar characteristics are treated in the same way under our financial promotion rules. We also provide feedback on the issues we discussed in Chapter 3 of [DP21/1](#).
- 3.2** In our view consumers will be more likely to be able to ascertain the different levels of risk associated with different types of investment if they are branded and marketed in different ways. [Behavioural testing](#) we conducted found that consumers preferred speculative mini-bonds to Stocks and Shares ISAs, despite also saying they preferred lower risk investments. When we tested the introduction of specific risk warnings for speculative mini-bonds, consumers were better able to match their risk tolerance with their chosen investment.

### Rationalising our rules for high-risk investments

- 3.3** How we apply restrictions to different types of product has developed over time in response to specific harms. Some firms have told us that our Handbook rules are difficult to navigate and understand what restrictions apply. We propose to rationalise our rules. Figure 2 provides a summary of these new categories.

**Figure 2: Financial promotion marketing restrictions product categories**



\* categorisation of qualifying cryptoassets subject to parliamentary approval of the relevant Statutory Instrument and this consultation (see chapter 6).

## Readily Realisable Securities

- 3.4** Our rules allow firms to market Readily Realisable Securities (RRS) without restriction under our financial promotion rules. RRS are listed and/or exchange traded securities (see Handbook Glossary definition). We would expect a listed or exchange traded security which is traded on a regulated market or venue providing liquidity, and is subject to initial and ongoing disclosure and transparency requirements, to be more likely to be an appropriate investment for retail investors than an unlisted security that is not traded on a public trading venue and so does not have these features.

## Restricted Mass Market Investments (RMMI)

- 3.5** Our rules allow Non-Readily Realisable Securities (NRRS) and Peer-to-Peer (P2P) agreements to be marketed to retail consumers, with certain restrictions. NRRS are, very broadly, unlisted securities, such as shares or bonds, that are not admitted to trading on a regulated market or trading venue. They can be sold either directly by the issuer or through an intermediary such as a crowdfunding platform. P2P agreements are entered into via a P2P platform. In both cases, the common feature of NRRS and P2P investments is that consumers may not have frequent opportunities to sell these investments on a secondary market that offers continuous trading. Consumers who buy these products are typically investing in companies or individuals about whom limited public information may be available.
- 3.6** Given both NRRS and P2P agreements are subject to the same marketing restrictions, we propose to rationalise our financial promotion rules for these investments under the banner of 'Restricted Mass Market Investments'. This is not an existing term in our rules, but one we intend to introduce.
- 3.7** Under our current rules, these investments can generally be mass-marketed. However, firms cannot make a Direct Offer Financial Promotion which, in general terms, specifies how consumers can respond or includes a form to do so, unless certain conditions are satisfied. These conditions do not apply where the investor is being advised.
- 3.8** First, the recipient of such a promotion must be categorised as either a certified high-net-worth investor, a certified sophisticated investor, a self-certified sophisticated investor, or a certified 'restricted' investor according to our Handbook rules. To be a restricted investor, the individual must sign a declaration to say they have not in the last 12 months, and will not in the next 12 months, invest more than 10% of their net assets (certain assets being excluded from this calculation) in these types of investments.
- 3.9** Second, firms must comply with our Handbook rules on appropriateness. These rules require firms to consider the investor's knowledge and experience in the relevant investment field, to enable an assessment of whether the product is appropriate for that investor.

## Non-Mass Market Investments (NMMI)

- 3.10** Our rules ban Non-Mainstream Pooled Investments (NMPI) and Speculative Illiquid Securities (SIS) from being mass-marketed to retail investors. An NMPI includes the following investments:
- a unit in an unregulated collective investment scheme (UCIS)
  - a unit in a qualified investor scheme (QIS)
  - a unit in a long-term asset fund (LTAF)

- certain securities issued by special purpose vehicles
- a traded life policy investment

**3.11** A SIS is a debenture or preference share where the proceeds are used for on lending, buying or acquiring investments, buying real property or funding the construction of property. While listed securities are generally not SISs, a listed debenture that meets the definition of a SIS and is not regularly traded, is also caught by the SIS rules.

**3.12** Given both investments are generally subject to the same marketing restrictions, we propose to rationalise our financial promotion rules for these investments under the category of 'Non-Mass Market Investments'. This is not an existing term in our rules, but one we intend to introduce.

**3.13** These investments are often very high risk and so unlikely to be suitable for most retail investors. They are often complex, pooled investments which makes it very difficult for consumers to understand the product structure, know what their money is being invested in and what risk they are exposed to. We have seen significant harm from ordinary consumers accessing promotions of, and investing in these, types of products. The mass marketing ban means that most retail investors should not be able to receive promotions for these types of investment. These investments can only be marketed under our rules if the following conditions are met.

**3.14** First, an authorised firm can only communicate or approve financial promotions where an exemption to the marketing restrictions applies, including for certified high net worth, certified sophisticated and self-certified sophisticated investors. Second, the firm must complete a preliminary suitability assessment for certified high net worth and self-certified sophisticated investors. This requires a firm to acquaint itself with the investor's profile and objectives, to ascertain whether the investment is likely to be suitable.

**Q1: Should we rationalise our financial promotion rules in COBS 4 by introducing the concepts of 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?**

## Extending our SIS rules

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### DP21/1 responses

**3.15** The rules for SIS apply to debentures and preference shares which meet the definition of a SIS. In DP21/1 we discussed expanding these rules to include equity shares and P2P agreements with similar characteristics to a SIS. This proposal was intended to ensure that the harm we have seen from speculative mini-bonds does not move to other forms of investment with similar speculative features.

**3.16** We received 42 responses on this topic, primarily from authorised firms and trade bodies. 10 respondents (24%) were in favour of extending our SIS rules. They argued that changes were needed to avoid firms arbitraging our rules by structuring the investment to fall outside the definition of a SIS. These respondents thought our rules should focus on the economics of the investment and the risks this may expose consumers to, not their legal structure. A small number of respondents argued that all unlisted securities were unsuitable for retail investors and so we should ban their mass-marketing.

**3.17** 24 respondents (57%) did not support extending the SIS rules. Many of them argued that our existing rules for NRRS and P2P agreements, such as the appropriateness test, were sufficient to protect consumers. Crowdfunding and P2P platforms also argued they were subject to direct FCA regulation of their firms. Respondents also raised concerns that extending mass-marketing bans would drive more firms into the unregulated space, such as marketing investments through the FPO exemptions, and so would not be subject to our rules. A number of firms and trade bodies raised concerns about the impact of this proposal on firms' ability to raise capital and on the property development sector. Several P2P firms argued that if the SIS rules were extended, they should differentiate between lending models, for example between conduit and discretionary lending models.

### **Our proposal**

**3.18** We still believe it is important that our rules do not allow opportunities for arbitrage. While legal forms may differ, our focus is clear – we want to ensure that investments which are complex and difficult for retail consumers to understand are not marketed to them. We also share concerns about the ease with which unauthorised persons can market investments to consumers through exemptions in the Financial Promotion Order. We welcome the Treasury's [consultation](#) to ensure that the regime remains fit for purpose.

**3.19** We understand respondents' concerns about the potential impact of extending our SIS rules on firms legitimately raising capital from retail investors. We also understand concerns that not all P2P lending models present the same risks to retail investors. We published a [Discussion Paper](#) before consulting precisely to better understand the potential impact of these proposals and avoid unintended consequences. To fully address the issues that respondents raised, we do not propose to extend our SIS rules in this consultation. We intend to revisit this issue later in the year.

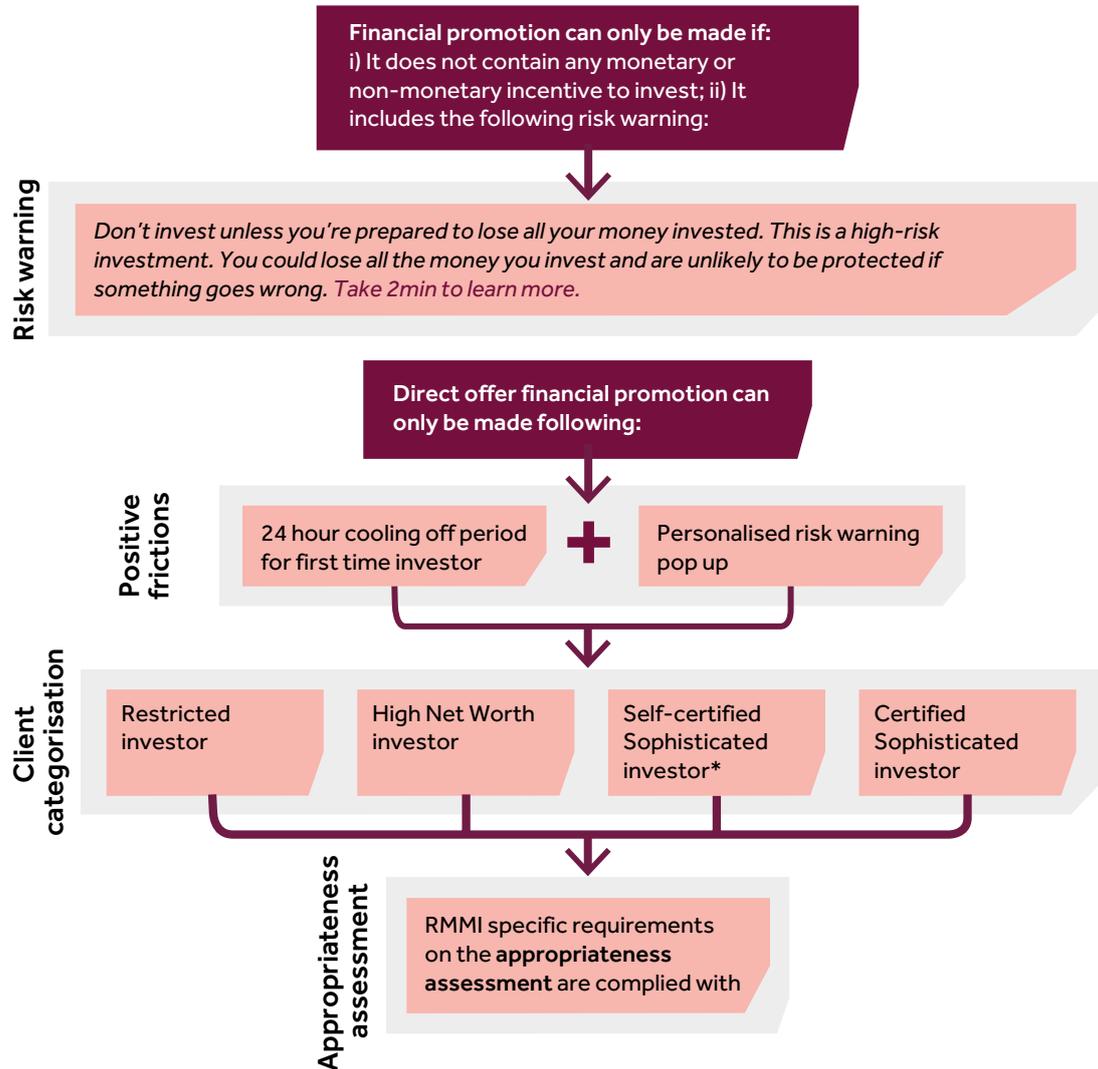
## 4 Strengthening the consumer journey for high-risk investments

### Introduction

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- 4.1** High-risk investments have a place in a well-functioning consumer investment market for those who understand the risks involved and can absorb potential losses. We do not want to unnecessarily restrict consumers from investing if they want to. However, we do want them to be able to access and identify investments that suit their circumstances and attitude to risk. We want to achieve a market where consumers:
- invest with confidence, understanding the risks they are taking and the regulatory protections available to them
  - only access high-risk investments knowingly and after firms have assessed them as having the relevant knowledge and experience
  - are not pressured, misled or induced to take on investments that do not match their risk tolerance.
- 4.2** Our existing marketing restrictions (set out in Chapter 3) are intended to help achieve this. However, our consumer research shows that the current approach isn't working as well as it should. Too many consumers are investing in high-risk products that do not match their risk tolerance and are unlikely to meet their investment needs. No one, whether firms raising capital or consumers investing their money, benefits when consumers do not understand the risks involved and experience unexpected losses.
- 4.3** Based on DP21/1 responses and our wider evidence base including behavioural testing, we intend to strengthen the consumer journey in the following ways:
- improve **risk warnings** to help consumers better understand and engage with them
  - ban **inducements to invest** as these encourage investments that are not aligned to the investor's risk tolerance and are abused by bad actors
  - add **positive frictions** to the consumer journey to counter social and emotional pressures to invest and support more considered investment decisions
  - make changes to investor declarations to help consumers **better categorise themselves** (as high net worth, sophisticated or restricted investors)
  - strengthen the **appropriateness tests** so consumers only invest following a robust assessment of their knowledge and experience. This only applies to 'Restricted Mass Market Investments'.
- 4.4** Unless otherwise stated, these changes would apply to promotions of 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'. We also propose to require firms to record the impact of these proposals in terms of consumers' engagement with the different stages of the consumer journey. This will help us assess the impact of these changes. Figure 3 provides a high-level overview of how a Restricted Mass Market Investment could be marketed under our proposed rules.

**Figure 3: Can Restricted Mass Market Investments be marketed under our proposed rules?**



\* self-certified sophisticated investor category not applicable to promotions of cryptoassets

**4.5** Our aim has been to strike a careful balance between ensuring our reforms are effective in influencing consumer behaviour, while also considering the costs to firms and having regard to the regulatory principle that consumers should take responsibility for their own decisions. When considering these changes, firms should be aware that our proposals establish a baseline of protections. Firms should consider the needs of their customers when designing and marketing their products. We already see many firms going beyond our existing requirements, such as providing 'just in time' educational material to potential investors. We support these initiatives. Firms must also continue to disclose all relevant risks to consumers to ensure their promotions remain clear, fair and not misleading.

## Consumer research

**4.6** To support our InvestSmart campaign and wider Consumer Investments Strategy, we commissioned research to better understand consumers' behaviour when they invest in high-risk products. This research forms an important backdrop to the issues in this Consultation Paper and we have taken the findings into account in developing our proposals.

## BritainThinks research on self-directed investors

4.7 BritainThinks conducted in-depth research on self-directed (i.e. non-advised) investors who invested in high-risk products. This was published in March 2021. We summarise the key results below.

- Self-directed investors are particularly vulnerable to making inappropriate high-risk investments and do not appear to understand the risk involved. For example, **over four in ten (45%) did not view 'losing some money' as a potential risk of investing.**
- Investment decisions are highly influenced by emotional and social factors. **Four in ten investors (38%) are driven solely by these factors.** For these investors the challenge, competition and novelty are more important than conventional, more functional reasons for investing like wanting to make their money work harder or save for their retirement.
- This group of investors do not appear to be matching the risk of their investment with their own risk appetite. **Half (51%) of newer self-directed investors who invested in high-risk products score their risk appetite as less than eight (on a zero to ten scale).**
- They do not appear to be able to absorb losses from their risky investments. **Nearly six in ten (59%) claim that a significant investment loss would have a fundamental, negative impact on their current or future lifestyle.**

## Opinium survey

4.8 Opinium surveyed 1,000 people aged 18 to 40 who invest in high-risk investment products. We published the results in October 2021. We summarise the key findings below.

- As with the BritainThinks research, these investors were highly driven by emotional and social factors. **Over three quarters (76%) said they felt a sense of competitiveness when placing their money in an investment, wanting to beat their personal best as well as the returns of friends, family and acquaintances. Over two thirds (68%) likened it to gambling.**
- Few were investing for the long haul. **Just 1 in 5 respondents (21%) were considering holding their most recent investment for more than a year, and less than 1 in 10 (8%) for more than 5 years.** This is despite 60% of those surveyed saying that they prefer more stable returns than investments that rise and fall dramatically, which typically requires investing for longer time periods.
- These investors did not appear to understand the lack of investor protection and the risk to their money. **A majority of those who purchased foreign exchange or cryptoassets (57% and 69% respectively) incorrectly believed these to be regulated by the FCA.**

## IPSOS MORI FRS

### 4.9

IPSOS MORI conducted a deep dive on specific high-risk investments using their Financial Research Survey (FRS).<sup>1</sup> The FRS is a monthly personal finance survey of around 4,500 GB adults. The data is taken from the 12 months to 30 June 2021 and has a sample size of 50,081 respondents. The FRS only captures the following high-risk investments: cryptoassets; peer-to-peer loans; Innovative Finance ISAs (IFISA); retail bonds/mini-bonds. We summarise the key findings below.

- There has been a rapid growth in the proportion of consumers with high-risk investments. **Between March 2020 and June 2021 the proportion of consumers owning high-risk investments included in the FRS increased from 5.1% of GB adults to 8.4% (an increase of 65%).**
- Many investors in high-risk products display characteristics of vulnerability. **Investors in high risk investments were 37% more likely to display one of the indicators of vulnerability (as defined in our guidance on the fair treatment of vulnerable customers) compared with all adults with investments (see Figure 4 below).**

**Figure 4: Proportion of consumers displaying characteristics of vulnerability**

	Any indicator of vulnerability	Low Financial Resilience	Negative Life Events	Low Financial Capability	Health-related Issues
All GB adults (n = 50,081)	47%	24%	18%	16%	9%
Holders of any investment (n = 20,547)	41%	21%	18%	10%	8%
Holders of any high risk investment (n = 4,344)	56%	43%	22%	9%	12%
Holders of retail bonds/mini-bonds (n = 887)	70%	59%	23%	9%	20%
Holders of peer-to-peer lending (n = 1,462)	61%	50%	19%	9%	16%
Holders of IFISA's (n = 611)	58%	41%	22%	9%	16%
Holders of cryptoassets (n = 2,092)	51%	36%	23%	8%	9%

<sup>1</sup> The Financial Research Survey (FRS), is a syndicated survey carried out on behalf of 21 financial institutions for Ipsos MORI. The survey is carried out monthly among c. 4,500 GB adults aged 16+ over the telephone (using RDD and quota sample) and online (quota sample). These results are based on 50,081 participants surveyed monthly between June 2020 and June 2021. Survey data were weighted to the target audience. Full Survey details can be found in Annex 6.

## Cryptoasset Consumer Research

**4.10** In June 2021, we published the findings of our latest and most comprehensive cryptoasset consumer research. The findings are summarised below:

- **An increasing proportion of the UK population** (5.7% – around 3 million people) **hold or have held ‘cryptocurrencies’** (‘crypto’), compared to 2020 (5.4%) and half of those said they intend to invest more.
- **The profile of crypto has risen amongst the general public**, with 78% of adults having heard of it.
- **Attitudes towards cryptoassets have changed**, with fewer cryptoasset users seeing them as a gamble (9% fall since 2020), and more users buying them as an alternative or complement to mainstream investments.
- **Overall understanding has declined**, suggesting that some cryptoasset users do not fully understand what they are buying.
- **Promotions play an important role for consumers** in their purchase of cryptoassets, with 31% of crypto users who saw an advert encouraged or led to buy as a result. Those consumers wrongly believing they had regulatory protection were much more likely to have been led/encouraged to invest due to advertising (71% compared to the benchmark of 31%). Those led/encouraged to buy were also much more likely to regret their purchase.

## UK Crowdfunding Association’s investor survey

**4.11** As part of their response to DP21/1, the UK Crowdfunding Association (UKCFA) shared with us the results of a survey they conducted on investors in equity, debt security and loan-based investments. The survey had 2,500 respondents and was conducted in June 2021. We welcome this helpful contribution to better understanding investors and how both regulators and the industry can ensure that consumers understand the risks associated with these investments. We have considered the results of this survey in designing the proposals in this CP.

**4.12** We believe respondents to the UKCFA survey are likely to be more experienced, sophisticated and wealthier compared with the wider population of consumers with these investments. For example, 46% of respondents to the survey described themselves as ‘sophisticated’ investors and 18% as high net worth. Two-thirds (66%) of respondents had been a customer of their platform for more than three years. Our data request on the P2P and crowdfunding portfolios found that only 13% of retail customers across both portfolios are categorised as sophisticated and only 10% as high net worth. In addition, as described in the IPSOS MORI research, we have seen a rapid growth in the number of investors in these sectors.

**4.13** Respondents to the UKCFA survey had a range of views on the policy proposals in DP 21/1. For example:

- 55% of respondents agreed or strongly agreed that crowdfunding and P2P investments should use stronger risk warnings to help investors understand the risks of investing.
- 51% of respondents were in favour of a minimum 1 week cooling off period in which consumers could be refunded their investment.
- 50% of respondents were in favour of a test to ensure consumers understand the risks of investments.

## Improving risk warnings

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### DP21/1 Responses

- 4.14** Firms' compliance with our financial promotion rules often involves simply copying out language in our Handbook into their promotions. For example, risk warnings which simply state that 'your capital is at risk'. We are concerned that consumers are not engaging with this language and view it as 'wallpaper' which they ignore. In DP21/1, we asked respondents whether stronger risk warnings, such as those we introduced for SISs, should be applied more broadly.
- 4.15** Many respondents to DP21/1 supported the principle that risk warnings should be short, direct and in plain English.
- 4.16** Respondents were evenly split on whether to apply the risk warnings introduced for SIS more broadly. 31% of respondents were concerned that having the same risk warning on all promotions for investments would cause these to be ignored or be ineffective. Some respondents said that applying the same risk warning to all investments may inadvertently cause consumers to view all investments as equally risky, and not realise when they have moved from mainstream, diversified products to high-risk investments. It could also inadvertently put consumers off investing in mainstream investments that are appropriate for their circumstances. We consider these concerns to be equally relevant with the status quo, where most promotions for investments contain the same 'your capital is at risk' warning.
- 4.17** Many respondents supported having more tailored risk warnings, which clearly explain the risks to the consumer when investing in the particular type of investment being promoted. 25% of respondents said they saw value in this.

### Behavioural testing

- 4.18** We worked with our Behavioural Economics and Design Unit (BDU) to conduct online experiments to analyse how changing the content of risk warnings, their position (moving it out of the small print) and background colour affect consumers' risk comprehension and perception of crowdfunding and cryptoassets.
- 4.19** These new warnings included a 'Take 2min to learn more' link which provides a short, standardised pop-up giving more risk information about the specific type of high-risk investment. The full results can be found [on our website](#), but the key results of the testing were:
- More informative risk warnings which make use of behavioural science principles ('behaviourally informed risk warnings') are effective at influencing a consumer's perception of an investment. Compared with the control (the standard 'your capital is at risk' warning), the new risk warnings significantly improved comprehension of key investment risks (by up to 17% for crowdfunding). They also significantly increased the proportion of consumers who recognised the investment as high risk (by up to 51%).
  - The treatments were effective for both crowdfunding and crypto assets. This suggests that the risk warnings are effective across a range of investments.
  - Increasing the prominence of risk warnings did significantly improve comprehension and perception of risk for crowdfunding, but not cryptoassets. However, this was most effective in combination with the behaviourally informed risk warnings.

- 48% of participants clicked on the 'Take 2min to learn more' link that produced the pop-up risk information when it was available.

## Our proposal

### *Risk warning*

- 4.20** We don't think that disclosure alone can address the challenges that consumers face. However, we do think that there is a role for a clear, prominent and behaviourally informed risk warning and agree with DP21/1 respondents that more can be done to help consumers engage with these warnings.
- 4.21** Based on DP21/1 responses and our behavioural testing, we propose to require that all financial promotions for 'Restricted Mass Market Investments' and 'Non-Mass Market Investments' contain the risk warning below in compliance with prescribed format requirements. For SIS, this would replace the existing risk warning and associated display requirements in our rules. However, the other SIS- specific rules, such as those on cost and charges disclosure, would remain.
- Don't invest unless you're prepared to lose all your money invested. This is a high-risk investment. You could lose all the money you invest and are unlikely to be protected if something goes wrong. Take 2min to learn more.
- 4.22** We have selected this wording as it was effective in the behavioural testing, and aligns with our current messaging about high-risk investments, namely that consumers should only invest if they are prepared to lose all their money. This wording has been slightly modified from that used in the behavioural testing to clarify that consumers can only lose the amount they invest.
- 4.23** The draft rules set out the differences in requirements for financial promotions that are not on websites or mobile applications. For example where the financial promotion does not appear on a website, mobile application or other digital medium we would expect firms to provide the 'Take 2min to learn more' risk summary to the consumer in a durable medium where possible.

### *Prominence requirements*

- 4.24** We propose to introduce rules and guidance on how the risk warning should be displayed. This is to achieve the intended effect on consumer behaviour and to create a level playing field for firms. There is existing guidance on prominence for all financial promotions, and guidance for digital promotions. There are already further provisions that build on this in our rules for SISs and Contracts for Difference (CFDs). Our proposals go further, adding more detail on our expectations in response to poor practice we have observed and the research and findings in our behavioural testing. For example, we propose to require that any financial promotion for a 'Restricted Mass Market Investment' or 'Non-Mass Market Investment' must not contain any design feature which has the intent or effect of reducing the visibility of the risk warning. We also expect that firms take the Accessibility Standards into account when displaying their risk warning, to ensure it is sufficiently legible, prominent and contrasting to the background.
- 4.25** The general guidance for all financial promotions would remain, and would still be relevant to disclosures and risk warnings for purposes other than high-risk investments. The prominence requirements for SIS would be replaced by our proposals.

### **'Take 2min to learn more' risk information**

- 4.26** We are proposing prescribed risk information for different types of high-risk investment. This information would be presented in a pop-up box when a consumer clicks on the link in the risk warning. The language used in our proposals is informed by that used in the behavioural testing. Firms should continue to provide further risk information specific to their business model and the product or service promoted (as per COBS 4.5.2 R) aside from that included in the pop-up, to ensure the whole of the promotion is clear, fair and not misleading. This risk information should also be succinct and in plain English.
- 4.27** The proposed risk information wording is in line with our proposed guidance for matters to be covered within appropriateness tests, in the case of 'Restricted Mass Market Investments'. If firms display further risk information, they should also consider covering this within their appropriateness test where relevant (and vice versa with additional topics covered in appropriateness tests).

**Q2: Should we introduce stronger risk warnings, as outlined in paragraphs 4.20 – 4.27, for all 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?**

## **Banning inducements to invest**

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- 4.28** We have seen bad actors use inducements to invest, such as refer a friend bonuses and new joiner bonuses, to achieve rapid and exponential growth in fraudulent investment schemes that rely on the flow of money from new investors to fund existing investors' returns. This includes a single case where we recovered around £3.5m but consumer losses were already around £8m and rapidly growing at the point of intervention. As new investors are being referred by friends, family and other contacts, this creates powerful social and emotional drivers to invest, with consumers often failing to realise the risks until it is too late. Investors can wrongly assume the investment being promoted is credible because it is referred to them by someone they already know.
- 4.29** Even when used by legitimate firms, we are concerned that these inducements unduly influence consumers' investment decisions and cause them to invest without fully considering the risks involved, particularly given our consumer research which shows how social and emotional factors can have a powerful impact on investment decisions.
- 4.30** We intend to ban financial promotions for high-risk investments from containing any monetary and non-monetary benefits that incentivise investment activity, including such incentives paid in cryptoassets. This is modelled on a similar ban that applies to the marketing and distribution of Contracts for Difference (see COBS 22.5.20). We particularly welcome views from respondents on whether certain items should be excluded from a ban to avoid negative unintended consequences.

**Q3: Should we ban inducements to invest eg refer a friend bonuses, for all 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?**

## Positive frictions

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### DP21/1 Responses

- 4.31** In DP21/1 we discussed introducing 'positive frictions' into the consumer journey for high risk-investments. The aim of these frictions would be to prevent consumers from simply 'clicking through' and accessing high-risk investments they do not understand or which do not match their risk appetite. We received 46 responses on this.
- 4.32** 20 respondents (43%) were in favour of this proposal, particularly consumer groups. They thought that appropriately designed positive frictions could help consumers make more informed investments decisions. They also thought there was no need for consumers to 'rush' into these types of investments, particularly first-time investors.
- 4.33** 26 respondents (57%) did not support this proposal. Relatively few respondents provided reasons for opposing this change. When respondents did provide more detail, their main argument was that existing marketing restrictions already provided sufficient friction in the consumer journey.

### Behavioural testing

- 4.34** We tested the impact of 2 interventions: i) prominent FAQ-style risk information, similar to that described in our risk warnings proposal, with additional pop-ups and personalised risk warnings ii) active confirmations, such as requiring consumers to tick a box confirming they understood that they could lose all their money. The full results can be found [on our website](#) but in summary we found that:
- Prominent, well summarised risk information significantly improves consumer understanding of key investment risks.
  - Active confirmations do not improve consumer understanding over and above the impact of prominent risk information. However, they do reduce the likelihood of consumers clicking onto the detailed risk warning.
- 4.35** The research notes that detail our behavioural testing refer more generally to 'decision points' in line with most recent and relevant academic literature, where 'positive frictions' such as active confirmations are a subset of decision points. In this CP, we refer to all of these interventions as 'positive frictions' in line with previous policies and discussions.

### Our proposal

- 4.36** We agree with DP21/1 respondents that any additional positive frictions need to be carefully designed so they influence consumer behaviour without adding excessive burdens. Our consumer research shows that the current consumer journey is not sufficiently robust and more can be done to help consumers make more informed investment decisions. We therefore propose to introduce 2 positive frictions.
- 4.37** First, a personalised risk warning pop-up for **first time** investors with a firm. For 'Restricted Mass Market Investments', this would appear before a Direct Offer Financial Promotion could be communicated. For 'Non-Mass Market Investments', this would appear before the financial promotion could be communicated (assuming all necessary conditions for the financial promotion to be lawfully communicated are satisfied).

**[Client name], this is a high-risk investment. How would you feel if you lost the money you're about to invest? *Take 2min to learn more.***

- 4.38** The 'take 2min to learn more' would link to the product specific risk summaries described in paragraphs 4.26 – 4.27. Where the financial promotion does not appear on a website, mobile application or other digital medium we would expect firms to provide the 'Take 2min to learn more' risk summary to the consumer in a durable medium. We did not test the intervention in this exact format, but the testing did show that personalised messages and prominent directions to further information were the most effective intervention in getting consumers to click on the full risk warning. Therefore, we believe this intervention will be effective in getting consumers to read the full risk warning and that the risk warning is effective in influencing consumers' understanding of the investment.
- 4.39** Second, a 24-hour cooling off period for **first time** investors with a firm. This would apply after the personalised risk warning pop up and would mean that the consumer could not receive the financial promotion (in the case of 'Non-mass Market Investments') or the Direct Offer Financial Promotion (in the case of 'Restricted Mass Market Investments') unless they re-confirmed their request to proceed after waiting at least 24 hours. It was not possible to test a cooling-off period as part of our behavioural testing. There is not a lot of behavioural literature on cooling-off periods, with some evidence suggesting they can be effective in getting consumers to reflect on their decision-making. A cooling off period should not negatively affect those consumers for whom the investment is appropriate, as they can still proceed after a short wait. However, it adds a slight pause to the process and helps those consumers for whom the investment may not be appropriate to reflect on whether they still want to proceed.
- 4.40** These frictions would only apply the **first time** that consumers look to invest with a firm (i.e. request to receive financial promotions from the firm). We believe these interventions will be most effective, and the consumer in greatest need of protection, for their first investment.
- 4.41** Given the evidence from our consumer research, we think these proposals strike the right balance between still allowing consumers to invest but ensuring they only invest on a carefully considered basis, by helping to counter social and emotional drivers. The cooling off period would not affect any of the consumers' existing cancellation rights that may apply to these investments, such as those in COBS 15.2.
- Q4:** **Should we introduce a personalised risk warning pop up for first time investors in 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?**
- Q5:** **Should we introduce a 24 hour cooling off period for first time investors in 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?**

## Helping clients better categorise themselves

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### DP21/1 Responses

- 4.42** In DP21/1 we discussed changes we could introduce to help consumers better categorise themselves (as a High Net Worth, Sophisticated or Restricted Investor). We received 47 responses on this. 25 respondents (53%) supported this proposal. They also supported reducing jargon and greater use of plain English. A number of respondents supported the inclusion of a 'none of the above' option in any declaration.
- 4.43** 15 respondents (32%) did not support this proposal. Many of these respondents were opposed to the concept of client categorisation in general.

### Behavioural testing

- 4.44** We tested the impact of changes to the investor declaration on rates of self-certification. The full results can be found [here](#) but in summary we found that:
- Adding an 'evidence declaration', where consumers are required to state the specific criteria they meet and provide supporting evidence (e.g. stating their income to demonstrate they are high net worth), is effective in reducing certification. Based on our primary assumption about attrition in the experiment, the evidence declaration reduced self-certification by 36%.
  - Other interventions, such as making the declaration in plain English or adding a minimum reading time, do not significantly reduce rates of self-certification over and above the impact of the evidence declaration.
  - Even with the evidence declaration, self-certification rates are over twice the level we would expect. In a non-incentivised part of the testing (i.e. without any financial reward that may influence the consumer's behaviour), only 16% of consumers stated they met the relevant criteria to be high net worth or sophisticated- which we take to be closer to the true rate of consumers meeting the criteria. However, in the incentivised part of the testing, even after including the evidence declaration, the rate of self-certification remained at least 33%.

### Our proposal

- 4.45** We remain concerned that too many consumers are incorrectly self-certifying themselves as high net worth or sophisticated and do not understand the impact of their categorisation. In a recent enforcement case involving a firm marketing Non-Readily Realisable Securities, 71% of consumers could not remember how they had categorised themselves.
- 4.46** Our behavioural testing shows that it is possible to reduce rates of self-certification through changes to the declaration form. We therefore propose to implement an evidence declaration where consumers will be required to state why they meet the relevant criteria, for example stating their income to demonstrate they are high net worth. While simplifying the declaration did not reduce rates of self-certification in our testing, we agree with DP21/1 respondents that improvements can be made to make the declaration more accessible. Therefore, we also propose to simplify the language in the declaration. We also intend to add a 'none of the above' option to the declarations.

- 4.47** Even with these changes, our testing shows that many consumers are likely to incorrectly self-certify, even without bad actors actively coaching them through. We still believe that self-certification is fundamentally not the right approach, given the potential for consumers to incorrectly self-certify or bad actors to exploit consumers' lack of understanding. We welcome the Treasury's [consultation](#) on reforming the FPO exemptions, including a proposal that would require a firm to come to a reasonable belief that investors met the conditions of the exemptions. We will continue to keep this issue under review and consider whether further changes are needed once the Treasury have concluded their consultation.
- 4.48** We propose to include the LTAF within scope of this proposal. This is to avoid there being duplicative versions of the investor declaration forms in our Handbook.
- Q6: Should we change the investor declaration form for 'restricted', 'high net worth' and 'sophisticated' investors to introduce an 'evidence declaration' and simplify the declaration?**

## Appropriateness test

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### Review of current requirements

- 4.49** The appropriateness regime is applied to Direct Offer Financial Promotions of 'Restricted Mass Market Investments'. The rules require firms to gather information on an investor's knowledge and experience in the relevant investment field. The firm can then assess the appropriateness of the investment for a consumer before they can respond to the Direct Offer Financial Promotion.
- 4.50** The appropriateness test is therefore a key consumer protection, designed to alert consumers where a product or service is not considered appropriate for them (i.e. where they lack the knowledge and experience to understand the risks involved). Our appropriateness requirements are now often met through an interactive set of questions put to the consumer online, without any human involvement from the firm.
- 4.51** We did not discuss changes to the appropriateness test in DP21/1 (except in the context of the role of a s21 approver). However, many firms referenced the appropriateness test in their response to DP21/1. They argued that further changes to strengthen the consumer journey into high-risk investments were unnecessary, as the appropriateness test already provided sufficient consumer protection.
- 4.52** We agree that the appropriateness test is meant to be a key consumer protection. We conducted a review of how it functions, including issuing a data request to the P2P and investment-based crowdfunding (IBCF) platform portfolios. The responses to this data request and results from our wider review raised concerns about the robustness of this process, especially given the emphasis that firms themselves place on this test. We list the key findings of this review below.
- Weaknesses in our Handbook rules**
- 4.53** There is specific [guidance](#) (in COBS 10.2.9 G) on what appropriateness tests should cover as a minimum for P2P investments, but not for other kinds of 'Restricted Mass Market Investments'. Within crowdfunding, we saw examples of tests that only

covered the consumer's knowledge of industry terminology eg the definition of an equity investment, rather than the risks of the investment. We are concerned about the effectiveness of the appropriateness test in cases like this, as this approach could result in investments being considered appropriate for consumers who do not understand the risks involved.

- 4.54** COBS 10.3/COBS 10A.3 allows a consumer to proceed with an investment, even if the firm considers that the investment is not appropriate for them or does not have enough information to make this assessment, as long as the firm warns the client. COBS 10.4/10A.4 describes circumstances where a firm does not need to assess appropriateness.

### ***Ease of reassessing appropriateness***

- 4.55** The rules on appropriateness do not say anything about re-assessments. 41% of respondents to our data request did not have any kind of restriction on how often or how quickly they can reassess appropriateness after they have first assessed an investment is inappropriate for the consumer. We have seen message boards where consumers discuss taking the test over 20 times, until they 'pass'. Additionally, only 2% of respondents to the data request posed different questions to consumers who took an appropriateness test again after being told the investment they were looking to invest in was inappropriate for them. Many firms also told consumers exactly which of their responses resulted in the conclusion that an investment was not appropriate for them.

- 4.56** Allowing consumers to immediately retake the same assessment, especially when they know which questions resulted in the firm deciding the investment was inappropriate, encourages disengagement and an approach of 'gaming' the test by using a process of elimination, or trial and error. This ultimately results in consumers accessing investments which are unlikely to be appropriate for them.

### ***Treating the test as an educational/disclosure tool***

- 4.57** Many firms that responded to our data request seemed to consider their appropriateness test as an education exercise in itself, or a tool to use for information disclosure. Rather than 'test' appropriateness, many firms have built in features and processes to educate consumers as they go through the questions (rather than before, as outlined in COBS 10/10A.2.7G).

- 4.58** For example, some respondents said they give hints about what the answer is above the question. Some also 'nudge' the consumer if their answer is likely to result in a view that the investment is inappropriate before they submit their answers. Some respondents explained that they call and/or email the consumer if the investment is determined as inappropriate for them, to remind them that they can be reassessed or to discuss misunderstandings.

## **Our proposal**

### ***Strengthening appropriateness test questions***

- 4.59** We propose to introduce guidance on the types of question to be covered by appropriateness assessments for all other 'Restricted Mass Market Investments', similar to the P2P guidance.
- 4.60** As with the P2P guidance, the new guidance will not be a complete list prescribing what should be covered by an appropriateness assessment. Firms will need to construct robust and effective assessments that consider the features and risks of

the investments they offer, which may include matters that are not covered in the guidance. Equally, if an element of the guidance is not relevant to the investment being offered, firms need not include it.

- 4.61** We also propose to update the guidance for P2P appropriateness tests, to highlight that consumers' ability to quickly access their money (e.g. daily access) is not guaranteed. This is in response to concerns that consumers may not realise this access is conditional on the ability to sell loans on a secondary market.
- 4.62** We also propose to extend the guidance discouraging binary yes/no answers in appropriateness tests for P2P agreements to all 'Restricted Mass Market Investments', as these types of questions are easily gamed. This guidance would also be broadened to suggest that firms avoid any kind of binary choice between answers.

#### ***Ensuring an investment is always appropriate for the consumer***

- 4.63** We are concerned about the possibility of consumers investing in 'Restricted Mass Market Investments' without the investment being assessed as appropriate for them.
- 4.64** We propose to amend our rules to ensure that an investment must always be determined as appropriate for a consumer, before an order or application for the 'Restricted Mass Market Investment' is fulfilled in response to a Direct Offer Financial Promotion.

#### ***Limiting the ease of test retakes***

- 4.65** Appropriateness tests should encourage consumers to conduct their own due diligence on the investment if they are not aware of the answers already.
- 4.66** We propose to introduce a rule that where an investment is assessed as being inappropriate for a consumer, the firm cannot re-assess the appropriateness of that investment for the same client for at least 24 hours. This proposal seeks to help investors who are motivated by social or emotional factors when investing, by making sure they take time to consider their choice and understand the risks of the investment before proceeding. We have set 24 hours as the minimum period. Firms should consider whether more time is appropriate in view of the complexity of, and level of risk inherent in, the products they promote.
- 4.67** We also propose to introduce a rule that the questions firms ask must be different each time a consumer is subject to the assessment. Furthermore, consumers should only be told the broad areas that caused the investment to be assessed as inappropriate rather than the specific questions. This is intended to avoid coaching. The question sets the firm uses would all need to be in line with the guidance proposed in paragraphs 4.59 – 4.62 for the specific investment type. Equally, the different questions used should be sufficiently differentiated to mean that where an investment has been found to be inappropriate, answers to questions on a subsequent test couldn't simply be read across from the previous questions. These proposals aim to encourage consumers to do further research to educate themselves, rather than trying to game the test or pass using trial and error.

### ***Ensuring consumers aren't unduly influenced***

**4.68** The appropriateness test should not be a process to 'tick a box' to say that the consumer has answered the questions. This says little about whether they have understood the risks involved and whether the product is appropriate for them. So we propose that firms should not be able to give the consumer information about the answers, or feedback, from the point at which the assessment starts until it is completed. Firms can still give consumers educational material outside of the assessment, and we see many examples of firms providing effective, well summarised information including 'just in time' educational material.

**4.69** We also propose to introduce guidance to say that firms should not, in their communications with consumers, encourage them to retake the test after the investment has been considered inappropriate for them if they have not attempted to do so on their own initiative. It may be that the consumer has not retaken the test as they have reflected on the content and concluded that the investment is not appropriate for them. Encouraging these consumers to rethink undermines the aim of the test. This guidance would not stop firms informing consumers of the outcome of the appropriateness test, the option to retake it or educational content about the investment.

**Q7: Should we make changes to our rules on appropriateness to ensure all investors in 'Restricted Mass Market Investments' must pass a robust assessment of their knowledge and experience?**

## **Record keeping requirements**

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**4.70** To help us monitor the impact of these changes, we propose that firms should record data to demonstrate the effect of our proposals. This includes data on whether consumers proceed to access the investment after each intervention, whether consumers click the link in the risk warnings and the outcomes of appropriateness assessments and client categorisation. As with other information and records firms hold, we expect firms to have the ability to provide this information to us if requested (SUP 2.3.3 G).

**4.71** We initially propose the following set of record keeping requirements, to be used alongside total transactions with retail consumers which firms will record already. However, we welcome views as to what specific metrics should be required in the final rules, to ensure that what we require is useful for assessing our policies' effects over time without being unduly burdensome on firms:

- The number of users who are presented with the risk warning, and the number of users that click on the 'take 2 mins to learn more' within the risk warning
- The number of users that click to proceed to the Direct Offer Financial Promotion, ie express interest in responding to the financial promotion
- the number of consumers the personalised risk warning is presented to, and the number of consumers who click on the 'take 2 mins to learn more' within the personalised risk warning
- the number of consumers who do not proceed with the consumer journey after the personalised risk warning

- the number of consumers that are subject to the 24-hour cooling off period, and the number of consumers who do not proceed with the consumer journey after the 24-hour cooling off period
- the outcome of client categorisation (ie the number of consumers categorised as HNW, sophisticated and restricted and the reason why they believe they meet those criteria)
- the number of consumers who do not proceed with the consumer journey at client categorisation (ie do not get categorised)
- the outcome of the appropriateness assessment (ie the final outcome of the appropriateness assessment for each consumer and the number of times they were subject to the assessment for the same investment, the number of assessments that determined the investment to be appropriate and inappropriate, and the total number of assessments undertaken).

**4.72** Where possible, firms should distinguish between new customers and existing customers looking to increase their holdings, where the consumer journey proposal applies to any existing customers. Which consumers each proposal applies to is discussed in 'Approach to implementation' below (paragraphs 4.74-4.77).

**Q8: Should we introduce record keeping requirements for firms to monitor the outcome of the consumer journey for 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?**

## Debt based payment options

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**4.73** We know that a number of firms allow consumers to invest in high-risk investments using debt-based payment options, such as a credit card. We are concerned that none of the firms we have reviewed had adequately considered that allowing customers to fund their investments with debt could cause harm and is a potential indicator of vulnerability, eg over-indebtedness. If firms decide to allow debt-based payment options they should carefully consider whether they have adequate systems to monitor this. They should also consider whether they have adequate systems and controls to monitor for indicators of vulnerability and have regard to their obligations under the client's best interest rule (COBS 2.1.1) and the Principles (in particular Principles 2, 3 and 6).

## Approach to implementation

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**4.74** We propose to give firms already subject to our financial promotion rules 3 months from final rules being made to comply with the proposals in this chapter. We believe this is a sufficient time as many of the changes modify and enhance existing requirements on firms, rather than create entirely new obligations which would require substantial changes to business models.

**4.75** The proposed changes to risk warnings and banning inducements to invest would apply to all financial promotions for 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'. The proposed changes around positive frictions, client categorisation and appropriateness tests will generally only apply to new

customers being marketed to. We note that the current investor declarations are only valid for a 12-month period, so firms will be required to use the new declaration if they wish to make further Direct Offer Financial Promotions for 'Restricted Mass Market Investments', or financial promotions generally for 'Non-Mass Market Investments', to existing customers once existing certificates have expired.

**4.76** For appropriateness assessments, we propose that existing clients will only need to be subject to this assessment (in line with the proposed changes) if they are the subject of new Direct Offer Financial Promotions (ie they want to increase their investment holdings with the firm) and they have not already passed an appropriateness assessment for the relevant investment type. Existing customers who have already passed an assessment for the relevant type of investment will not need to repeat the assessment. However, firms may consider it appropriate to require consumers to undergo the revised appropriateness assessment even if they have undergone one for the relevant investment previously (for example if the firm has undergone significant business model changes since the consumer was last subject to the assessment).

**4.77** We are conscious that some of the interventions, such as the new risk warnings and positive frictions, may become less effective over time as consumers adjust their behaviour. We will use our consumer research and the record keeping requirements to monitor the impact of our proposals and consider whether further changes are needed. For example, if there was a decline in the proportion of consumers looking at the detailed risk summaries, we may need to consider changes to the risk warning wording or prominence requirements. We welcome respondents' views on how else we can monitor the impact of our proposals and ensure our rules remain effective over time.

**Q9: Do you agree with our proposed approach to implementation of our consumer journey proposals for investments already subject to our financial promotion rules?**

**Q10: Do you have any suggestions for how we can monitor the impact of our consumer journey proposals?**

## Implementation for Cryptoassets

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**4.78** We intend to publish our final rules in summer 2022 and propose that the changes in this consultation apply to promotions of qualifying cryptoassets from the date they are brought within the financial promotion regime.

**4.79** As cryptoassets are not currently subject to the financial promotion regime, it is unlikely that customers will yet have been categorised or passed an appropriateness test set by a firm marketing cryptoassets. Firms should note that under our proposals, firms communicating or approving 'Direct Offer' Financial Promotions will need to ensure clients are both categorised appropriately and an appropriateness test is undertaken, including when the Direct Offer Financial Promotions are marketed to existing customers wanting to engage in further investment activity.

**4.80** Rules relating to positive frictions (personalised risk warnings and cooling off periods) are only designed for first time investors as they are likely to be less effective in influencing the behaviour of investors that have already bought cryptoassets. For this reason, we are not proposing to apply these rules to any existing customers, only consumers who are investing in cryptoassets with a firm for the first time.

**Q11: Do you agree with our proposed approach to implementation of our consumer journey proposals for cryptoassets?**

## 5 Strengthening the role of authorised firms communicating and approving financial promotions

### Introduction

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- 5.1** This chapter outlines our proposed changes to authorised firms' roles and responsibilities when communicating financial promotions or approving them for unauthorised persons. These proposals will apply to authorised firms communicating or approving financial promotions for investment business and subject to the financial promotion rules in Chapter 4 of the Conduct of Business Sourcebook (COBS 4). The changes are designed to improve the quality and content of financial promotions to enable retail investors to make informed investment decisions about any given product, and how much to invest.
- 5.2** As we set out in Chapter 2, authorised firms communicating or approving financial promotions (as a s21 approver) are responsible for ensuring the promotion complies with the financial promotion rules, including that it is clear, fair and not misleading. This means they play an important role in ensuring the promotion accurately represents the product or service, particularly on matters that are relevant to helping consumers make informed decisions, like risk and return.
- 5.3** Historically, we have seen too many poor quality and non-compliant promotions being approved and communicated to retail investors. We have seen approved promotions with inadequate due diligence by s21 approvers including, for example, promising unrealistic rates of return. Consumer harm has arisen when these promotions are made to consumers for whom the underlying investment product is unsuitable, e.g. when not aligned to the consumer's risk appetite. In the worst cases, the investments underperformed or failed and led to significant and unexpected losses for retail investors. Much of this harm stemmed from speculative illiquid securities (SIS), including speculative mini-bonds, which we permanently banned from being mass-marketed in January 2020. Since then, we have seen very few s21 approved promotions for investment business (only 2 of 681 financial promotions reviewed by us between December 2020 and August 2021).
- 5.4** However, the Treasury's confirmation of bringing qualifying cryptoassets within scope of the financial promotion regime and its consultation on reforming the Financial Promotion Order (FPO) exemptions mean we expect there to be higher demand for approvals of financial promotions from unauthorised persons in future. In preparation, we are proposing changes to the Handbook requirements for firms communicating and approving financial promotions to avoid some of the problems we have seen in the past.
- 5.5** Our proposals aim to ensure the quality, competence and expertise of firms approving financial promotions, which in turn will drive improvements in the quality of approved promotions. Higher quality promotions will enable consumers to make more informed and effective investment decisions and more easily identify suitable products that meet their investment needs and risk tolerance.

**5.6** We are proposing changes to 3 key areas of the financial promotion lifecycle:

- Approving and communicating promotions – including a new date stamp for approved promotions and a new competence and expertise requirement for firms communicating or approving financial promotions
- Lifetime of the promotion – including an ongoing monitoring requirement for firms approving promotions
- Consumer journey – to clarify the role of firms approving promotions in the client categorisation and appropriateness test for 'Restricted Mass Market Investments' and preliminary assessment of suitability for 'Non-Mass Market Investments' (as defined in Chapter 3).

**5.7** Some of the consultation proposals below build on discussion items raised in Chapter 5 of [DP21/1](#).

## Background

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**5.8** Before an authorised person can communicate or approve a financial promotion, they must first ensure that a promotion related to investment business complies with the financial promotion rules in COBS 4. If the authorised person becomes aware that an approved financial promotion no longer complies with the financial promotion rules, they must withdraw approval and notify anyone they know is relying on the approval.

**5.9** Authorised persons can also rely on authorised third parties to confirm that communications comply with the financial promotion rules where certain conditions are met. These conditions are that once they establish that the third-party has confirmed compliance, they only communicate the promotions to intended recipients, and as far as they know, the promotion is fair, clear and not misleading, and the third-party has not withdrawn its confirmation of compliance.

### **New regulatory gateway for s21 approvers**

**5.10** In June 2021, the Treasury confirmed the Government intends to legislate to introduce a new regulatory gateway for firms approving promotions for unauthorised persons (s21 gateway) when parliamentary time allows. The Treasury has indicated that the proposed legislation will impose a new Financial Promotion Requirement (FPR) on all existing and newly authorised firms that prohibits them from approving financial promotions for unauthorised persons, other than for a person in the same group or an Appointed Representative (AR).

**5.11** If legislation is passed to create the s21 gateway in the way that Treasury has set out, then authorised firms wanting to approve financial promotions for unauthorised persons will need to first apply for a variation or cancellation of the FPR. We anticipate that authorised firms will broadly be able to do so in the normal way. We give more information on varying or cancelling requirements on the [FCA website](#). It is intended that firms applying for authorisation and wanting to approve financial promotions for unauthorised persons will be able to apply for a variation or cancellation of the FPR as part of the application for authorisation.

- 5.12** When an authorised firm or applicant firm applies to vary or cancel the FPR, the Treasury has indicated that it intends for us to assess applications against our operational objectives.
- 5.13** We will consult on draft guidance for firms applying to the s21 gateway when legislation has been published in due course.
- 5.14** The policy proposals in this chapter are intended to complement the proposed s21 gateway when introduced and help ensure all authorised firms approving financial promotions for unauthorised persons are operating to the same high standards.

## Approving promotions

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### Name of the s21 approver and date stamp

- 5.15** S21 approvers are already required by our existing rules in COBS 4.5.2R to ensure a financial promotion to a retail client includes the name of the firm that approved the promotion. This information is important to consumers so that they can confirm the identity of the authorised firm on the FCA's [Financial Services Register](#). However, this requirement is not universally understood by firms when approving financial promotions, so we are proposing new guidance to make this existing obligation clearer (see Annex 4).
- 5.16** We also propose that s21 approvers must ensure that the financial promotion clearly states on its face the date on which it was approved.
- 5.17** The clarification will enable consumers to easily identify the firm that has approved a promotion. Further, the date stamp will enable consumers to consider the relevance of the approved promotion and help reduce harm from consumers relying on outdated information that has not yet been reviewed and appropriately acted upon by the person communicating the financial promotion or the s21 approver.
- 5.18** These basic disclosures will also benefit our supervisory and enforcement functions when reviewing and investigating financial promotions. The date stamp, for example, will provide us with clear information on the length of time the promotion has been in circulation.

**Q12:** Do you agree with our proposed changes to COBS 4.5 to clarify the obligation regarding the name of the s21 approver?

**Q13:** Do you agree with our proposal for s21 approvers to ensure that approved promotions include the date of approval in the financial promotion?

### Competence and expertise

- 5.19** If the anticipated legislation is passed, the s21 gateway will allow us to prevent unsuitable firms from approving financial promotions for unauthorised persons and give us greater oversight of s21 approval activity. However, we also want to ensure the quality of financial promotions is of the standard we expect. We want s21 approvers

to be held to the same high standard as authorised firms communicating their own promotions, given the important role they play in giving unauthorised issuers access to retail consumers.

- 5.20** Our supervisory work has identified a number of instances where firms have approved financial promotions for unauthorised persons without doing adequate due diligence on the contents of the financial promotions. In some cases, they did not have any expertise in, or understanding of, the underlying products. This has seen firms approving misleading and poor-quality promotions that have then been communicated to consumers. This led to requirements being placed on some of these firms to withdraw their approval of existing promotions and not to approve further financial promotions in the future.
- 5.21** Currently, our rules do not contain a specific restriction on firms approving financial promotions for products or services where they lack relevant expertise. We have recently seen cases where authorised firms were approving or communicating financial promotions for high-risk investments unrelated to the regulated activities for which they were authorised. This raises questions about the firms' skills, knowledge and overall competence to properly assess the compliance of the promotions they were approving or communicating. We have identified similar issues through our assessments at the authorisations gateway. In these circumstances, we consider it unlikely that the firm would be capable of properly ensuring the compliance of promotions with the requirements in our rules.
- 5.22** To address the potential for harm, we propose to introduce a new rule that will require firms to self-assess whether they have the necessary competence and expertise (C&E) in an investment product or service before approving or communicating a relevant financial promotion. Many of the respondents to [DP21/1](#) agreed that an approving firm should have knowledge of the market and associated risks of the product. This rule would apply to firms approving promotions for ARs, intra-group business, third-party unauthorised persons and firms communicating their own promotions. Therefore, this rule is intended to drive up standards for all approving firms, as well as authorised firms issuing and communicating financial promotions for products or services about which they may lack competence and expertise.
- 5.23** Firms should already be considering C&E before communicating or approving financial promotions, in line with the Principles for Businesses ([PRIN 2](#)), rules in [SYSC 3.1.6R](#) and [SYSC 5.1.1R](#). Despite this, we are concerned that this broad approach is not driving the desired standards. We believe this new rule will focus firms' attention on whether they have the in-house skills, knowledge and experience to understand the product or service before potentially communicating or approving a financial promotion which may not meet the requirements of our rules. This should lead to an improved quality of financial promotions in the market.
- 5.24** Where the promotion involves a regulated activity for which the firm has a Part 4A permission (eg dealing in investments), then we would generally expect the firm to have met the C&E requirement by virtue of its permission and the various Handbook requirements applying to the firm in relation to that permission. However, the firm should still consider whether it has C&E in the underlying product, particularly if the promotion is for an innovative or emerging product.

**5.25** Under this proposal, we expect a firm without the relevant C&E to either:

- Decline to approve the relevant financial promotion; or
- Where it has originated the promotion, to have another authorised person confirm the financial promotion complies with our rules before it is communicated to consumers. We set this out in the diagram below. It should also be noted that any authorised firm that confirms compliance of a financial promotion will be responsible for ensuring the financial promotion complies with our rules. In this scenario, where a promotion is found to be non-compliant, both the firm confirming compliance of the promotion as well as the authorised firm communicating the promotion could be in breach of our rules.

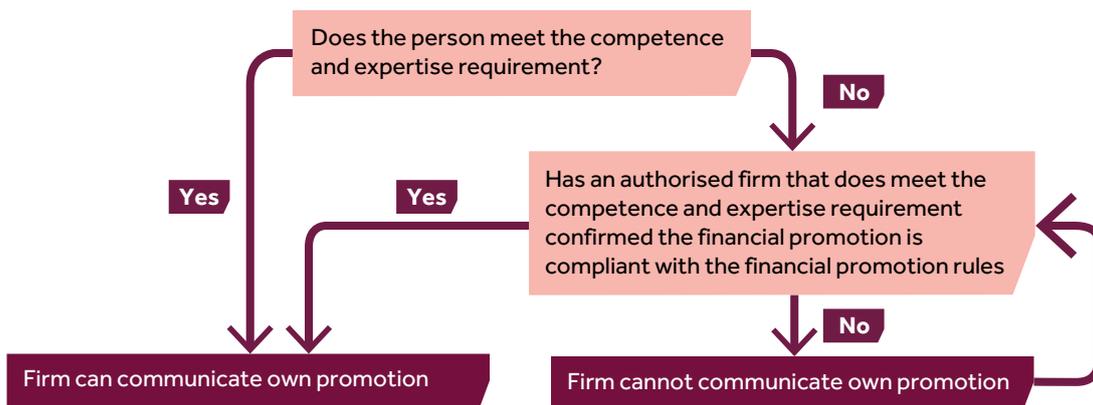
**5.26** In its self-assessment of C&E, we propose that a firm considers:

- whether it has the relevant experience and/or qualifications in the sector to which the financial promotion relates
- the previous employment history and qualifications of the individuals responsible for approving promotions and whether they align with the product and sector of the promotion.

**5.27** We will expect firms to keep an up to date record of how they have met the C&E requirement for any given promotion as part of their usual record-keeping obligations for financial promotions under COBS 4.11.1R.

**5.28** We have considered the potential interaction of the C&E requirement with the Senior Managers & Certification Regime (SM&CR). There are currently no Prescribed Responsibilities (PRs) that relate to financial promotions from a SM&CR perspective, or additional information that firms need to disclose as a result of the SM&CR. We will consider whether we should incorporate the C&E requirement into the SM&CR by, for example, introducing a new PR as part of our broader review of the SM&CR in the future.

**Figure 5: Can firms communicate their own financial promotion under our proposed rules?**



**Q14:** Do you agree with the introduction of a competence and expertise rule to apply to all authorised firms when approving or communicating financial promotions?

**Q15: Do you agree with the proposed approach to firms assessing competence and expertise?**

**Q16: Do you agree with our guidance to firms on the competence and expertise requirement (see Annex 4)?**

## Lifetime of the promotion

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### Ongoing monitoring

**5.29** When an authorised firm communicates a financial promotion, it is required to ensure its compliance with the financial promotion rules and that it remains compliant for the lifetime of the promotion (that is, on each occasion that it is communicated).

**5.30** The current rules require s21 approvers to withdraw approval if they become aware that the promotion is no longer compliant. However, given the significance of the role of a s21 approver in allowing unauthorised persons to communicate promotions to retail investors, we want to strengthen the rules.

**5.31** As discussed in DP21/1, we propose to require approvers to play a more active role in ensuring approved promotions remain compliant for the lifetime of the promotion – not just at a single point in time. This is an extension of their existing obligations under [COBS 4.10.2R \(2\)](#) and is intended to move s21 approvers away from a 'once and done' approach. Respondents to our DP wanted more clarity about how long this obligation would last and the extent of their responsibility. We clarify these points below and in our draft guidance at Annex 4. We propose this rule to require s21 approvers to have a continuing relationship, with those for whom they approve promotions, for the life of the promotion and to actively monitor it after approval for any changes that might mean the promotion no longer complies. This should put approvers in a better position to assess whether they need to withdraw approval at any time.

**5.32** As set out in DP21/1, in meeting this requirement a s21 approver will need to take reasonable steps to monitor the continuing compliance of approved promotions to consider whether:

- There have been any changes to the promotion, which mean it is no longer being lawfully communicated.
- There have been any changes which may affect whether the promotion continues to be clear, fair and not misleading, including consideration of the ongoing commercial viability of the proposition described in the promotion. They should also assess whether the headline rates of return in the promotion continue to be reasonably achievable.
- Funds raised are being used for the purposes described in the promotion.
- The promotion complies with any new requirements we introduce, e.g. risk disclosures and positive frictions (see Chapter 4).

**5.33** We set out more information on our expectations of s21 approvers in meeting the proposed ongoing monitoring requirements in guidance (see Annex 4).

**Q17: Do you agree with our proposal for a new ongoing monitoring requirement for s21 approvers?**

**Q18: Do you agree with our guidance on ongoing monitoring for s21 approvers?**

### ***Attestations of 'no material change'***

**5.34** To help s21 approvers with their ongoing monitoring responsibilities, we also propose to require them to collect attestations of 'no material change' from clients with approved promotions every 3 months, and for the lifetime of the approved promotion. These attestations are intended to serve as an early warning to s21 approvers of any changes or issues with approved promotions. Approvers should consider any changes disclosed in an attestation and, where necessary, withdraw approval as soon as reasonably practicable.

**5.35** If the client does not respond or the s21 approver is otherwise unable to get an attestation from their client, they should consider withdrawing approval.

**Q19: Do you agree with our proposal to require s21 approvers to obtain attestations of no material change from clients?**

### **Conflicts of interest**

**5.36** We are proposing to extend existing conflicts of interest obligations to firms:

- approving financial promotions for unauthorised persons
- confirming compliance of a financial promotion for an authorised firm

**5.37** It is likely that a firm that is able to approve financial promotions will be asked to do so by competitors or competitors of their group businesses. It is not appropriate for firms to use their position as a s21 approver to gain a competitive advantage over their rivals. We will use our supervisory powers to monitor attempts to restrict competition in the market. We are also considering changes in the future which may see us collecting data from firms on revenue earned from financial promotion approval activity to help us identify competition issues.

**5.38** As some respondents to DP21/1 pointed out, this will be particularly acute for the cryptoassets sector, which largely sits outside of the regulatory perimeter. Most cryptoasset firms are unauthorised and will need to have their financial promotions approved by an authorised firm with relevant expertise.

**5.39** This proposal will reduce the likelihood of anti-competitive behaviour by ensuring that firms take all reasonable steps to identify and manage conflicts of interest. Currently, the definition of 'client' under SYSC does not include the relationship between a firm and a person for whom it is approving a financial promotion. For simplicity, we therefore propose to include the relevant requirement as a new provision in COBS 4.10.

**Q20: Do you agree with our proposal to extend conflicts of interest requirements to s21 approvers?**

## Consumer journey

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### Appropriateness assessments

- 5.40** Under the current approval process, a firm cannot approve a direct offer financial promotion for NRRSs and P2P agreements for communication to retail investors other than high net worth, sophisticated or 'restricted' investors, and provided that the rules on appropriateness (COBS 4.7.7R(3)) are complied with by either an authorised firm (ie the s21 approver) or the person communicating the promotion. This is unlike the preliminary assessment of suitability process for NMPIs or SISs, where there is an explicit requirement that the s21 approver is actively involved on an investor-by-investor basis (COBS 4.12.4R(3)) (see 3.14).
- 5.41** However, a s21 approver's responsibility for ensuring compliance with the appropriateness rules should not be limited to a one-off assessment on approval of the promotion. We propose a new requirement on s21 approvers to check the compliance of appropriateness tests periodically, throughout the lifetime of a promotion. Appropriateness tests are often automated in this area. This is because the requirements of an appropriateness assessment better lend themselves to questions that can be part of a standardised assessment, rather than the more personalised approach required for a preliminary suitability assessment. So, where the process will be undertaken by another, s21 approvers are required to check the process is compliant.
- 5.42** 63% of respondents to DP21/1 agreed with our proposed changes to the s21 approver's role in assessing the suitability and appropriateness of the promoted product for the relevant client, as well as in categorising the client. We recognise it may be impractical, time consuming and expensive for s21 approvers to be involved in every case when the process is automated. Taking this into consideration, we propose requiring s21 approvers take reasonable steps to ensure that the relevant processes for appropriateness tests comply with our rules for the lifetime of the promotion. We will clarify our expectations on what we consider to be 'reasonable steps' in guidance (see Annex 4). We propose firms consider the following in their assessment of the processes in place to assess appropriateness where this is to be undertaken by a person other than the s21 approver – that the person who will undertake the assessment has:
- adequate systems and controls in place to assess the knowledge and experience of the customer
  - adequate systems and controls in place to assess the customer's understanding of the risks involved with the product or service
  - adequate systems and controls in place to record the customer's information.
- 5.43** If the approving firm is not satisfied that processes are in place to conduct appropriateness tests, then it should withdraw its financial promotion approval.
- Q21:** **Do you agree that s21 approvers of 'Restricted Mass Market Investments' should take reasonable steps to ensure that the relevant processes for appropriateness tests comply with our rules on an ongoing basis?**
- Q22:** **Do you agree with our expectations of firms when complying with the appropriateness test?**

**Q23: Do you agree with our proposed guidance to firms on conducting appropriateness tests?**

**Preliminary assessments of suitability**

**5.44** We propose to issue guidance to clarify our existing requirements of approvers in client categorisation and preliminary suitability assessments for 'Non-Mass Market Investments' and clarify the expectations set out in COBS 4.12.4R.

**5.45** The guidance will reiterate that firms approving financial promotions for 'Non-Mass Market Investments' must undertake a preliminary assessment of suitability before a firm can make a promotion to high-net worth or sophisticated investors. This should be based on the client's profile and objectives. We consider this guidance will improve firm understanding of our existing requirements for preliminary assessments of suitability.

**Q24: Do you agree with our proposed guidance for firms approving financial promotions for Non-Mass Market Investments?**

## 6 Applying our financial promotion rules to cryptoassets

### Introduction

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- 6.1** The use of distributed ledger technology (DLT) and cryptoassets is growing, including in the UK and the financial services sector. The cryptoasset market is inherently global and not limited to traditional national boundaries like other financial market activities. Our consumer research shows that as of January 2021 4.4% of UK adults (or 2.3 million people) own cryptoassets. An increasing number of regulated firms are also becoming active in this market.
- 6.2** We continue to encourage innovation and support competition in consumers' interests. However, we recognise that different types of cryptoassets and new business models can bring novel risks of harm for consumers and markets.
- 6.3** We recognise the potential positive impact that DLT and certain cryptoassets might have in the future on financial services. In particular, we see potential benefits for regulated firms in using DLT and similar technologies in their regulated activities. It may lower their costs, increase efficiency, enable faster settlements and help better monitor transactions. We also see benefits for consumers and businesses when a subset of cryptoassets – stablecoins – are used for payments. This is especially the case for cross-border (remittance) payments, where stablecoins may lower the costs and speed up settlement for business and consumers.
- 6.4** However, we have seen increased risks emerging from the cryptoasset market where consumers or businesses invest in cryptoassets speculatively, and where more complex cryptoasset-linked investments are offered to UK consumers. These include a range of products offering retail consumers high returns and yields, without adequately presenting the risks involved.
- 6.5** The cryptoasset market is generally unregulated, so consumers are unlikely to be protected if something goes wrong. We have repeatedly warned consumers they should be prepared to lose all their money when investing in cryptoassets. Consumers may suffer sudden, large and unexpected losses from these investments for reasons including volatility, firm failure, comingling of funds, cyber-attacks and financial crime. Consumers may also not understand complex products offered to them. Poor-quality and misleading promotions can exacerbate these risks and lead to consumers buying investments that are outside their risk tolerance and which do not meet their needs.
- 6.6** We consider cryptoassets used as speculative investments to be high-risk, and the proposals in this CP are focused on addressing the resulting harms to consumers. As with other high-risk investments, we only want consumers to access them knowingly, and after they have been assessed as having sufficient knowledge and experience to understand the risks involved.

- 6.7** We are therefore proposing to apply the same financial promotion rules to cryptoassets as we are proposing to apply to other high-risk investments, categorised in this CP as 'Restricted Mass Market Investments' (see Chapter 3).

## Background

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- 6.8** The Cryptoassets Taskforce (CATF), consisting of the Treasury, the FCA, the Bank of England (BoE) and the Payments Systems Regulator (PSR) aims to monitor, understand, and draw conclusions from the development of cryptoassets and DLT in relation to financial services within the UK.
- 6.9** The [2018 CATF report](#) identified several risks cryptoassets pose to consumers, including the potential for harm where consumers buy cryptoasset products without appropriate awareness of the risks involved. The report also found that cryptoasset advertising is often targeted at retail investors, is typically not clear or fair, and can be misleading.
- 6.10** Since the report, the cryptoasset market has continued to evolve and grow. [FCA research \(2021\)](#) shows that UK consumer ownership has risen. Our research also found that adverts play an important role in consumer purchasing behaviour. The findings of this research are further described in Chapter 4 (4.10).
- 6.11** In January 2022, the Treasury [published a response](#) to its 2020 consultation on cryptoasset promotions, which confirmed the extension of the financial promotion regime to include promotions of 'qualifying cryptoassets'. We are consulting based on the content of this consultation response, aware that the statutory instrument has not yet been laid before Parliament. This is to give firms as much time as possible, following publication of our final rules, to understand their obligations under the financial promotions regime and make necessary changes to their business models before the regime comes into force.

## Classifying cryptoassets as 'Restricted Mass Market Investments'

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- 6.12** To make the changes proposed in its consultation response, the Treasury intends to amend the controlled investments and controlled activities defined in Schedule 1 of the FPO to include 'qualifying cryptoassets'.
- 6.13** The scope of 'qualifying cryptoasset' in the Treasury consultation response is any cryptographically secured digital representation of value or contractual rights which is fungible and transferable. The Treasury intends to exclude from this other controlled investments, electronic money under the Electronic Money Regulations 2011, and central bank money, as well as cryptoassets that are only transferable to one or more vendors, or merchants in payment for goods or services. While we are consulting on the basis of this, we note that any definition is provisional and subject to change before the statutory instrument is laid before Parliament.
- 6.14** The changes proposed by the Treasury will mean the financial promotion restriction under Section 21 of FSMA will apply to the promotion of investment activity in relation to qualifying cryptoassets (for detail of the changes see section 4.21 – 4.25 of the

Treasury consultation response). Under paragraph 27 of the FPO, instruments that provide rights to or interests in qualifying cryptoassets, and which are not controlled investments themselves, will also be controlled investments. Under our proposals these instruments will also be in scope and classed as 'Restricted Mass Market Investments'. Promotions relating to them will be subject to the same rules as qualifying cryptoassets themselves.

- 6.15** The financial promotion restriction will apply to any in-scope promotion capable of having an effect in the UK, even where it is communicated by an overseas person. It is proposed that FCA rules such as the requirement for financial promotions to be clear, fair and not misleading will also apply to such promotions, when communicated or approved by authorised persons, as well as other rules generally applicable to financial promotions contained in Chapter 4 of the Conduct of Business Sourcebook (COBS 4). We give further information on these rules in Chapter 2 of our guidance, located in Annex 4.
- 6.16** The financial promotion regime will only apply to cryptoasset promotions – it will not affect the regulatory status of the underlying activity. This means that, to the extent that an activity relating to cryptoassets is unregulated today; it will remain unregulated once the new financial promotion rules apply. These rules will also not affect the existing AML/CTF perimeter and firms under that regime will continue to be required to register with us. [Our Guidance on Cryptoassets \(PS19/22\)](#) gives more detail on the regulatory perimeter.
- 6.17** We recognise that the application of the financial promotion regime may be the first interaction unregulated cryptoasset firms will have had with regulation. It is likely these firms will need to make operational adjustments to implement the required systems and controls to ensure their promotions are compliant.
- 6.18** Given the high-risk profile of unregulated cryptoassets (as set out in 6.4-6.5), we do not believe it would be appropriate to classify them as 'Readily Realisable Securities' (RRS) and release them from marketing restrictions. The RRS category is described in detail in 3.4.
- 6.19** Instead, we are proposing to align our rules for cryptoassets with existing rules for other high-risk investments, that place additional restrictions on firms communicating or approving relevant promotions. High risk investments should therefore either fall under the 'Restricted Mass Market Investments' or 'Non-Mass Market Investments' product categories (set out in Chapter 3).
- 6.20** We do not believe it would be proportionate to classify cryptoassets as 'Non-Mass Market Investments' at this stage. The industry is still developing, and we are looking to encourage, not stifle, innovation that may benefit consumers. This is aligned with the response from the Treasury to their consultation on cryptoasset promotions.
- 6.21** Instead, we propose to classify cryptoassets as 'Restricted Mass Market Investments' under our rules (a new term proposed in Chapter 3). We believe this is an appropriate and consistent approach, considering the risks identified and summarised in 6.4-6.5, the classifications of other high-risk investments and the relative immaturity of the cryptoasset market.

- 6.22** In practice, this means the mass-marketing of cryptoassets to retail consumers will be permitted, subject to meeting the requirements of our financial promotion rules. This includes the risk warnings and ban on inducements to invest proposed in Chapter 4. However, 'direct offer financial promotions' (which, in general terms, specifies how consumers should respond or includes a form to respond) can only be made if certain requirements are met, such as firms complying with our proposed rules on positive frictions, client categorisation and appropriateness assessments (see Chapter 4).
- 6.23** Under these proposed rules, direct offer financial promotions can only be made to investors categorised as 'restricted', 'high net worth' or 'certified sophisticated'. 'Restricted investors' must sign a declaration to say they have not invested in the last 12 months, and will not invest in the next 12 months, more than 10% of their net assets (excluding certain assets) in 'Restricted Mass Market Investments'. Our approach to exemptions covering 'high net worth' and 'certified sophisticated' investors is covered from 6.28 – 6.35. Direct offer financial promotions will not be permitted to be communicated, or approved for communication, to 'self-certified sophisticated' investors.
- 6.24** We encourage stakeholders with views on the application of the financial promotion regime to cryptoassets, including their classification as 'Restricted Mass Market Investments', to respond to relevant questions in Chapter 4, as well as Question 23 below.

**Q25: Do you agree with our proposal to apply the financial promotion regime to cryptoassets and classify them as 'Restricted Mass Market Investments'?**

## Implementation

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- 6.25** We intend to publish our final rules in summer 2022 and propose that the changes in this consultation apply to promotions of qualifying cryptoassets from the date they are brought within the financial promotion regime.
- 6.26** As set out in paragraph 4.75-4.77, the proposed rules on client categorisation and appropriateness tests will apply to both existing customers choosing to buy more cryptoasset investments with the same firm (i.e. existing customers receiving new direct offer financial promotions) and consumers being marketed to for the first time under our rules. However, the rules on positive frictions (personalised risk warnings and the cooling off period) will only apply to consumers who are investing in cryptoassets with a firm for the first time.
- 6.27** We would welcome stakeholders with views on the proposed implementation period for cryptoassets to respond to question 11 in Chapter 4.

## Approach to Exemptions

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- 6.28** The Treasury's consultation response sets out its approach to exemptions for qualifying cryptoassets. With respect to promotions to retail investors, the Treasury confirmed it intends to apply the 'certified sophisticated investors' ([Article 50](#)) exemption.

- 6.29** This means financial promotions communicated within scope of the Article 50 exemption will not require approval from an authorised person and will not be subject to our financial promotion rules, such as the requirement to be clear, fair and not misleading. Certified sophisticated investors are persons who have: i) a certificate signed in the preceding three years by an authorised person stating that they are sufficiently knowledgeable to understand the risks associated with the relevant type of investment; and ii) themselves signed a certificate in the preceding 12 months stating they qualified for this exemption and understood the implications. To benefit from this exemption, the financial promotion must not invite or induce the recipient to engage in investment activity with the person who has signed the statement certifying the consumer's knowledge.
- 6.30** The Treasury does not intend to apply the 'high net worth' or 'self-certified sophisticated investors' exemptions (Articles 48 & 50A respectively) to qualifying cryptoassets. This is because they only currently apply to investments related to unlisted securities, so it would be inconsistent to apply them to promotions relating cryptoassets. However, the consultation response noted that we would consider how any further exemptions might apply to qualifying cryptoassets through our rules. In line with this, we are proposing to allow direct offer financial promotions for cryptoassets to be communicated, or approved for communication, to high net worth investors within the context of our rules on 'Restricted Mass Market Investments'. This aims to prevent the regime from being too restrictive to those more able to absorb losses.
- 6.31** Adding this exemption in our rules means cryptoasset promotions communicated to these investors must still be clear, fair and not misleading and must contain appropriate risk warnings. Other protections under our rules (set out in more detail in Chapter 4 and our guidance in Annex 4) will also apply.
- 6.32** However, unlike for 'restricted' investors, those categorised as high net worth will not have to sign a statement declaring that they will not in the next twelve months, and have not in the preceding twelve months, invested more than 10% of their net assets in cryptoassets, or any other 'Restricted Mass Market Investment'. This is because we consider that high net worth investors are more able to absorb potential losses. As is the case for other Restricted Mass Market Investments, firms will need to identify whether the consumer is high net worth before it can communicate a direct offer financial promotion to them.
- 6.33** To provide consistency, we propose to apply the same definition of high net worth investor as applies to promotions of other types of restricted mass market investment (and which itself reflects that contained in Article 48 of the FPO). A high net worth investor is defined as a consumer who signs a statement certifying they have: i) an annual income of at least £100,000; or ii) Net assets of £250,000 or more, excluding primary residence, pensions and rights under qualifying contracts of insurance. This statement must have been signed in the 12 months immediately prior to the promotion being made.
- 6.34** As set out in our [2020/21 perimeter report](#), we have significant concerns that the current thresholds used to define high net worth in the FPO are too low, as they have not been updated since they were introduced in 2001. We welcome the Treasury's [consultation on increasing these thresholds](#). Depending on the outcome of that consultation, we may consider changing the threshold for the exemption in our Handbook, in the future.

- 6.35** We do not propose to create a 'self-certified sophisticated investor' exemption for cryptoassets, based on that specified in Article 50A of the FPO. The current criteria for self-certification of sophistication are based on the investment relating to an unlisted security and includes criteria, such as being a member of a syndicate or business angel network, that is not suitable for demonstrating sophistication in relation to cryptoassets. We also believe creating new criteria for cryptoassets, for example defining the cryptoasset market, or the specific level or nature of experience deemed sufficient, would be very challenging. We may consider the possibility of developing an appropriate definition once the industry has further matured.

**Q26: Do you agree with our proposed approach to exemptions for cryptoassets?**

## Section 21 approvers for cryptoasset financial promotions

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- 6.36** As set out in Chapter 2, unauthorised firms wanting to communicate a financial promotion must have the promotion approved by an authorised firm (Section 21 approver), or else rely on an exemption in the FPO.
- 6.37** As part of the proposals in Chapter 5, S.21 approvers will have to assess whether they have sufficient competence and in-house expertise in the product or service that underlies the financial promotion, before approving it. This includes promotions for other entities within a corporate group (intra-group) or an appointed representative (AR). We give further detail on the competence and expertise requirement in Chapter 2 of our guidance in Annex 4.
- 6.38** We know that many cryptoasset firms are unauthorised and will therefore need their promotions approved by a s21 approver, when they are brought into the financial promotion regime. Neither cryptoasset firms which are registered with the FCA under the AML/CTF regime, nor firms authorised under e-money or payments regulation can communicate or approve financial promotions (as defined by S.21 FSMA), unless they are also authorised persons within the meaning of S.31 FSMA. This is set in legislation and cannot be modified by our rules.
- 6.39** As cryptoassets currently sit outside the financial promotion regime, there is unlikely to be an existing population of s21 approver firms. We recognise that the population of authorised firms with sufficient competence and expertise to approve cryptoasset financial promotions is likely to be limited at first.
- 6.40** However, for reasons set out in detail in Chapter 5, we believe these changes are crucial to ensuring an appropriate level of consumer protection. Historically, we have seen too many poor quality and non-compliant promotions being approved and communicated to retail investors. To prevent this happening with cryptoassets, we intend to subject approvers of cryptoasset promotions to the same requirements that will apply to all other s21 approvers.
- 6.41** We urge all firms communicating cryptoasset promotions to begin preparations and encourage them to take any necessary advice. We welcome cryptoasset stakeholders with views on the application of the S.21 approver regime to respond to the relevant questions in Chapter 5.

## Annex 1

### Questions in this paper

- Q1:** Should we rationalise our financial promotion rules in COBS 4 by introducing the concepts of 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?
- Q2:** Should we introduce stronger risk warnings, as outlined in paragraphs 4.20 – 4.27, for all 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?
- Q3:** Should we ban inducements to invest e.g. refer a friend bonuses, for all 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?
- Q4:** Should we introduce a personalised risk warning pop up for first time investors in 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?
- Q5:** Should we introduce a 24 hour cooling off period for first time investors in 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?
- Q6:** Should we change the investor declaration form for 'restricted', 'high net worth' and 'sophisticated' investors to introduce an 'evidence declaration' and simplify the declaration?
- Q7:** Should we make changes to our rules on appropriateness to ensure all investors in 'Restricted Mass Market Investments' must pass a robust assessment of their knowledge and experience?
- Q8:** Should we introduce record keeping requirements for firms to monitor the outcome of the consumer journey for 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'?
- Q9:** Do you agree with our proposed approach to implementation of our consumer journey proposals for investments already subject to our financial promotion rules?
- Q10:** Do you have any suggestions for how we can monitor the impact of our consumer journey proposals?
- Q11:** Do you agree with our proposed approach to implementation of our consumer journey proposals for cryptoassets?

- Q12:** Do you agree with our proposed changes to COBS 4.5 to clarify the obligation regarding the name of the s21 approver?
- Q13:** Do you agree with our proposal for s21 approvers to ensure that approved promotions include the date of approval in the financial promotion?
- Q14:** Do you agree with the introduction of a competence and expertise rule to apply to all authorised firms when approving or communicating financial promotions?
- Q15:** Do you agree with the proposed approach to firms assessing competence and expertise?
- Q16:** Do you agree with our guidance to firms on the competence and expertise requirement?
- Q17:** Do you agree with our proposal for a new ongoing monitoring requirement for s21 approvers?
- Q18:** Do you agree with our guidance on ongoing monitoring for s21 approvers?
- Q19:** Do you agree with our proposal to require s21 approvers to obtain attestations of no material change from clients?
- Q20:** Do you agree with our proposal to extend conflicts of interest requirements to s21 approvers?
- Q21:** Do you agree that s21 approvers of 'Restricted Mass Market Investments' should take reasonable steps to ensure that the relevant processes for appropriateness tests comply with our rules on an ongoing basis?
- Q22:** Do you agree with our expectations on what reasonable steps may look like when complying with the appropriateness test?
- Q23:** Do you agree with our proposed guidance to firms on conducting appropriateness tests?
- Q24:** Do you agree with our proposed guidance for firms approving financial promotions for 'Non-Mass Market Investments'?
- Q25:** Do you agree with our proposal to apply the financial promotion regime to cryptoassets and classify them as 'Restricted Mass Market Investments'?
- Q26:** Do you agree with our proposed approach to exemptions for cryptoassets?

## Annex 2

# Cost benefit analysis

### Executive summary

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1. This Annex sets out our assessment of the costs and benefits of the proposals to strengthen the rules for financial promotions of high-risk investments (HRIs). HRIs include 'Restricted Mass Market Investments' and 'Non-Mass Market Investments' (each defined in chapter 3 of the consultation paper (CP)). In the CP, we propose that cryptoassets are included in the 'Restricted Mass Market Investments' classification, once they are brought into the financial promotion regime.
2. These proposals are designed to address an observed increase in high-risk investment ownership amongst retail investors, despite evidence of a mismatch between the investment decisions consumers make and their stated risk tolerance. This has the potential to cause significant harm to consumers, including unexpected financial loss that cannot easily be absorbed. A significant unexpected loss from an investment can have knock on effects of further financial difficulty, and poorer wellbeing. The harm is likely to be more acute amongst individuals with characteristics of vulnerability, and survey evidence<sup>2</sup> reported that 56% of high-risk investment holders surveyed exhibited at least one characteristic of vulnerability.
3. We propose to introduce a set of policies to facilitate better informed and more appropriate investment decisions by:
  - a. alerting consumers to the risks of the investment through further differentiating the journey a consumer takes when looking to invest in a high-risk investment, compared to the journey undertaken when investing in a mainstream diversified investment
  - b. improving the consistency of our rules for financial promotions of high-risk investments. We are proposing to strengthen the role of firms that communicate and approve financial promotions, to ensure they have the necessary competence and expertise to do so in adherence to our rules. We are also clarifying the role of an approver of financial promotions for unauthorised persons, to ensure approved promotions are monitored and remain in line with our requirements, including the promotion being 'clear, fair and not misleading'
  - c. applying restrictions on the marketing of cryptoassets to retail investors. We propose to apply the financial promotion rules that currently apply to non-readily realisable securities and peer to peer agreements to promotions for cryptoassets, when they are brought into the Financial Promotions Regime. This group of investments are collectively referred to in our draft rules as 'Restricted Mass Market Investments'.

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2 The Financial Research Survey (FRS) is a syndicated survey carried out on behalf of 21 financial institutions for Ipsos MORI. The survey is carried out monthly among c. 4,500 GB adults aged 16+ over the telephone (using RDD and quota sample) and online (quota sample). These results are based on 50,081 participants surveyed monthly between June 2020 and June 2021. Survey data were weighted to the target audience. Full Survey details can be found in Annex 6, and further detail on the results can be found in paragraph 4.9 of the CP. 'High-risk investments' were defined as peer-to-peer loans, retail bonds/mini bonds, Innovative Finance ISAs (IFISAs) and cryptoassets for the purposes of this research.

4. We anticipate that our proposals will bring benefits to consumers who look to invest in high-risk investments for the first time, or look to increase their holdings in high-risk investments, where this investment decision would not be appropriate for them. Our consumer research suggests many new investors are driven by social and emotional factors and do not always fully understand the risks involved, making them particularly vulnerable to unexpected losses. Our policies aim to help consumers understand the risks of the high-risk investment before they invest, to prevent them from doing so unknowingly. Our proposals should therefore bring benefits in the form of reducing these unexpected losses to consumers, and reducing the likelihood of associated risks such as financial difficulty and poorer wellbeing. Consumers may then invest in more appropriate investments instead, bringing benefits to both themselves through improved financial wellbeing and to the retail investment market through increased confidence in investment, trust in the market and healthier participation of retail consumers.
5. Whilst our analysis gives an indication of the benefits of our proposals, we cannot reasonably predict how many consumers will stop investing in high-risk investments where this would be inappropriate for them, nor estimate the amount by which they will reduce their investment as a result of our proposals. We have, however, produced a break-even analysis to provide an indication of the overall scale of the anticipated benefits that would be necessary to offset the costs of the policies.
6. We expect that our proposals will result in direct costs to authorised firms, unregulated issuers of HRI and firms promoting cryptoasset investments. These costs include one off and ongoing compliance costs, financing costs and losses of revenue and profitability. Other unauthorised persons which rely on authorised firms to approve their financial promotions may also incur these costs. We have estimated total one-off costs to these firms of up to £59m.
7. We also expect ongoing costs to these firms. We anticipate that there will be a reduction in the number of retail investors who invest for the first time, or make further investments, in HRI as a result of our proposals. We therefore expect these proposals to cause some ongoing costs to issuers of HRI if it becomes costlier to obtain business funding or have financial promotions approved. We also expect ongoing costs for platforms distributing these products, some issuers of HRI and firms operating in the cryptoasset market, in the form of reduced revenue and profitability. However, we expect these costs to be driven by reduced investment in high-risk investments by consumers for whom the investment is not appropriate. While it has not been reasonably practicable to estimate these ongoing, indirect costs to firms and issuers, they will represent a transfer to consumers and are a key benefit of these proposals.
8. We estimate that for our intervention to be net beneficial in monetary terms, each potential new HRI consumer or existing HRI holder potentially increasing their holdings (absent our proposals) would need to make a saving of £38 on average. This is given the estimated quantified costs incurred by firms and consumers in year 1 of up to £61m, and assumed potential investors of 1.62 million per annum. To put this into perspective, for example for cryptoasset consumers, this would mean dissuading 137,600 consumers or 3.4% of new consumers per year for the benefits to exceed the costs.
9. Our behavioural experiment findings suggest that our proposals will reduce the likelihood of consumers investing in HRI when they do not match their risk tolerance. In recent years, we have seen significant high-risk investment losses to consumers (for example the collapse of London Capital and Finance resulted in consumer losses of

£230 million, and at the point Lendy collapsed investors were owed more than £150m). Although these proposals are not designed to address these specific cases, these examples demonstrate the magnitude of losses that consumers can face when things go wrong. We therefore consider that these breakeven benefits figures are achievable, and it is likely that this intervention will be net beneficial.

10. We consider some of our assumptions and estimates to be uncertain. We would therefore encourage any data input from firms regarding the cost of compliance with our proposals, or any other aspects of this cost-benefit analysis, within their response to this consultation.

## Introduction

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11. The Financial Services and Markets Act 2000 (FSMA 2000), as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
12. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, taking into account all the other impacts we foresee.
13. Our proposals are likely to affect different subsets of firms depending on the nature of the firm and the high risk investments (HRIs) they promote. Our consumer journey proposals will affect all firms promoting HRIs, including promoters of cryptoassets who are also affected by their own specific proposals- but firms that approve financial promotions (s21 approvers) are also affected as they must be aware of any new requirements for financial promotions. Our proposals for s21 approvers will also affect all firms who are currently s21 approvers or may be a s21 approver in the future. These may have knock on impacts to firms that promote HRIs, if they get their financial promotions s21 approved. Firms may therefore be affected by more than one segment of our proposals. For this reason, as well as ease of reference for firms, we generally present our cost-benefit analysis by each set of firms.

## Problem and rationale for intervention

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14. We are concerned that the rules we currently have in place regarding the marketing of 'Restricted Mass Market Investments' and 'Non-Mass Market Investments' (or 'RMMI' and 'NMMI', as defined in chapter 3 of the CP), are not sufficiently robust to reduce the risk of unexpected financial loss to consumers from investing in these high-risk investments when they do not match their risk tolerance. We also see similar risks of harm arising from the promotion of cryptoassets. These risks are currently unmitigated as cryptoassets fall outside the financial promotion regime.

15. There has been a significant increase in consumer ownership of HRIs in recent years. Data from Ipsos MORI's Financial Research Survey (FRS)<sup>3</sup> estimates the proportion of British adults that hold HRI was 8.4% in June 2021, up from 2.1% 5 years earlier.
16. Alongside this, there is evidence of a generally low level of consumer understanding of the risks of investing. Research we commissioned from BritainThinks suggests that 45% of new self-directed (non-advised) investors said they did not view 'losing some money' as a potential risk of investing. This view was particularly common among those that had invested in the high-risk end of the market. Furthermore, data from Ipsos MORI's FRS<sup>3</sup> suggests that HRI investors were 37% more likely to display one of the indicators of vulnerability (as defined in our guidance on the fair treatment of vulnerable customers), compared with all adults with investments.
17. We consider that the marketing of HRIs risks harm to consumers from purchasing products that are inappropriate for their circumstances and needs. If consumers purchase high-risk investments that do not match their risk tolerance, they face potentially significant financial losses and adverse wellbeing consequences if those products lose value. Addressing this harm is a key part of our Consumer Investments Strategy.
18. We consider that the risk of this consumer harm is driven by three main market failures:
- Asymmetric information
  - Behavioural biases
  - Gaps in the regulatory framework
19. The marketing of HRIs is characterised by an **asymmetry of information**. Evidence suggests consumers have a generally low level of understanding of the often complex risks of investing. This is exacerbated where consumers rely on poor quality financial promotions of HRI, where the information provided by firms about the product's risks and benefits fails to enable consumers to make informed investment decisions.
20. The 2018 Cryptoasset Taskforce (CATF)<sup>4</sup> report found that cryptoasset promotions, which are often targeted at retail investors, are typically not clear or fair, and can be misleading. According to our 2021 cryptoasset consumer research, these promotions can play an important role in consumer purchase decisions, as 31% of cryptoasset users who saw an advert were encouraged or led to buy as a result. 71% of the consumers who wrongly believed they had regulatory protection when investing in cryptoassets, and 60% of the consumers who regretted their purchase of cryptoassets, were encouraged or led to buy as a result of advertising.

3 The Financial Research Survey (FRS) is a syndicated survey carried out on behalf of 21 financial institutions for Ipsos MORI. The survey is carried out monthly among c.4,500 GB adults aged 16+ over the telephone (using RDD and quota sample) and online (quota sample). These results are based on 50,081 participants surveyed monthly between June 2020 and June 2021. Survey data were weighted to the target audience. Full Survey details can be found in Annex 6, and further detail on the results can be found in paragraph 4.9 of this CP. 'High-risk investments' were defined as peer-to-peer loans, retail bonds/mini bonds, Innovative Finance ISAs (IFISAs) and cryptoassets for the purposes of this research.

4 The Cryptoassets Taskforce (CATF) consists of the Treasury, the FCA, the Bank of England and the Payments Systems Regulator.

- 21. Behavioural biases** in response to financial promotions and HRI may exacerbate the impacts of asymmetric information. Behaviours such as consumers viewing current risk warnings as 'wallpaper' and 'clicking through' to access investments without engaging with existing consumer protections may potentially be viewed as behavioural biases, which lead consumers to make decisions that they later regret. More generally, consumers considering purchasing high-risk investments may suffer from cognitive behavioural biases such as overconfidence, 'myopia' or 'herding'. These biases can drive harm through consumers investing in high-risk investments either without understanding the risks, or without considering their long-term interests.
- 22.** For example, a survey by Opinium for the FCA of 1,000 people aged 18-40 who had invested in HRIs showed just 21% of them were considering holding their most recent investment for more than a year, and less than 8% for more than 5 years. This is despite 60% of those surveyed saying that they prefer more stable returns than investments that rise and fall dramatically, which typically requires investing for longer time periods. Furthermore, this new emerging group of younger investors tend to be driven by social and emotional factors when making investment decisions. The survey also found that 76% felt a sense of competitiveness when placing their money in an investment, and 58% said hype on social media and in the news lies behind their investment decisions.
- 23.** The routes through which financial promotions can be communicated are set out in chapter 2 of this CP. One of these routes is where an authorised firm approves the financial promotion for an unauthorised firm. Without requirements for authorised firms to inform us of their financial promotion approvals for unauthorised firms, it has been difficult for us to proactively address harm from poor quality, non-compliant financial promotions. These **gaps in the regulatory framework** have meant that consumer harm, such as unexpected financial losses from investing in HRI without understanding the associated risks, has often already occurred when we intervene. Chapter 5 of this CP details the weaknesses within our current regime that we would like to address as part of this.

## Summary of proposed interventions

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- 24.** As set out in chapter 1 of the CP, we are proposing changes in four main areas: our classification of HRIs, the consumer journey into HRIs, the role of firms approving and communicating financial promotions and the application of financial promotion rules to cryptoassets. The changes proposed for the classification of HRIs are purely changes to the structure of our Handbook. We consider these costs and benefits to be negligible.
- 25.** In summary for the other three areas, we are proposing to:
- Introduce a package of measures to **strengthen the consumer journey into HRI** by: enhancing risk warnings; banning inducements to invest; introducing a personalised risk warning pop-up for first time investors with a firm; introducing a 24-hour cooling off period for first-time investors with a firm; strengthening the appropriateness test; improving the client categorisation process by introducing more consumer-friendly statements, and an evidence declaration to help investors better categorise themselves.

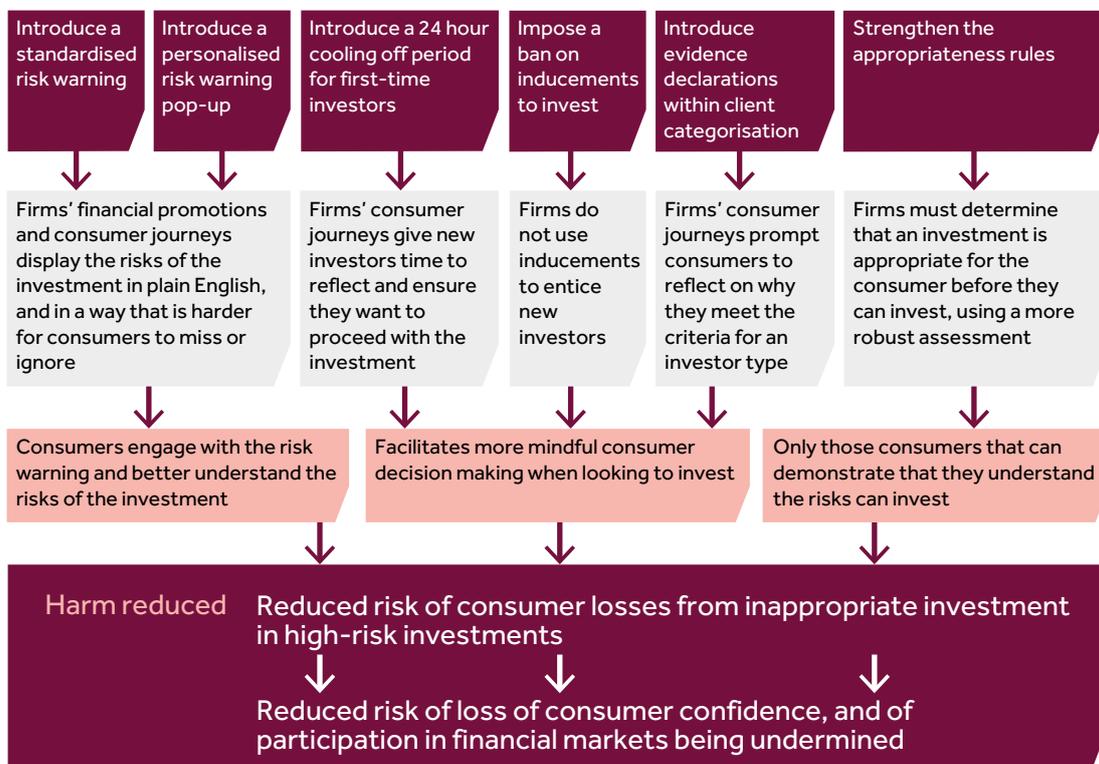
- Introduce rules requiring firms to **regularly check the compliance of approved promotions** with our rules and **introducing a competence and expertise requirement** on firms approving and communicating financial promotions.
- Apply the same **financial promotions rules to promotions of cryptoassets** as currently apply to non-readily realisable securities and P2P agreements (defined in chapter 3 of the CP).

26. Our proposed interventions seek to address the market failures we have identified and reduce the risk of harm posed to consumers, by reducing the number of consumers investing in products that are inappropriate for their circumstances and misaligned with their risk tolerance. Our recent behavioural testing, data request to P2P and crowdfunding firms, consumer research, evidence from our Supervision and Enforcement divisions and the responses to our Call for input and DP21/1 have all informed these proposals.

27. We have set out causal chains in the sections below, describing how we envisage our proposals will reduce the risk of harm to consumers and address market failures.

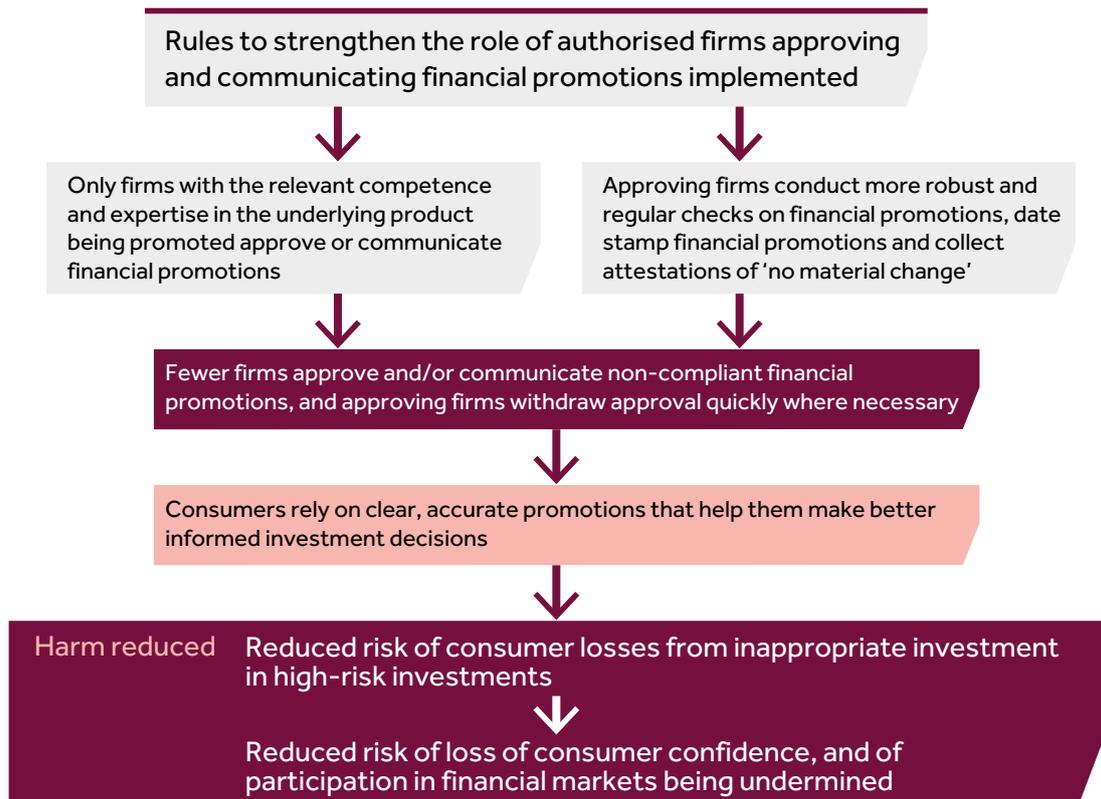
### Strengthening the consumer journey for firms promoting 'Restricted Mass Market Investments' and 'Non-Mass Market Investments'

28. Collectively, these proposed interventions aim to increase the robustness of the process consumers go through to invest in HRI, to ensure only those that understand the risks invest. We refer to this process, and the consumer protections within it, as the 'consumer journey.' The following causal chain aims to show how we believe our proposals will reduce harm to consumers who look to invest in HRI.



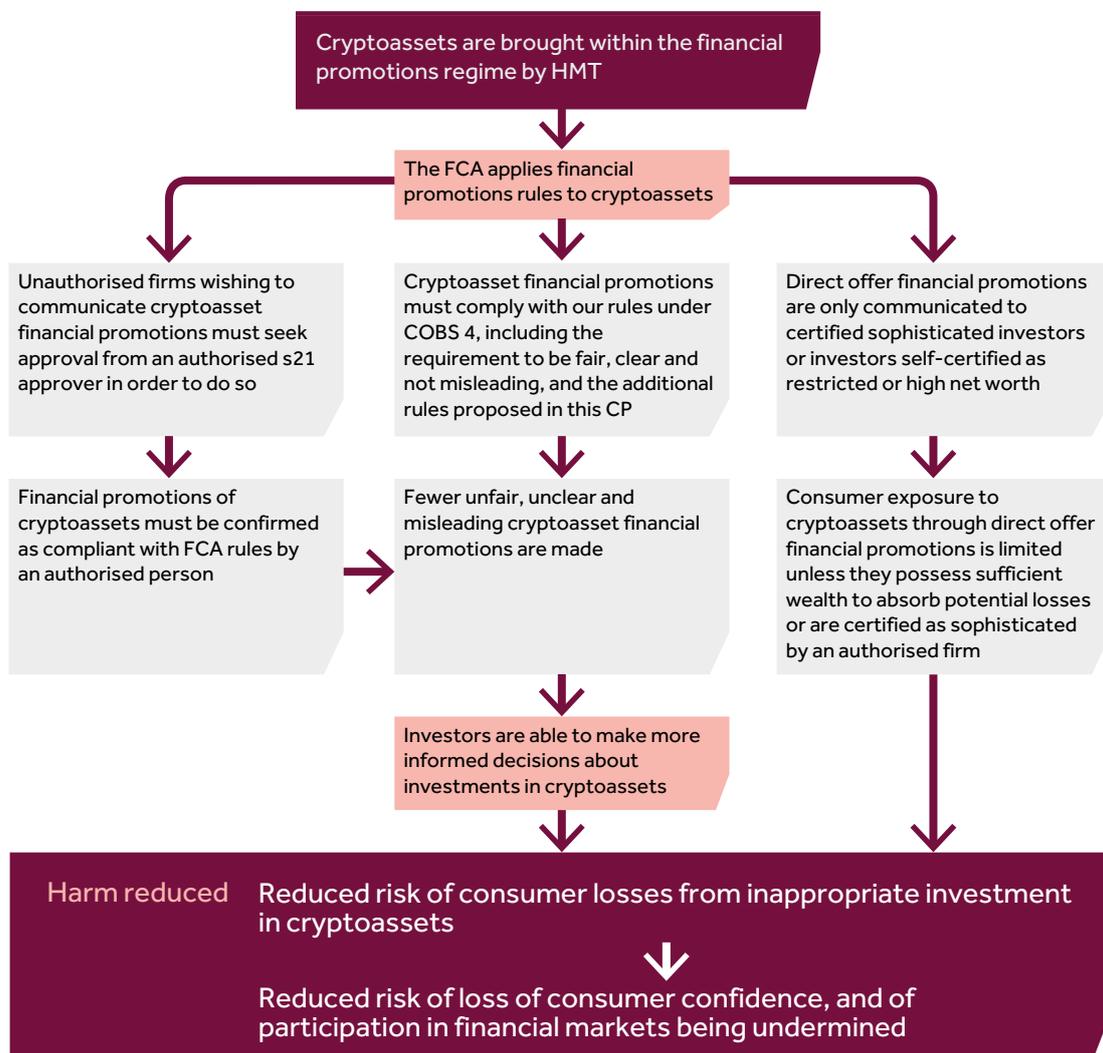
## Strengthening the role of firms approving and communicating financial promotions

29. These proposals impact authorised firms that approve financial promotions for unauthorised persons ('s21 approvers'), and firms who communicate their own financial promotions. We anticipate the proposals will improve the quality of financial promotions and their effectiveness at ensuring consumers understand the risks of the specific product before they invest, so they do not invest in a HRI unknowingly. The causal chain below shows how our proposals seek to reduce the risk of harm to consumers from investing in HRIs inappropriately.



## Applying our financial promotion rules to cryptoassets

30. We are proposing to apply our financial promotion rules to promotions of cryptoassets once these are brought within the perimeter and classify them as 'Restricted Mass Market Investments'. As set out in Chapter 6, this means any promotion of investment activity in relation to a qualifying cryptoasset<sup>5</sup> (as defined by the Treasury), would be subject to our rules. These rules, including the requirement for a promotion to be fair, clear and not misleading, would apply to any in-scope promotion communicated or approved by an authorised person and capable of having an effect in the UK, even when communicated by an overseas person. The classification of a 'Restricted Mass Market Investment' would also subject cryptoasset promotions to marketing restrictions, in order to mitigate the risk of consumer harm effectively. The following causal chain demonstrates how our proposals seek to reduce this consumer harm.



<sup>5</sup> Instruments that provide rights to or interests in qualifying cryptoassets are also in scope and proposed to be classed as 'Restricted Mass Market Investments'. Promotions relating to them are subject to the same rules as qualifying cryptoassets themselves.

## Baseline and key assumptions

### The current market for HRI

- 31.** Our proposed interventions impact firms communicating financial promotions for high-risk investments and firms that approve financial promotions. Our proposals for a Competence and Expertise requirement for s21 approvers also affects all firms communicating financial promotions for investment business; this is discussed in paragraph 39 below.
- 32.** Issuing a high-risk investment often does not involve a regulated activity, and firms are generally not required to inform the FCA when they are issuing these investments. We therefore do not have a complete record of firms carrying out these activities, meaning the number of issuers mentioned below is indicative. We also face challenges when trying to estimate the number of high-risk investment issuers through financial promotions, as authorised firms are not required to inform us when they approve financial promotions for unregulated issuers. Furthermore, many high-risk investments are promoted outside of our rules entirely using exemptions in the Financial Promotion Order (described in paragraphs 2.12-2.14 of this CP). These factors limit the FCA's ability to collect data in order to size the high-risk investment market, as well as to estimate the costs and benefits of our proposals.
- 33.** The table below details our estimates of the number and types of firms affected by our proposals.

	Firm types	Estimated number of firms/ issuers affected	Estimated number of consumers/ security holders
Authorised firms:	Investment-based crowdfunding platforms	19	670k <sup>6</sup>
	Peer to Peer (P2P) lending platforms	41	1.57m <sup>7</sup>
	S21 approvers	32-100	N/A
Issuers of:	Non-mainstream pooled investments	250*	63.5k*
	Speculative illiquid securities	251	63.5k
Firms promoting investments in:	Cryptoassets	300	2.3m <sup>8</sup>

\* We do not have a list of issuers of non-mainstream pooled investments, and we have no other data on these. We asked for data in DP21/1 but did not receive any in response. We have therefore used our estimates for Speculative Illiquid Securities as a proxy for this. Please see further detail below.

- 34.** The following paragraphs provide further details on the firm populations affected by our proposals, and the assumptions behind them.

<sup>6</sup> Financial Lives Survey 2020

<sup>7</sup> The Financial Research Survey (FRS) is a syndicated survey carried out on behalf of 21 financial institutions for Ipsos MORI. The survey is carried out monthly among c.4,500 GB adults aged 16+ over the telephone (using RDD and quota sample) and online (quota sample). These results are based on 50,081 participants surveyed monthly between June 2020 and June 2021. Survey data were weighted to the target audience. Full Survey details can be found in Annex 6, and further detail on the results can be found in paragraph 4.9 of this CP. 'High-risk investments' were defined as peer-to-peer loans, retail bonds/mini bonds, Innovative Finance ISAs (IFISAs) and cryptoassets for the purposes of this research.

<sup>8</sup> FCA Consumer Research 2021 estimated that 2.3m UK adults hold "cryptocurrency."

## Investment-Based Crowdfunding (IBCF) Platforms

35. Some high-risk investments are distributed through investment-based crowdfunding platforms. Generally, IBCF platforms generate revenue by promoting and facilitating investment in businesses and projects that feature on their platform, on behalf of the investment issuers. We currently supervise around 19 firms that are known to operate an IBCF platform that is open to retail investors. However, the regulatory permissions held by IBCF platforms are not specific to IBCF and are also held by many firms with other business models (ie there is no specific permission for IBCF), so this number may be underestimated.

## P2P Platforms

36. Some high-risk investments are distributed by P2P lending platforms. As with IBCF, P2P platforms communicate financial promotions for the investments featured on their platform. We currently supervise around 41 firms undertaking P2P lending activities for retail consumers.<sup>9</sup>
37. We are assuming that P2P and IBCF platforms are the only communicators of financial promotions for 'Restricted Mass Market Investments' where our rules currently apply. We have made this assumption both because these firms are likely to represent the vast majority of these investments marketed to retail consumers under our rules, and also because of a lack of alternative data. There may be some authorised firms that communicate financial promotions for 'Restricted Mass Market Investments' that are not P2P or IBCF firms, and there are unregulated firms that issue 'Restricted Mass Market Investments' and get their financial promotions approved by a s21 approver. However, we consider that the number of additional firms that are not captured is unlikely to be significant.

## s21 Approvers

38. Currently, any authorised firm can approve a financial promotion for an unauthorised firm. Our proposals are therefore, in theory, relevant to every authorised firm. However, based on our supervisory activities and our data request to P2P and crowdfunding firms, we estimate that only 32 firms are actively approving financial promotions for unauthorised issuers of HRI. As there is no current requirement for firms to tell us that they are involved in approving promotions, there may be some additional firms who are currently approving promotions or intend to do so.
39. Authorised firms communicating their own promotions will also be affected by the introduction of the competence and expertise requirement, meaning those without it would incur some cost in finding an authorised firm who does have the relevant expertise to confirm the compliance of their promotion. s21 approvers may also incur costs if they lose out on no longer being able to approve some types of promotions, due to not having the right competence and expertise. We have however assumed that all firms have already considered their expertise before approving a promotion, under existing obligations under the Principles for Businesses and SYSC (see Chapter 5).
40. It is uncertain how many firms will be s21 approvers under the new proposals. Based on supervisory intelligence and in the absence of data, we anticipate that the number of s21 approvers is likely to either remain at a similar level of 32 as a lower bound estimate,

<sup>9</sup> This number does not include P2P lending firms that have a live back book of retail loans but are not offering any further lending opportunities to new or existing retail investors, as these firms will not be implementing our consumer journey proposals.

or could rise to approximately 100 firms as an upper bound estimate.<sup>10</sup> To address this uncertainty, we consider the two scenarios as lower and upper bound estimates for sensitivity testing which should therefore cover the broad range of s21 approvers.

## Cryptoassets

41. Cryptoasset promotions are currently not subject to any financial promotion rules, so it is difficult to estimate precisely the number of firms that may be affected by our proposals. However, based on firms that applied for registration under the cryptoasset Anti-Money Laundering/Counter-Terrorist Financing (AML/CTF) regime, and the use of online research tools, we have identified around 300 firms that may be affected.
42. The number of firms affected may be lower in practice as not all firms that applied to register under the AML/CTF regime will necessarily communicate financial promotions. On the other hand, there will be firms that currently communicate cryptoasset promotions that have not applied for FCA registration (eg where they do not carry out in-scope activities requiring registration in the UK), nor been caught by our wider research. The number may therefore be higher, but on balance 300 is our best approximation based on currently available data.
43. Our latest cryptoasset consumer research, published in June 2021, estimated consumers holding cryptocurrency had risen to 2.3 million (4.4% of UK adults). This had increased from 3.9% in 2020. Given that the fieldwork for this research was carried out a year ago in January 2021, and the increasing trend in cryptoasset ownership that we have seen, we believe this ownership figure is likely to have increased further since then.

## Issuers of speculative illiquid securities (SIS)

44. In the absence of recent data, we estimate that there are 251 SIS issuers in the market and 63.5k SIS holders. These are the figures we used in the CBA for CP 20/8, which consulted on permanently banning the mass marketing of SIS under our rules. These figures are now likely to be an overestimate, given the likely reduction in the number of SIS issuers since the permanent mass marketing ban was confirmed.
45. We do not have a breakdown of how many SIS issuers are subject to our financial promotion rules (due to their promotions being s21 approved or them being an authorised firm) or how many use an investment-based crowdfunding platform to distribute their SIS on their behalf under our rules. In the absence of data, we assume that all SIS issuers will need to implement the proposed changes, though in reality we expect this will overestimate the number of firms affected in the first instance given that many use FPO exemptions (see paragraphs 2.12-2.14 in the CP), or market through an authorised crowdfunding platform which ensures compliance with our requirements.

## Issuers of Non-Mainstream Pooled Investments (NMPI)

46. We do not have data on the number of NMPI in the market, or the number of consumers that have invested in these. The difficulties we face with data in this area are discussed in paragraph 32; unauthorised firms can create these investments and we do not have a way

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<sup>10</sup> In our upper bound assumption, we factor in any potential HMT reform to the FPO exemptions (which many unauthorised issuers of HRI currently use to lawfully communicate their financial promotions), that may lead to unauthorised firms instead seeking a s21 approver for their promotions (see Chapter 2). In addition, we have considered any new firms that may have the expertise to approve financial promotions of cryptoassets in our upper bound assumption.

of tracking them. We asked for data on this in DP21/1 but did not receive any in response. In the absence of these data, we have assumed that the size of this market may be similar to the size of the SIS market (250 in the market and 63.5k NMPI holders). These figures are uncertain, but we consider that SIS is the most comparable market. We would welcome any further data on NMPI during the consultation.

## Key assumptions

- 47.** Our analysis of the ongoing costs and benefits of our proposals uses the current market sizes, levels of requirements and associated harm as the baseline. However, there has been significant growth in the proportion of consumers owning HRI in the UK. Between March 2020 and June 2021, the estimated proportion of British adults owning HRI in Ipsos MORI's FRS<sup>11</sup> increased from 5.1% to 8.4% (an increase of 65%). Without our interventions, we anticipate that ownership of HRI will continue to increase.
- 48.** The actual costs and benefits to consumers of all our proposals will be predominantly borne by consumers that either look to invest in HRI for the first time, or look to increase their holdings of HRI.<sup>12</sup> We do not have data on the flow of consumers into HRI (other than for cryptoassets) on a yearly basis, hence we have used our estimates of the number of consumers that are currently invested in these products as a proxy for the number of consumers that may face costs or benefits due to the proposal. In some illustrative calculations, we have estimated the flow of consumers into HRI (excluding cryptoassets) on a yearly basis using evidence from our [Financial Lives survey 2020](#). This suggests that 6% of adults with investments invested in HRI for the first time, or increased their holdings in HRI, between February and October 2020. Using this percentage and multiplying it by the estimated number of HRI (excluding cryptoassets) consumers, we estimate that approximately 142k consumers may either try to purchase, or increase their holdings, of these investments annually. This assumes a constant rate of growth in ownership of these investments. This is the only data we have on the flow of consumers into these HRI and is likely to be an underestimate. We would therefore welcome any more data in this area.
- 49.** As with other HRI, we are assuming appetite for cryptoasset investments will continue to grow. We estimate there are approximately 1.48 million consumers who will either increase their holdings of crypto assets or will purchase cryptoassets for the first time. [FCA consumer research](#) (June 2021) indicates 47% of the estimated 2.3 million cryptoasset owners (1.081m) said they would purchase cryptoassets again. There were also approximately 400k new cryptoasset owners between 2020 and 2021 based on our consumer research. We are assuming new cryptoasset ownership will increase at least at the same rate and consider 400,000 new consumers annually to be a conservative assumption given the particularly rapid growth in ownership of cryptoassets recently. Added to the 142k estimated consumers for other HRI, this gives a total of 1.62 million consumers that are estimated to either look to purchase HRI for the first time, or increase their holdings in HRI, annually.

11 The Financial Research Survey (FRS) is a syndicated survey carried out on behalf of 21 financial institutions for Ipsos MORI. The survey is carried out monthly among c.4,500 GB adults aged 16+ over the telephone (using RDD and quota sample) and online (quota sample). These results are based on 50,081 participants surveyed monthly between June 2020 and June 2021. Survey data were weighted to the target audience. Full Survey details can be found in Annex 6, and further detail on the results can be found in paragraph 4.9 of this CP. 'High-risk investments' were defined as peer-to-peer loans, retail bonds/mini bonds, Innovative Finance ISAs (IFISAs) and cryptoassets for the purposes of this research.

12 Consumers that have already invested in HRI but do not look to increase their holdings may also incur costs. This is discussed in paragraph 147.

- 50.** As cryptoassets do not currently fall within scope of the financial promotion regime, there are no FCA requirements placed on cryptoasset promotions. This means there is a different baseline compared to other types of HRI and the risks to consumers in the absence of intervention may be more significant, especially in a rapidly growing market. For example, cryptoasset promotions do not have to comply with the fair, clear and not misleading requirement and we have seen evidence of several promotions that fail to meet these standards. For example, a ruling by the ASA was issued<sup>13</sup> in relation to a promotion by Luno Money Ltd that breached CAP code rules.
- 51.** As we have estimated the number of consumers currently holding 'Restricted Mass Market Investments' where our rules currently apply to be the number with investments with P2P and crowdfunding firms, the number of consumers affected by our consumer journey proposals is likely to be an underestimate within this category of investment (explained in paragraph 37 above). However, this is likely to be offset, at least to some degree, by the likelihood that the estimate used for consumers invested in SIS is an overestimate (described in paragraph 45).
- 52.** Our estimates assume 100% compliance with our rules for authorised firms affected by our proposals, as well as unregulated issuers of HRI where they must already get an authorised firm to approve their financial promotions. We have therefore estimated the costs of our consumer journey proposals based on the assumption that these firms already have our existing requirements built into their systems, which would be amended to comply with our proposed changes. For example, firms communicating financial promotions about non-readily realisable securities or peer to peer agreements will already have an appropriateness test within their systems.
- 53.** We estimate that firms promoting cryptoassets will face higher costs than issuers of other HRI, as a result of being brought into the financial promotion regime for the first time. This is because they will be required to implement changes to their infrastructure to comply with the existing requirements of the financial promotion regime, in addition to the changes resulting from our consumer journey proposals.
- 54.** We are assuming that the vast majority of sales take place online, meaning sales staff are unlikely to be required and the direct cost to firms of a longer sales process as a result of our proposals is insignificant.

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13 <https://www.asa.org.uk/rulings/luno-money-ltd-g21-1101558-luno-pte-ltd.html>

## Summary of the costs and benefits of the proposal

	Costs	Benefits
<b>Firms</b>	<ul style="list-style-type: none"> <li>Quantified one-off compliance costs – £59 million</li> <li>Quantified ongoing compliance costs – £554k (upper bound)</li> <li>Increased financing costs/reduced revenue and profitability</li> </ul>	<ul style="list-style-type: none"> <li>Less risk of loss of reputation from customers investing in inappropriate investments</li> <li>Savings from loss of monetary/non-monetary inducement expenditure – £1.46 million</li> <li>Improved trust in the retail investments market</li> </ul>
<b>Consumers</b>	<ul style="list-style-type: none"> <li>Potentially fewer investment options available</li> <li>Increased time needed to purchase HRI – £1.36 million</li> <li>Loss of monetary/non-monetary inducement benefits- £1.46 million</li> <li>Potentially higher costs when purchasing HRI</li> </ul>	<ul style="list-style-type: none"> <li>Reduced risk of unexpected financial loss for consumers, and associated wellbeing benefits</li> <li>Reduced risk of any further financial difficulty because of an unexpected financial loss, and associated wellbeing benefits</li> <li>Improved trust in the retail investments market</li> </ul>
<b>FCA</b>	<ul style="list-style-type: none"> <li>Absorbed as business as usual</li> </ul>	

## Benefits

55. In this section we explain the benefits to firms and consumers.

### Benefits to firms

56. Firms communicating financial promotions for HRI that use inducements to invest will make a monetary saving as a result of the ban on such inducements. They will no longer incur the expenditure required to offer these monetary/non-monetary inducement benefits, which we have estimated to be £1.46 million (see calculations under 'costs to consumers' below). However, this is likely to be offset by loss of revenue and profit generated by the inducements, assuming they were profitable.

57. Where misleading and unclear HRI financial promotions play a part in large numbers of consumers suffering significant and unexpected financial loss, this tends to result in high media coverage and adversely affects a firm's reputation. Our strengthened financial promotions regime aims to prevent such unexpected losses and consumer harm from occurring in the first instance, reducing the risk of associated negative media attention.

58. We anticipate that these proposals will bring wider benefits to firms in the form of increased trust in the retail investments market amongst consumers. Consumers making better informed investment decisions should reduce the risk that significant investment losses from high-risk investments are unexpected for consumers, and are borne by those that cannot absorb such losses. We anticipate that this will reduce the risk of a reduction in consumer confidence and trust in the market from investing in high-risk investments unknowingly, and ultimately encourage further use. This may make it easier for all firms to raise capital.

## Benefits to consumers

59. We expect our proposals will result in a reduction in retail consumers unknowingly purchasing HRI beyond their risk tolerance. We anticipate that as a result, the risk of consumers suffering unexpected financial losses that they cannot easily absorb will be reduced. This risk may be reduced to a greater extent for cryptoassets, which are not currently covered by FCA rules on financial promotions. This then reduces the risk of knock-on financial difficulties, for example if consumers are in debt, and brings benefits in the form of improved wellbeing. There are also benefits to consumers if they then purchase more appropriate investments instead. Our proposals could lead to improved trust and confidence in the retail investments market, as a result of more appropriate investment decisions.
60. It is not reasonably practicable to quantify these benefits, as it is very difficult to predict how individuals will respond to the new proposals. We would need to estimate the amount by which consumers would reduce investment or stop investing in high-risk investments where this would be inappropriate for them, as a result of our proposals. We also do not have specific data that would help us estimate how many consumers in total we can expect will reduce or stop investing.
61. However, evidence from our behavioural testing supports our expectations that the policy package will lead to positive behavioural change by consumers. We have provided below an indication of the potential benefits that we may expect, inferred from the behavioural testing we have undertaken. Our testing showed that:
- The risk warning wording we are proposing improved comprehension of key investment risks for crowdfunding by up to 15%. Participants were up to 47% more likely to score the risk of crowdfunding as an 8 or higher on a 10-point risk scale, relative to the status quo, where they saw the control risk warning ('your capital is at risk'). The risk warning was effective for both crowdfunding and cryptoassets. We consider that this suggests that the risk warning is likely to be effective across a range of investments.
  - 48% of participants clicked on the "Take 2min to learn more" link within the risk warning when it was available, which produced a pop-up of summary risk information for the investment type.
  - Personalised messages, like the personalised risk warning pop-up we are proposing, were the most effective in increasing the number of people who clicked on the link within the risk warning (increasing the number by 388% compared to the control).
  - Salient, well-summarised information (similar to the investment-specific risk information we are proposing) was the best means of increasing consumers' comprehension of key investment risks and of consumers identifying an investment as high-risk within the experiment.
  - Personalised risk warnings in conjunction with the summary risk information increased the perceived risk of a crowdfunding investment by nearly 35% in comparison to the control.
  - Adding an 'evidence declaration', whereby consumers are required to state the specific investor criteria they meet and provide supporting evidence (eg stating their income to demonstrate they are a high-net-worth investor), is effective in reducing the number of consumers that sign the statement to say that they meet the criteria to be a specific category of investor. The evidence declaration reduced this 'self-certification' by 36%. The results suggest that fewer consumers will self-certify as high net worth or sophisticated investors, possibly because they do not meet the criteria. Applied to 'Non-Mass Market Investments', this

finding suggests fewer consumers will invest. Applied to 'Restricted Mass Market Investments', this finding suggests more consumers may either not invest, or invest with a limit of 10% of their net investible assets as a restricted investor.<sup>14</sup>

- 62.** Taken together, our behavioural experiment findings suggest that our proposals will reduce the likelihood of consumers investing in HRI when they do not match their risk tolerance.
- 63.** To illustrate an example of our proposals' potential impact, we estimate a reduction of 2.7k 'Non-Mass Market Investment' investors annually based on the evidence above from the experiments on self-certification. This illustration is calculated by taking the number of people who will try to purchase or increase their holdings of these investments annually (6%<sup>15</sup> of current NMPI and SIS holders (127k) which is estimated to be approximately 7.6k) multiplied by a 36% reduction in the number of people who we estimate will go through the full consumer journey annually based on our behavioural self-certification findings.<sup>16</sup>
- 64.** The benefits described above may be greatest in the cryptoasset market, where the number of consumers is significantly larger than other HRI. Approximately 2.3 million consumers own cryptoassets and 11% of owners- approximately 253,000 people- said they regretted their purchase (FCA Consumer Research 2021). 60% of the consumers who regretted their purchase of cryptoassets, were encouraged or led to buy as a result of advertising. If these promotions were poor quality and misleading, our proposals may have had a significant consumer benefit by preventing unexpected financial loss or feelings of regret. In addition, our research indicates median holdings have increased year-on-year from £260 (2020) to £300 (2021) which, other things equal, could mean larger losses for consumers in the absence of our intervention.
- 65.** The number of retail consumers who could benefit from the proposals is potentially in the millions. However, due to uncertainties about the cryptoasset market and about the direct application of the behavioural experiment results, we do not think it is reasonably practicable to estimate an exact number.
- 66.** Another piece of contextual evidence that informs the proportionality of our proposals is the level of vulnerability among retail investors. The results of Ipsos MORI's Financial Research Survey<sup>17</sup> show that 56% of high-risk investment holders surveyed exhibited at least one characteristic of vulnerability. This figure was 41% for all adults with investments, and 47% for British adults. If we apply this same percentage (56%) to our estimate of all HRI consumers affected by our proposals (3.9 million), this infers a population of 2.18 million HRI holders exhibiting characteristics of vulnerability. These consumers are likely to be harmed more by an unexpected investment loss, and yet a large number of them are present in the high- risk end of the market where this is more likely.

14 However, even with the evidence declaration, self-certification rates (as 'high net worth' or 'sophisticated') are over twice the level we would expect. Please see paragraphs 4.44-4.47 in the CP for further detail on this, and what else we think is needed to reduce harm.

15 Please see paragraphs 47-48 for detail on the underlying assumption about the flow of consumers.

16 This inference also implicitly assumes that all participants had the same willingness to purchase 'Non-Mass Market Investments' when entering the consumer journey. It also implicitly assumes that 36% of people under the status quo no longer certify under the evidence declaration setting, whilst 64% of people continue to certify under the evidence declaration setting.

17 The Financial Research Survey (FRS) is a syndicated survey carried out on behalf of 21 financial institutions for Ipsos MORI. The survey is carried out monthly among c. 4,500 GB adults aged 16+ over the telephone (using RDD and quota sample) and online (quota sample). These results are based on 50,081 participants surveyed monthly between June 2020 and June 2021. Survey data was weighted to the target audience. Full Survey details can be found in Annex 6, and further detail on the results can be found in paragraph 4.9 of this CP. 'High-risk investments' were defined as peer-to-peer loans, retail bonds/mini bonds, Innovative Finance ISAs (IFISAs) and cryptoassets for the purposes of this research.

### **Break-even analysis**

- 67.** To further illustrate the benefits of our proposal, we have undertaken a break-even analysis. This estimates the benefits that will need to be realised for the proposed package to be 'net beneficial', given the compliance costs incurred by firms.
- 68.** This break-even analysis excludes the unquantified ongoing costs and focuses only on the compliance costs faced by firms in year 1. We estimate a total quantifiable year one cost (one-off and ongoing) of £60.87 million, of which 41.28 million is attributed to our cryptoasset proposals, which is explained in the cost section below.
- 69.** As explained in paragraph 48 in the key assumptions section, we do not have data on the flow into HRIs (excluding cryptoassets), but have estimated that 142k consumers will purchase these investments for the first time, or increase their holdings in these, using the best available data (as explained above). In terms of cryptoassets, we show in paragraph 49 that 1.081m owners would purchase cryptoassets again, alongside a conservatively estimated 400k new cryptoasset owners annually.
- 70.** For the impact of our interventions to break even in monetary terms, each new potential HRI consumer or existing holder increasing their holdings (estimated to be 142,000 for HRIs excluding cryptoassets plus 1,481,000 for cryptoassets) would need to realise or make a saving of £38<sup>18</sup> in benefits on average per consumer. As we expect 1.623 million to be an underestimate of the consumers affected, this breakeven figure is likely to be lower still. We anticipate that our proposals will reduce harm in the form of unexpected losses and financial difficulties, as well as associated well-being effects. We consider it feasible that these benefits will be realised.
- 71.** Our breakeven figure can be put into perspective when considering the potential size of unexpected losses from high-risk investments. For example, per paragraph 64, median holdings of cryptoassets have increased year-on-year to £300 and 11% of crypto owners (253,000) say they regret their purchase. Of these, 60% (151,800) saw adverts and were encouraged or led to buy as a result. If these consumers were unaware of the risks of financial loss or were misled by adverts, our proposals could have had significant monetary benefits for these consumers, alongside benefits to their wellbeing.
- 72.** A further perspective on the break-even analysis can be achieved by expressing the analysis in terms of the number of consumers that would need to be dissuaded from investing for the benefits to exceed the costs. An illustrative example can be shown for cryptoassets, which represent the bulk of the costs of these proposals (£41.28m out of a total of £60.87m). Consumer research reports that current median holdings of cryptoassets are £300 per consumer, so we assume that new purchases would be equal to the current median holding. Expressing the total one-off costs for cryptoassets in terms of new purchases gives a total of 137,600 consumers that would need to benefit from being dissuaded from purchasing cryptoassets for the benefits to exceed the costs. This estimate is smaller than the 151,800 consumers that regret their cryptoasset purchase after seeing adverts that led/encouraged them to buy cryptoassets.
- 73.** We consider the break-even over time by calculating the share of new consumers that would need to be dissuaded from investing in cryptoassets every year for the benefits to exceed the costs. Assuming reductions in the number of consumers are

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18 To calculate our break-even figure of £38 per consumer, we have summed the total quantified year one costs (one off and ongoing), and divided this (£60.94 million) by the total number of consumers we expect to purchase or increase their holdings in HRI (estimated to be 1.62 million in total).

achieved equally over a 10-year period, 13,760 consumers per year would need to be dissuaded from investing in cryptoassets. We also assume a constant 400,000 new holders of cryptoassets per year. This figure is a conservative estimate as it does not include current cryptoasset owners who have stated they would purchase again. The result would be that 3.4% of consumers per year (13,760 consumers out of 400,000 new investors in cryptoassets per year) would need to be dissuaded from making inappropriate purchases for the benefits of the policy proposal to exceed its costs over 10 years. If as a result of the policy the number of consumers that are dissuaded from investing in cryptoassets is greater than the break-even amount, then the benefits will exceed the costs sooner than in 10 years.

- 74.** Further context is provided when considering the potential size of high-risk investment losses. The collapse of London Capital and Finance in January 2019 resulted in consumer losses of £230 million. At the point the P2P firm 'Lendy' collapsed in May 2019, investors were owed more than £150m, though final losses may be smaller than this as some loans are recovered during the administration process. Our interventions are not primarily aimed at addressing these specific cases, which have been mitigated by other FCA interventions such as our ban on the mass-marketing of speculative illiquid securities. However, they demonstrate the potential for harm with firms issuing and distributing high-risk investments, and the scale of consumer losses that can result.

## Costs

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- 75.** This section outlines the costs to firms, the FCA and consumers.

### Costs to firms

- 76.** In the case where promotions must be approved, we expect the costs of our s21 proposals and some familiarisation costs for our consumer journey proposals to be incurred by the s21 approver (and then passed on to the promotion communicator through fees), and the costs of our consumer journey proposals to be incurred by the communicator of the promotion. In the case where non-readily realisable securities and peer to peer agreements are distributed via a P2P or investment-based crowdfunding platform, we expect that the platform will incur the costs of our consumer journey proposals (which will then be reflected in the fees to borrowers/lenders/issuers).
- 77.** We have separated out the costs of our proposals to firms in terms of which firms incur the costs. We set out below the total costs to firms promoting high-risk investments (excluding crypto assets), the total costs to s21 approvers and the total costs to firms promoting crypto assets.

78. The table below sets out our estimates of the costs to firms of our proposals according to the type of firm affected:

Firms affected	Type of costs	Total Costs (£)
Authorised P2P and IBCF platforms	One off	£1.94m
	Ongoing	Unquantified
Issuers of NMMI	One off	£14.50m
	Ongoing	Unquantified
s.21 Approvers	One off	£1.28- £2.12m
	Ongoing	£188k – £554k per year
Firms promoting cryptoassets	One off	£41.28m
	Ongoing	Unquantified
<b>Total quantified costs</b>	One off	£59.00m
	Ongoing (upper bound)	£554k per year

### Costs of strengthening the consumer journey for firms communicating financial promotions for high-risk investments (excluding cryptoassets)

79. Costs of the proposals to strengthen the consumer journey will apply to firms communicating financial promotions for 'Restricted Mass Market' and 'Non-Mass Market Investments'. This section includes the costs to authorised firms (investment-based crowdfunding and P2P platforms) and issuers of 'Non-Mass Market Investments'. This however excludes the costs to firms promoting cryptoassets (see the section starting at paragraph 116 for further detail on the costs for these firms).

80. In estimating these costs, we have made a number of additional assumptions:

- When estimating the costs to firms, we are assuming that all firms will need to implement all of the consumer journey proposals. In reality, this will not be the case. For example, communicators of financial promotions for 'Non-Mass Market Investments' only will not need to implement our proposals on the appropriateness test, as this test is not required as a condition for promoting these investments. Furthermore, any firms that do not currently use incentives to invest within their business model will not need to incur costs to remove these.
- We are also assuming that there will be no variation in the extent to which firms will need to change their existing practices (aside from the effect of their relative sizes), which is also unlikely to be the case. For example, firms that already impose minimum time periods before a consumer can be reassessed for appropriateness are likely to have lower costs of amendments than firms that do not.

81. We consider that these differences between firms would not be reasonably practicable to estimate and would likely have an immaterial impact overall.

82. We anticipate that the direct one-off costs to firms may disproportionately impact smaller firms. This is because some of the costs, such as some IT changes, are likely to be similar for firms of all sizes and will therefore represent a bigger percentage of small firms' total costs. Small firms are also more likely to need to use an outsourced provider to implement some of the changes, which may be more costly. We expect the vast majority of firms affected by our proposals to be small. However, this is likely to be offset to an extent by the fact that some costs will be more significant for firms with

more complex business models (such as authorised platforms), that are likely to be larger than issuers for example.

83. We use FCA standardised compliance cost estimates to inform our analysis. However, many of the affected firms are not regulated, and as such applying the standardised estimates assumes that costs for regulated firms are representative of unregulated firms. We have assumed that all issuers of 'Non-Mass Market Investments' would incur costs on average equivalent to a 'small' regulated firm.

84. The following table summarises the estimated one off and ongoing costs of our consumer journey proposals to the firms that would need to implement them.

Stakeholder	Type of costs	Costs
Authorised P2P lending and IBCF platforms (approx. 60)	<b>One off cost</b>	
	Familiarisation and legal costs	£19k
	Governance & change projects, including review by ExCo and the Board	£226k
	Costs of making changes to IT systems	£1.7 million
	<b>Ongoing costs</b>	
	Decreased revenue	Unquantified
'Non-Mass Market Investment' issuers (approx. 501)	<b>One off cost</b>	
	Familiarisation and legal costs	£150k
	Governance & change projects, including review by ExCo and the Board	£998k
	Costs of making changes to IT systems	£13.3 million
	<b>Ongoing costs</b>	
	Increased financing and/or s21 approval costs or decreased revenue	Unquantified

### ***Familiarisation and legal costs***

85. We use standardised assumptions to produce an estimate of familiarisation costs. We anticipate that there will be approximately 66 pages of policy documentation excluding the legal instrument. Assuming 300 words per page and a reading speed of 100 words per minute, it would take around 3.5 hours to read the document. It is further assumed that 5 staff at each medium firm and 2 staff at each small firm will read the text. We expect that all firms in scope will incur familiarisation costs.

86. Regarding legal costs, we assume 30 pages of legal text. We anticipate that 2 legal staff at a medium firm and 1 legal staff member at each small firm will read the legal instrument, taking 25 hours for each medium firm and 4 hours per small firm.

87. The total familiarisation and legal costs to firms communicating financial promotions for high-risk investments (excluding cryptoassets), including 30% overheads, is estimated at £169,200. On average this would cost £300 per firm in scope.

### **IT changes**

- 88.** We would expect authorised firms and unregulated issuers to incur costs in updating their IT systems to implement the changes. We do not expect firms to make large scale IT changes to comply with the rules, as they should already have existing infrastructure in place that can be modified. The IT changes that would need to be made are, depending on the types of investment, the following:
- Update the risk warning shown on their website and/or mobile application
  - Build in the pop-up for the product-specific risk information, linked to in the risk warning
  - Build in the 24-hour cooling off period for first time investors
  - Add in the evidence declaration field into the client categorisation process, and update the investor statements
  - Build in the personalised risk warning pop-up and the associated risk information pop-up linked within this
  - Amend the appropriateness test question and answer fields and introduce alternative question sets for reassessments
  - Amend the appropriateness test journey (ie adding in the 24-hour lock-out period if an investment is determined inappropriate for the consumer, ensure all consumers are subject to an appropriateness assessment and must be considered appropriate to be able to invest, remove features designed to influence the consumer during the assessment, removal of any encouragement to be re-assessed from communications if considered inappropriate)
  - Remove references to inducements to invest
  - Incorporate record keeping requirements into data collection
- 89.** Based on standardised assumptions, we assume it will take a small firm an average of 93 person days to update their IT systems and a medium firm an average of 312 person days across several roles (business analysis team, design team, programming team, project management team, test team, senior management). We acknowledge that there may be significant disparities amongst firms underneath this, with some firms needing more days than the average and some needing less.
- 90.** Using standardised assumptions, we estimate the costs of implementing IT changes according to the time requirements for different types of staff and their hourly salary including overheads.
- 91.** In total, we expect one-off IT costs to be £15,044,400. On average this would cost £26,800 per firm in scope.

### **Change and governance**

- 92.** We anticipate that firms would need to run a 'change project' to implement the required changes to both infrastructure and their governance, policies and procedures. This may include changes to non-digital financial promotions.
- 93.** To estimate the cost to firms, we use standardised estimates of the time incurred by a project team and management, including senior staff time.
- 94.** We anticipate that a change project would be of minor scale. According to our standardised assumptions, we assume it would take 6 person days across project teams and managers for small firms and 280 person days for medium firms. We also assume additional resource for Board and Executive Committee review, which we anticipate being 0.1 and 0.3 person days respectively for small firms and 0.6 and 0.9

person days respectively for a medium firm. Using the cost of various staff resources required, we estimate a total cost of change and governance.

95. In total, we expect the one-off change project costs to be £1,225,600. On average this would cost £2,200 per firm in scope.

#### ***Ongoing costs for firms and issuers***

96. As a result of our proposals, we expect there will be a reduction in the number of retail investors who invest for the first time or make further investments in HRI. This would reduce the amount of funds raised by the issuers of HRI, and then either reduce their revenue and profitability, or potentially increase their financing costs. This is likely to also reduce the revenue and profitability of platforms that distribute these investments. Firms that get their financial promotions approved may also have increased costs of seeking a s21 approval. As noted in paragraph 115, this average fee may increase due to the proposed changes relating to s21 approvers. Due to the uncertainty around fees that will be charged and the number of adverts that will be approved per firm, we do not think it is reasonably practicable to estimate these on-going costs of increased s21 approver fees. However, we welcome feedback from firms on this as part of the consultation.
97. We also believe that it is not reasonably practicable to estimate the ongoing costs of decreased revenues for firms and issuers, or increased financing costs for issuers. This is because we do not know how much investment in these high-risk products will be reduced as a result of our proposals, and therefore by how much firms' revenues will be reduced or financing costs for issuers trying to raise capital increased. These costs are a transfer to consumers, as they should equate to the reduction in consumer investment in high-risk investments, where they are not in line with their risk tolerance.
- #### **Costs to S.21 approvers**
98. The costs outlined below apply to all s21 approving firms, including those approving cryptoasset promotions. The costs to s21 approvers include the costs of our proposals for s21 approvers, as well as familiarisation costs in relation to our consumer journey proposals and our additional proposals for promotions of investments in crypto assets. We estimate lower and upper bound costs under two assumptions: that the number of s21 approvers will remain at 32 (lower bound); or the number of s21 approvers will rise to 100 (upper bound).

Stakeholder	Type of costs	Costs
S21 approvers (32 current firms – rising to 100 firms) <sup>19</sup>	<b>One off cost</b>	
	Familiarisation and legal costs	£16k – £43k
	Governance & change projects, including review by ExCo and the Board	£491k – £626k
	Costs of making changes to IT systems	£722.5k – £1,330k
	Costs of providing staff training/ disseminating information about the new rules	£51k-£117k
	<b>Ongoing costs</b>	
	Carrying out regular compliance assessments and monitoring	£187.5k-£554.0k pa
<b>Total</b>	One off (range)	£1.28m – £2.12m
	Ongoing (range)	£187.5k pa – £554.0k pa

### ***Familiarisation and legal costs***

- 99.** We expect that all firms (s21 approvers) in scope will incur familiarisation costs. We anticipate that there will be approximately 88 pages of policy documentation, excluding the legal instrument. Assuming 300 words per page and a reading speed of 100 words per minute, it would take around 4.5 hours to read the document. It is further assumed that 5 staff at each medium firm and 2 staff at each small firm will read the text.
- 100.** With regard to legal costs, we assume 74 pages of legal text. We anticipate that 2 legal staff at each medium firm and 1 legal staff at each small firm will read the legal instrument, taking 62 hours per medium firm and 10 hours per small firm.
- 101.** The total familiarisation and legal cost for s21 approvers is estimated to be between £16,000 and £43,200. On average this would cost £500 per s21 approver. This may vary depending on the size of the firms that choose to carry out s21 approvals in the future.

### ***IT changes***

- 102.** We would expect s21 approvers to incur some costs in updating their IT systems to implement the changes. Although respondents to [DP21/1](#) stated they would incur costs of this nature to implement our proposals, the feedback given was not specific. We do not expect these firms to make large scale IT changes to comply with the rules as authorised firms should already have existing systems in place to assist in checking the compliance of promotions. However, we do expect authorised firms to increase the frequency of compliance checks for financial promotions, incurring some IT systems changes and costs.
- 103.** Based on standardised assumptions and supervisory knowledge, we assume it will take a small firm an average of 31 person days to update their IT systems and a medium firm an average of 312 person days across several roles (business analysis team, design team, programming team, project management team, test team,

<sup>19</sup> Some s21 approvers are also authorised platforms that are included in the calculations above for firms that promote high-risk investments. To avoid double counting, the familiarisation costs of the consumer journey proposals for these firms are included in the cost section above in their capacity as promoters of high-risk investments. We exclude the familiarisation costs of the consumer journey in this section where s21 approvers are also promoters of high-risk investments (excluding cryptoassets).

senior management). Using standardised assumptions, we estimate the costs of implementing IT changes according to the time requirements for different types of staff and their hourly salary including overheads.

- 104.** The total one-off IT cost is estimated to range from £722,500 to £1,330,600. On average this would cost £22,600 per s21 approver. This may vary depending on the size of the firms that choose to carry out s21 approvals in the future.

### ***Ongoing monitoring requirement***

- 105.** Firms should already be familiar with, and have systems and staff in place to conduct, compliance checks on financial promotions. Our new rules will mean they will conduct these checks more regularly and receive attestations of no material change in the financial promotion from their client to assist them. We expect costs associated with ongoing monitoring of compliance to be absorbed as BAU compliance costs. The nature of the activities required to do more regular compliance checks are as follows:

- Reviewing websites and firm documents to check, amongst other things, the ongoing commercial viability of the proposition described in the promotion, whether funds raised or the investments themselves are being used for the intended purpose, whether the headline rates of return in the promotion continue to be reasonably achievable
- Reviewing promotions for compliance with risk warnings and disclosures
- Reviewing/including the date stamp on the face of the approval
- More regular checking that systems and controls of the firm seeking approval are in place to assess appropriateness.

- 106.** We use the cost of a compliance officer's time assuming that it would take 3.5 person hours per week for each small firm and 5 person hours per week for each medium firm to compute an ongoing monitoring cost. The total ongoing cost is estimated to be £187,500- £554,000 per annum. On average this would cost £22,600 per s21 approver. This may vary depending on the size of the firms that choose to carry out s21 approvals in the future.

### ***Change and governance***

- 107.** We would also expect firms to develop new procedures to comply with the ongoing monitoring rules.
- 108.** We anticipate that the change and governance projects for s21 approvers would be of minor scale. Using our standardised assumptions, we assume it would take 12 person days across project teams and managers for small firms and 280 person days for medium firms. We also assume additional resource for Board and Executive Committee review, which we anticipate being 0.1 and 0.3 person days respectively for small firms and 0.6 and 0.9 person days respectively for medium firms.
- 109.** The total one-off governance and change cost is estimated to be £491,000 to £626,500. On average this would cost £15,300 per s21 approver. This may vary depending on the size of the firms that choose to carry out s21 approvals in the future.

### ***Costs of providing staff training/disseminating information on new rule changes***

- 110.** It is likely that staff will need compliance training as a result of the additional requirements that strengthen the role of a s21 approver, such as regularly checking compliance after first approval of any promotion, collecting attestations of no material change of the promotion from the unauthorised firm and including a date stamp of when the promotion was approved.
- 111.** We assume that 1 working day of training will be required (7 hours) with the expectation that 2 staff per small firm and 5 staff per medium firm would need compliance training. We use standardised compliance cost assumptions to estimate the cost of staff time, including overheads, and the cost of organising the training itself.
- 112.** The total one-off cost for this staff training is estimated to range from £50,700 – £117,200. On average this would cost £1600 per s21 approver. This may vary depending on the size of the firms that choose to carry out s21 approvals in the future.

### ***Fees***

- 113.** We intend to recover some of the costs of FCA resourcing and operating the s21 gateway through an application fee from firms wishing to apply to the s21 gateway and approve the promotions of unauthorised persons. We are reviewing the cost implications and expect to consult on any new fees as part of our annual consultation on FCA regulated fees and levies in due course once legislation has been published.

### ***Impact on competition***

- 114.** We are aware that there will be a potential impact on competition in the market as the competence and expertise requirements will restrict the number of firms who are able to approve or confirm the compliance of financial promotions. This may be particularly relevant for cryptoasset firms who will need to find a s21 approver to approve their promotions for the first time. We recognise that the population of authorised firms with sufficient competence and expertise to approve cryptoasset financial promotions is likely to be limited at first.
- 115.** From our Supervisory work, we estimate firms charge between £5,000 and £15,000 for approving a financial promotion, depending on the nature and complexity of the product. There is a risk that a reduction in the number of s21 approvers may increase the market power of a small number of firms and lead them to raising fees. It is not reasonably practicable to predict how likely this is, but we will closely monitor the impact of our proposals on the market and consider acting where necessary:
- We are considering firms, in future, having to send us details of the revenue earned from approval activity. This could serve as an indicator of any impact on competition, via potential increases in prices charged for approvals.
  - We have also proposed to extend the existing conflict of interest rule in SYSC to s21 approvers. We expect them to manage and identify all conflicts of interest, so they do not take advantage of their status as a 21 approver (see paragraph 5.36 of the CP).

### ***Costs to firms that promote investments in cryptoassets***

- 116.** We expect firms currently promoting investments in cryptoassets will incur a range of costs as a result of the changes proposed in this CP. Given that they do not currently have to adhere to any financial promotion rules, we anticipate that there will be additional costs, in most cases, for cryptoasset firms compared to those incurred by firms that are already subject to the financial promotions regime.

**117.** We use FCA standardised compliance cost estimates to inform our analysis as in previous sections. We have assumed 20% of cryptoasset firms are equivalent to 'medium' and 80% 'small' sized regulated firms. This is an estimate based on our current understanding of the size of cryptoasset businesses operating in the UK.

**118.** In estimating these costs, we have made a number of additional assumptions:

- As for other high-risk investments (see paragraph 80), we assume that all firms will need to implement all of the consumer journey proposals.
- We have also assumed that cryptoasset firms do not currently comply with existing financial promotions rules. This is because the cryptoasset market has largely been unregulated. However, this may not be the case for all firms, so costs estimates are likely conservative. We are also assuming that there will be no variation in the extent to which firms will need to change their existing practices (aside from the effect of their relative sizes).

**119.** The costs set out in the table below assume the existing infrastructure is in place for compliance and legal staff in terms of familiarisation and legal costs. We acknowledge that many cryptoasset firms may have to build infrastructure such as systems, processes and procedures to ensure compliance. IT and governance and change costs are assumed to be larger for cryptoasset firms compared to other high-risk investment firms, as these will have to be adapted to comply with the regulatory regime for the first time.

Costs to:	Type of costs	Cost for all firms
Firms promoting cryptoassets	<b>One-off costs</b>	
	Familiarisation and legal costs	£655k
	Costs of changes to IT systems	£25.35m
	Governance and change projects, including review by ExCo and the Board	£14.30m
	Staff training/dissemination of new rules	£0.97m
	<b>Ongoing costs</b>	
	S21 approver fees	Per advert fees
	Loss of revenue	Unquantified
<b>Total cost</b>		£ 41.28 million (excluding on-going costs)

### ***Familiarisation and legal costs***

**120.** Firms communicating cryptoasset promotions will need to understand the relevant requirements they will be subject to, once cryptoassets are brought within the financial promotion regime. This includes the financial promotions rules contained within the FCA Handbook, as well as relevant legislation. They may need to consult compliance professionals or hire new expertise to understand the impact of the regime and the proposed changes on their business.

**121.** We anticipate that there will be approximately 73 pages of policy documentation excluding the legal instrument. Assuming 300 words per page and a reading speed of 100 words per minute, it would take around 3.5 hours to read the document. It is further assumed that 5 staff for a medium firm and 2 staff for a small firm will read the text. We expect that all firms in scope will incur familiarisation costs.

- 122.** In terms of legal costs, we anticipate 31 pages of legal text will need to be read in the CP. We also assume that cryptoasset firms will not be familiar with the regulatory regime as it currently stands. As a result, we expect that cryptoasset firms will need to read a further 64 pages of legal and regulatory documentation to understand the requirements of the regime.
- 123.** We anticipate that 2 legal or compliance staff for a medium firm will read the legal and regulatory information, taking 76 hours. We anticipate for a small firm, 1 legal staff member will read the document taking 13 hours.
- 124.** The total familiarisation and legal cost for firms communicating cryptoasset promotions, including 30% overheads, is estimated at £655,403. On average this would be £2,200 per firm.
- 125.** We also acknowledge that cryptoasset firms who do not yet have compliance staff or sufficient legal staff will face further costs. A cryptoasset firm may have further recruitment and salary costs in addition to familiarisation costs above. However, due to uncertainty about the resources available at firms promoting cryptoassets, we do not think it is reasonably practicable to estimate an additional overall average on-going cost per firm.

### ***IT changes***

- 126.** We would expect firms promoting cryptoassets to incur costs when building or updating their IT systems to implement the required changes. In addition to the IT changes outlined in the consumer journey section, we anticipate further IT costs for firms promoting cryptoassets. For example, building in the client categorisation process and an appropriateness assessment into their consumer journey. For some firms promoting cryptoassets, these may be large-scale changes, as existing IT infrastructure may need to be adapted significantly. We therefore assume IT changes will be 'major' in scale according to standardised cost model assumptions for cryptoasset firms compared to 'moderate' in scale for firms promoting other kinds of high-risk investment. Based on standardised cost assumptions for 'major' projects and supervisory knowledge, we expect that medium sized firms will take on average 585 person days to implement the changes and small firms will take on average 176 person days.
- 127.** In total, we estimate one-off IT costs to be £25,350,366. On average, this would be £84,500 per firm although specific firms may experience costs somewhat higher or lower than this.

### ***Change and governance***

- 128.** We would expect firms to operate a change programme to update existing or, in some cases create brand new, internal processes and procedures to comply with the new requirements for communicating a cryptoasset promotion. As a result, we assume the change project would be 'moderate' in scale for firms promoting cryptoassets compared to 'minor' for other high-risk investment.
- 129.** Using standardised cost model assumptions for 'moderate' projects, we expect that medium-sized firms would on average spend 560 person days to deliver the changes required to comply with the proposed rules, whilst small-sized firms would spend on average 18 person days. The time is spread across project teams and manager oversight. We also assume additional resource for Board and Executive Committee review, which we anticipate being 0.2 and 0.4 person days respectively for small firms and 0.9 and 1.3 person days respectively for a medium firm.

- 130.** In total, based on the SCM and an estimate of 300 firms, we expect the one-off change project costs to be £14,303,838. On average, this would be £47,700 per firm although specific firms may experience costs somewhat higher or lower than this.

### ***Costs of providing staff training/disseminating information on new rule changes***

- 131.** It is likely that staff at firms promoting cryptoassets will need compliance training as result of the proposals. Given financial promotion rules will apply to cryptoassets for the first time, firms will need to invest time and resources to ensure they understand the requirements imposed on them and the implications for their staff.

- 132.** We expect firms will need to implement training programmes to ensure all staff are fully aware of their responsibilities. Based on supervisory knowledge, we assume that 1 working day of training will be required (7 hours) with the expectation that 2 staff per small firm and 5 staff per medium firm would need compliance training. We use standardised compliance cost assumptions to estimate the cost of staff time, including overheads, and the cost of organising the training itself.

- 133.** In total we estimate the one-off cost for staff training and dissemination of information on new rules to be £969,584 or £3,200 per firm on average.

### ***Ongoing costs for firms promoting cryptoassets***

- 134.** Unauthorised firms wishing to promote cryptoassets will be required to have their promotions approved by an authorised 's21 approver' firm with sufficient competence and expertise. We expect this service will be provided by the s21 approver for a fee, and the average fee per promotion is currently £5,000 – £15,000, depending on the complexity of the product.

- 135.** As noted in paragraph 96 and 115 above and especially in the case of cryptoassets, this average fee may increase due to the proposed changes relating to s21 approvers, although this may in turn be passed onto consumers, in the form of higher investment fees. Due to the uncertainty around fees that will be charged and the number of adverts that will be approved per firm, we do not think it is reasonably practicable to estimate on-going costs. However, we welcome feedback from firms on this as part of the consultation.

- 136.** Additionally, as in paragraph 96 above, we note any reduction in the number of retail investors purchasing cryptoassets could reduce revenue or profitability of firms promoting them. As above, we believe that it is not reasonably practicable to estimate the ongoing costs of a decrease in revenues or profitability for firms. This is because we do not know how much investment in cryptoassets will be reduced as a result of our proposals, and therefore by how much firms' revenues will be reduced. These costs are a transfer to consumers, as the reduction in revenue equates to the reduction in consumers' inappropriate investment in cryptoassets.

### ***Costs to the FCA***

- 137.** Compliance with all of our proposals (including for cryptoassets) will be monitored through business-as-usual processes within existing resources, despite the challenges posed whenever we seek to monitor activities on the edge of our perimeter.

## Costs to consumers

- 138.** We consider that our proposals will predominantly lead to costs to consumers looking to invest for the first time in, or increase their existing holdings in, HRI. These are:
- Cost of time to invest in HRIs
  - Potential decrease in choice of HRIs
  - Potential increase in the cost to invest, or continue to be invested, in HRIs
  - Loss of inducement benefits
- 139.** However, the potential increase in the cost to invest, or continue to be invested, in HRIs may affect existing HRI customers that do not look to increase their holdings also.
- 140.** Our consumer journey proposals, and our proposal to bring cryptoassets into the financial promotions regime, will cause a time cost to consumers who wish to access high risk investments as they will slow down the purchase process. This gives them more time to consider their decision and the risks involved given their circumstances. The total length of the sales process will vary greatly, for example depending on whether the consumer must undergo an appropriateness assessment more than once.
- 141.** The sales process for HRIs other than crypto assets will increase by less, given that they already contain the existing protections in our rules. When estimating how much extra time the sale process will take as a result of our proposals, we assume that each consumer reads the new investment-specific risk information once. In the behavioural experiment (discussed in paragraphs 4.18 and 4.19 of the CP), 48% of consumers clicked on the link to this when it was presented, and our proposals are for the link to be presented twice within the sales process. We assume that reading the risk information itself will take each consumer an extra 2 minutes. Furthermore, we assume that consumers filling out the new evidence declaration fields within client categorisation will take a further 1 minute on average. This is based on the fact that participants that certified as a specific type of investor in the behavioural experiment for this proposal took around 1 minute longer when faced with the evidence declaration, than when faced with the status-quo self-certification process. We therefore assume the new proposals will increase the entire sales process by at least 3 minutes.
- 142.** For cryptoassets, we assume the same 3 minute sales time increase above, with additional time added for the introduction of the appropriateness test. We estimate the average length of the appropriateness test for consumers looking to purchase cryptoassets will be 5 minutes. We therefore assume the new proposals will increase the entire sales process for cryptoassets by at least 8 minutes.
- 143.** There will also be a cost to consumers from a slower sales process due to the 24-hour cooling off period for new investors, and any lock-out periods after investments are assessed as being inappropriate for consumers. It is not reasonably practicable to estimate the size of these costs, given the difficulty in estimating how often these elements will be triggered.
- 144.** Using the [DfT Transport & analysis guidance](#) to place a cost on consumers' time, we then multiply the minute cost of 11 pence (derived from the 2022 hourly cost of time estimated to be £6.45) by 3 minutes for HRIs other than crypto and subsequently multiply by the estimated number of non-crypto HRI transactions (estimated to be approximately 142,020; please see paragraph 48) to obtain a cost to consumers. For cryptoassets, we use the same approach multiplying the per minute cost by 8 minutes and the estimated number of cryptoasset transactions (1.48 million; see paragraph 49).

We estimate the total cost of time to be at least £45,800 for HRI consumers excluding cryptoassets and at least £1.27 million for cryptoasset consumers. This is assuming that the number of transactions remains as estimated, and is not reduced by the longer sales process. In reality, we expect some drop-outs from the process. It is worth noting that we do not have a bespoke cost of time for HRI consumers thus, we have used DfT figures as a proxy.

- 145.** Our proposals may also decrease choice for retail consumers in terms of the high-risk investments on offer, if firms find it is no longer economically viable to offer investments to restricted investors or retail consumers at all. Firms may instead decide to focus on seeking institutional investment or choose to only market to those falling under an FPO exemption (as described in paragraphs 2.12 to 2.14 of the CP). If firms remain in the retail market, they may increase costs to consumers to compensate for the costs of our proposals, such as through increased investment fees. This may also affect some existing HRI customers that do not look to increase their holdings, for example if a P2P platform decided to increase their ongoing fees to existing customers to compensate for the costs. We do not consider it reasonably practicable to estimate these costs to consumers.
- 146.** There will be a loss of monetary/non-monetary incentives for investors, as a result of our ban on inducements to invest. In our data request to P2P and crowdfunding firms in August 2021, the average amount that firms spent on inducements to invest (if they offered these) since December 2019 was £49,420. Respondents reported £1.24m total expenditure on inducements to invest in this period, used by 15,760 consumers (around £78 per consumer). We do not have data for other HRI, including cryptoassets, although we are aware of similar inducements existing in the cryptoassets market. We are therefore using the figures for P2P and crowdfunding as a proxy to estimate inducements for other HRIs, in its absence. We do not know whether these figures are representative of the broader HRI market and therefore these numbers should be treated with caution. However, we think they provide a useful illustration to understand the potential costs and is based on the best available data.
- 147.** To extrapolate this data, we take the proportion of those who benefit from inducements over the expected number of new investors and investors increasing their holdings in P2P and crowdfunding annually (ie 15,760 divided by 2.24 million). This gives us 0.7% of P2P/crowdfunding consumers. If we extrapolate that same share to all HRI consumers including cryptoassets, assuming the same proportion of other HRIs benefit from inducements (ie multiply 0.7% by the broader number of consumers who have HRIs, estimated to be 4.67 million), we get 32,800 consumers. As noted above, this is a strong assumption, and these figures may not be applicable or representative for the broader HRI and cryptoasset market. If we then make an adjustment to get an annual figure for the number of people who benefit from inducements, assuming it is uniformly distributed across the months in which the data captured, we obtain an annual number of 18,740 consumers who may benefit from inducements under the status quo. To then obtain a monetary value per annum, we multiply this figure by £78 which provides us with an approximate total inducement value to consumers of £1.46 million, which would be lost as a result of our proposal to ban inducements to invest for HRIs. It is worth noting that this is not a precise estimate but gives a broad indication of what costs would be if we assume the whole market operates similarly to the P2P and crowdfunding sectors.

- 148.** We consider the costs of our proposals that fall on a subset of consumers to be proportionate, considering the risk of harm posed to consumers for whom these investments are inappropriate. Our proposals do not prevent the individuals for whom these investments are appropriate from investing. We therefore consider the costs to these consumers in the form of time, loss of inducement benefits, potentially reduced choice and/or higher prices to be necessary to achieve the wider goals of these proposals. These costs may also be incurred by consumers for whom the investment is inappropriate but proceed anyway despite our measures.

## Annex 3

# Compatibility statement

### Compliance with legal requirements

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1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

### The FCA's objectives and regulatory principles: Compatibility statement

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7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of consumer protection. They are also relevant to the FCA's market integrity objective.

8. Our consumer protection objective is to secure an appropriate degree of protection for consumers. In considering what degree of protection may be appropriate we are required to have regard to the 7 matters listed in FSMA s.1C(2)(a)-(h).

### **The differing degrees of risk involved in different kinds of investment or other transaction**

9. The proposals in this CP are designed to reduce/prevent the harm to consumers from investing in high-risk investments that do not match their risk tolerance. As set out in chapter 3, we consider Non-Readily Realisable Securities, P2P agreements, and qualifying cryptoassets to pose a high risk to consumers. Our rules distinguish these investments from more complex, speculative investments such as Speculative Illiquid Securities and Non-Mainstream Pooled Investments which are subject to different rules and cannot be mass marketed to retail investors.

### **The principle that consumers are provided with a level of care that is appropriate given the risk involved in the transaction and capabilities of the consumer and the differing degrees of experience and expertise that consumers may have**

10. As noted above, we consider Non-Readily Realisable Securities, P2P agreements and qualifying cryptoassets to pose a high risk to consumers. Our rules require ordinary consumers investing in these products to sign a declaration to say they have not in the last 12 months, and will not in the next 12 months, invest more than 10% of their net assets (certain assets being excluded from this calculation) in these types of investments. High Net Worth and Sophisticated investors do not have to sign this declaration.
11. Our rules distinguish these investments from more complex, speculative investments such as Speculative Illiquid Securities and Non-Mainstream Pooled Investments which are subject to different rules and cannot be mass marketed to retail investors. We consider these investments to be unsuitable for most retail investors. These investments can be marketed to high net worth and sophisticated investors, provided the requirements to classify them as such and perform a preliminary suitability assessment are complied with first.

### **The needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose**

12. Our proposed 'take 2min to learn more' link in the risk warning and personalised risk warning pop up will provide consumers with well summarised information on the investments they are contemplating. The personalised risk warning pop up will deliver this in a timely manner at the point the consumer is looking to purchase the investment.

### **The general principle that consumers should take responsibility for their decisions**

13. Our rules allow consumers to invest in response to direct offer financial promotions for Non-Readily Realisable Securities and P2P agreements, provided they have been assessed as having sufficient knowledge and experience to understand the risks involved. Our proposed rules will also allow consumers to respond to promotions of cryptoassets, under the same conditions. As noted above, we consider that SISs and

NMPIs are unlikely to be suitable investments for most retail consumers. Our proposals permit marketing to consumers who are certified high net worth or sophisticated investors subject to requirements being met.

### **The different expectations that consumers may have in relation to different kinds of investment**

14. As noted above, our proposals are designed to reduce the harm from consumers investing in high-risk investments that do not match their risk tolerance. Our rules distinguish the most complex, speculative types of security from other investments.

### **Any information which the consumer financial education body has provided to us in the exercise of consumer financial education function 14.**

15. This matter is not relevant to these proposals.

### **Any information received from the Financial Ombudsman Service**

16. In many instances, the high-risk investments in scope of this CP do not fall within the Financial Ombudsman Service's compulsory jurisdiction, in particular, where the only role being performed by an authorised firm is to approve a financial promotion communicated by an unauthorised issuer (the s21 approver) and where that approval is not connected to a regulated activity being carried on by the s21 approver.
17. Where complaints related to high-risk investments are in scope, they often relate to poor quality financial promotions and poor quality appropriateness assessments. Our proposals to strengthen the role of firms communicating and approving financial promotions, and to strengthen the appropriateness test, should help reduce the number of these complaints.
18. Our integrity objective is to protect and enhance the integrity of the UK financial system, which includes the matters listed in FSMA s.1D(2)(a)-(e). Our measures support this as failures and unexpected losses for retail investors investing in products that do not match their risk appetite may undermine confidence in UK financial markets and impact the soundness, stability and resilience of the UK financial system.
19. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they reduce the harm from consumers investing in high-risk investments that do not match their risk appetite. They also improve the quality and content of financial promotions to enable retail investors to make informed investment decisions about any given product, and how much to invest. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA.
20. We have also considered the most recent recommendations from the Treasury on aspects of the economic policy of the Government, which we should have regard to when acting to advance our objectives and meet our duties (s1JA of FSMA). We think our proposals are consistent with the economic policy of the Government. Our rules are designed to secure better outcomes for consumers such that consumers are better able to align their risk appetite with their investment decisions. They also help consumers receive higher quality financial promotions to help them make more informed investment decisions.

21. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

### **The need to use our resources in the most efficient and economic way**

22. We have designed these rules to set a new, higher standard of consumer protection and to help firms better understand their obligations when communicating or approving financial promotions. This is more effective and efficient than taking a case-by-case approach to reviewing firms' financial promotions and appropriateness tests.

### **The principle that a burden or restriction should be proportionate to the benefits**

23. Our consumer research shows that too many consumers investing in high-risk investments do not understand the risks involved. Our review of firms' appropriateness tests have identified significant weaknesses by many firms. We believe our proposals to strengthen the consumer journey for high risk investments are proportionate to address the harms we have identified. None of our proposals prohibit consumers from investing in Non-Readily Realisable Securities, P2P agreements or qualifying cryptoassets, where they understand the risks involved.
24. Historically we have seen too many poor-quality financial promotions. With the Treasury's consultations on bringing qualifying cryptoassets within scope of the financial promotion regime and on reforming the Financial Promotion Order (FPO) exemptions, we expect there to be higher demand for approvals of financial promotions from unauthorised persons in future. Our proposals to strengthen the role of firms communicating or approving financial promotions are proportionate to ensuring we avoid the problems we have seen in the past. None of our proposals prevent firms communicating or approving financial promotions for investments that they have competence and expertise in.

### **The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**

25. We consider our measures will enhance confidence in UK markets, and encourage inward investment and growth, by reducing the likelihood of future mis-selling cases linked to the marketing of investments that do not match consumers risk appetite. If some issuers raise less funds in future due to our rules, we consider that is likely to affect those propositions that do not match consumers' risk appetite. This is positive for the wider economy if consumers' savings are instead invested in a way that is aligned with their risk appetite and more likely to fund productive companies' industrial or commercial operations that are non-speculative, with better prospects of sustainable growth.

### **The general principle that consumers should take responsibility for their decisions**

26. Our rules allow consumers to invest in non-readily realisable securities and P2P agreements in response to direct offer financial promotions, provided they have been assessed as having sufficient knowledge and experience to understand the risks involved. Our proposed rules will also allow consumers to be marketed qualifying cryptoassets, under the same conditions. As noted above, we consider that SISs and NMPs are unlikely to be suitable investments for most retail consumers. However our rules permit these investments to be marketed to high net worth and sophisticated investors subject to relevant requirements being met.

### **The responsibilities of senior management**

27. Relevant senior management will need to ensure that firms comply with our proposed rules, having regard to their responsibilities under the senior managers and certification regime (SMCR), which has applied to most authorised firms since 9 December 2019.

### **The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**

28. Our rules allow Non-Readily Realisable Securities, P2P agreements and qualifying cryptoassets to be mass-marketed to consumers. We have sought to distinguish these investments from more complex, speculative investments such as SISs and NMPIs.

### **The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information**

29. We do not think our rules will impact this.

### **The principle that we should exercise of our functions as transparently as possible**

30. Many of the proposals in this CP were included in a Discussion Paper (DP21/1) published in April 2021. We have considered the feedback to DP21/1 is designing these proposals.
31. We are publishing three research notes on the behavioural testing that has informed our proposed changes to the consumer journey for high-risk investments. Where possible, we have also made public the consumer research that have informed these proposals, including our 2021 cryptoasset research.
32. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). We have seen examples of firms issuing high risk investments that are scams, although they usually are non-compliant with our financial promotions rules and/or in breach of s21 FSMA. By strengthening our rules for high-risk investments and firms communicating or approving financial promotions, we will make it more difficult for those seeking to defraud consumers to either reach the general public, or alternatively to be able to disguise their activity in the absence of genuine propositions being advertised more widely.

### **Expected effect on mutual societies**

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33. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies as they apply to all firms in the same way.

## Compatibility with the duty to promote effective competition in the interests of consumers

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- 34.** In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.
- 35.** Our interventions may cause a reduction in the number of firms marketing high risk investments and access to investments for some consumers. However, we consider this to be appropriate given the harm posed by high-risk investments. Firms marketing investments that do not match consumers' risk tolerance does not represent positive competition in the interest of consumers. None of our proposals prevent consumers from investing in high-risk investments where they understand the risks involved.
- 36.** There will likely be costs to s21 approvers having to adopt the new proposals. We foresee that these costs may be passed on to unauthorised issuers by way of an increase in the financial promotion approval fee. This may drive unauthorised firms to use the FPO exemptions to lawfully communicate their financial promotions instead of our regime initially, but the outcome of the HMT consultation on changes to the high net worth and sophisticated person exemptions may drive these firms' promotions back into our perimeter through s21 approvals in the future. Unauthorised firms may also decide to use an authorised intermediary, such as a crowdfunding platform, to promote on their behalf rather than seek a s21 approval or fall within an exemption. This will again bring them within our regulatory perimeter and subject to our financial promotion rules.
- 37.** We are aware that there will be a potential impact on competition in the market as the competence and expertise requirements will restrict the number of firms who are able to approve or confirm the compliance of financial promotions. This may be particularly relevant for cryptoasset firms who will need to find a s21 approver to approve their promotions for the first time. We recognise that the population of authorised firms with sufficient competence and expertise to approve cryptoasset financial promotions is likely to be limited at first.

## Equality and diversity

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- 38.** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
- 39.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in Chapter 2 of this CP.

## Legislative and Regulatory Reform Act 2006 (LRRRA)

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- 40.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are:
- Transparent: As set out above
  - Accountable: Following our Discussion Paper published in April we are now consulting on final rules having taken feedback to the DP into account.
  - Proportionate: As set out above
  - Consistent: Our approach would apply in a consistent manner to all firms communicating or approving financial promotions
  - Targeted only at cases in which action is needed: we consider there is significant need for these measures given the evidence of consumers investing in high-risk investments that do not match their risk tolerance and the evidence of poor quality financial promotions.
- 41.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are proportionate to the potential harm to consumers or risks to our statutory objectives identified.

# Annex 4

## Draft non-Handbook guidance: Approving financial promotions

### Overview

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#### Introduction

1. In CP22/2, we consulted on proposals relating to the financial promotion rules for promotions related to investment business and subject to Chapter 4 of the Conduct of Business Sourcebook (COBS 4). This included changes to the role and responsibilities of authorised firms approving financial promotions for unauthorised persons (s21 approvers).

#### Background

2. We aim to deliver a consumer investment market that works well for the millions of people who stand to benefit from it, helping them to invest with confidence and save for planned and unexpected life events, and for the businesses in the real economy for which it provides essential funding.
3. Our Consumer Investments Strategy, published in September 2021, sets out our plan to achieve this. A key part of the strategy is addressing the harm from consumers investing in high-risk investments that do not match their risk tolerance.
4. The main way consumers build their understanding of the risks and regulatory protection associated with an investment is through the information they are given in a financial promotion when deciding whether to invest.
5. A financial promotion is an invitation or inducement to engage in investment activity (or claims management activity), that is communicated in the course of business. They can take a wide variety of forms, including adverts placed through print, broadcast or online media, marketing brochures, emails, websites or social media posts. For the purposes of this guidance, we are only concerned with financial promotions that relate to investment business and are subject to the financial promotion rules in COBS 4.
6. The financial promotion restriction in section 21 (s21) of the Financial Services and Markets Act 2000 (FSMA) means that a person must not communicate an invitation or inducement to engage in investment activity, unless:
  - the person is an authorised person, i.e. authorised by the FCA or the Prudential Regulation Authority (PRA) under Part 4A of FSMA to carry on certain regulated activities
  - the promotion has been approved by an authorised person, i.e. a s21 approver
  - an exemption in the Financial Promotion Order (FPO) applies.

7. Before an authorised person can communicate or approve a financial promotion, it must first ensure that the promotion complies with the financial promotion rules in COBS 4. This includes that the promotion is fair, clear and not misleading (see chapter 2). If the authorised person becomes aware that an approved financial promotion no longer complies with the financial promotion rules, they must withdraw approval and notify anyone they know who is relying on their approval.

## The financial promotion rules (COBS 4)

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8. We have existing guidance on approving financial promotions on our webpage [here](#). We now invite comments on the additional guidance below in light of our new proposals.
9. Before a firm approves a financial promotion for communication by an unauthorised person, it must confirm that the financial promotion complies with our financial promotion rules (COBS 4.10.2 R (1)). This is also true of firms which approve their own financial promotions for communication by unauthorised persons (see PERG 8.9.3 G).

### Name of s21 Approver

10. S21 approvers are already required by our existing rules in COBS 4.5.2R to ensure a financial promotion to a retail client includes the name of the firm that approved the promotion. This information is important to consumers so that they can confirm the identity of the authorised firm on the FCA's [Financial Services Register](#).
11. We expect firms to give sufficient prominence to the name of the firm that approved the financial promotion to assist consumers should they wish to confirm the identity of the approving firm to understand who is responsible for ensuring the financial promotion complies with applicable FCA rules.

### Ongoing monitoring

12. A firm that has approved a financial promotion is also required to take reasonable steps to monitor the continuing compliance of the financial promotion with the financial promotion rules for the lifetime of the promotion (COBS 4.10.2 R), i.e. not just at the point of approval. This means that a s21 approver is expected to monitor each financial promotion it has approved periodically to assess whether (among other things and as applicable):
  - there have been any changes to the promotion, which mean it is no longer being lawfully communicated
  - there have been any changes which may affect whether the promotion continues to be fair, clear and not misleading, including consideration of the ongoing commercial viability of the proposition described in the promotion, and whether the headline rates of return in the promotion continue to be reasonably achievable
  - funds raised are being used for the purposes described in the promotion
  - any new and relevant requirements, i.e. that have come into force post-approval, are being complied with.

13. If at any time the firm becomes aware that the approved promotion no longer complies with the financial promotion rules – through its monitoring activity or otherwise – it must withdraw its approval and notify any person known to be relying on its approval (COBS 4.10.2 R (2)).
14. As part of the ongoing monitoring requirements, firms that have approved promotions for unauthorised persons are also required to collect quarterly attestations of 'no material change' from the unauthorised persons for whom they have approved promotions (COBS 4.10.2R(1B)). Where a client is unable to provide the attestation, because there have been material changes or the client is unresponsive, the firm should consider all information available to it and where appropriate consider withdrawing its approval. Firms cannot rely solely on attestations of no material change to meet their responsibilities under the ongoing monitoring requirement and should take reasonable steps to satisfy themselves that approved promotions remain compliant.
15. The ongoing monitoring requirement applies to firms for the lifetime of the approved promotion, so it is in a better position to withdraw its approval if necessary.

### **Appropriateness assessments**

16. Where the rules on restricted mass market investments require an appropriateness assessment to be undertaken, s21 approvers must ensure that the relevant automated, or other, processes for appropriateness tests comply with our rules periodically throughout the life of the promotion, not just at the point of first approval. We would expect firms to consider the following in reviewing the processes in place to assess appropriateness – where this is to be undertaken by a person other than the s21 approver – that the person who will undertake the assessment has:
  - adequate systems and controls in place to assess the knowledge and experience of the customer
  - adequate systems and controls in place to assess the customer's understanding of the risks involved with the product or service
  - adequate systems and controls in place to record the customer's information.
17. An assessment of what is adequate should be objective and unbiased. If a firm is not satisfied with any of the above, having conducted its checks or via any other information it has available to it, it must withdraw its approval.

### **Preliminary suitability assessments (NMMI promotions)**

18. Firms approving financial promotions for NMMI products must conduct a preliminary assessment of suitability before an unauthorised person can make a promotion to high-net worth or sophisticated investors. The s21 approver should take reasonable steps to acquaint themselves with the intended client's profile and objectives as stated in COBS 4.12.5G 2(c).
19. This may include a s21 approver having sight of the following information in relation to the client, which is not an exhaustive list:
  - knowledge and history of investing in the relevant product in question
  - financial circumstances
  - investment objectives

**20.** If a firm is not satisfied that the NMMI product is suitable for the client, having conducted a preliminary assessment of suitability, or via any other information it has available to it, it should not grant its approval for the promotion.

**21.** Authorised persons can rely on another authorised firm to confirm that communications comply with the financial promotion rules where certain conditions are met (COBS 4.10.10 R). These conditions are that once they establish that the third party firm has confirmed compliance, they only communicate the promotions to intended recipients, and as far as they know, the promotion is fair, clear and not misleading, and the third party firm has not withdrawn its confirmation of compliance.

### Competence & Expertise

**22.** We expect firms to have persons with the relevant competence and expertise in-house before approving or communicating a financial promotion ( PRIN 2, SYSC 3.1.6 R and SYSC 5.1.1 R). In assessing whether it has the relevant competence and expertise to communicate or approve a particular financial promotion firms should, as a minimum, consider:

- whether the firm has adequate resources, systems and controls in place to approve and monitor the financial promotion, particularly when the firm is approving volumes of promotions
- whether it has relevant experience and/or qualifications in the investment product/sector that is the subject of the financial promotion
- the previous employment history and qualifications of the individuals responsible for approving promotions and whether they align with the product and sector underlying the promotion.

**23.** Where the promotion is related to a regulated activity for which the firm has a Part 4A permission (e.g. dealing in investments), we would generally expect the firm to have met the C&E requirement by virtue of its regulated business. However, we expect firms to take particular care when considering their competence and expertise and when approving financial promotions related to new or innovative products in their respective fields.

**24.** If a firm wishes to communicate a promotion but does not have the relevant competence and expertise in-house, this firm must find an authorised person that does. In this circumstance, the firm would need to find an authorised firm with competence and expertise to confirm compliance of the promotion to be communicated (COBS 4.10.9AR (3)). If a firm communicates a promotion without the relevant competence and expertise in the underlying product it will be in breach of our rules and we will act accordingly.

**25.** Firms are also reminded of the importance of maintaining adequate records of the financial promotions which they approve (COBS 4.11.1 R (1)). As part of this record keeping requirement, we expect you to also keep an up to date record of how you have met the competence and expertise rule when communicating or approving a financial promotion (COBS 4.11.1R (2B)). When you approve a financial promotion, you should consider recording how the promotion complies with our rules (COBS 4.11.2 G).

### Conflicts of Interest

**26.** Firms approving financial promotions are required to identify and prevent or manage any conflicts of interest relevant to s21 approval activity (COBS 4.10.12R).

## Annex 5

# Technical note on IPSOS MORI Financial Research Survey (FRS)

1. High Risk Investments are defined as holding one or more of the following investment types: Peer-to-Peer lending, Retail Bonds or Mini bonds, Innovative Finance ISAs or Cryptocurrency.
2. Vulnerability is defined through a series of questions to ascertain whether the participant has any of the following which could potentially impact their financial wellbeing:
  - a. Low financial resilience; the ability to withstand financial shocks,
  - b. Negative life events; a major life event like bereavement, relationship breakdown, or redundancy,
  - c. Low financial capability; where participants have low knowledge of financial matters or confidence in managing money,
  - d. Health related issues; conditions or illnesses impacting a consumer's ability to carry out day to day tasks.
3. Syndicate members during 2021: Ageas, Aviva, Barclays, Capital One, Co-op Bank, Co-op Insurance, Direct Line Group, Financial Conduct Authority, Goldman Sachs, Hastings Direct, HSBC, Legal & General, Lloyds Banking Group, Nationwide Building Society, NatWest, NFU Mutual, NS&I, Principality Building society, Royal Sun Alliance, Santander, Tesco Bank & TSB.

Month	Fieldwork Start	Fieldwork End	Sample Size
July	02/07/2020	02/08/2020	4,453
August	03/08/2020	28/08/2020	4,154
September	01/09/2020	27/09/2020	4,073
October	01/10/2020	28/10/2020	4,000
November	02/11/2020	23/11/2020	4,123
December	26/11/2020	17/12/2020	3,799
January	04/01/2021	26/01/2021	4,364
February	02/02/2021	22/02/2021	4,123
March	01/03/2021	22/03/2021	4,285
April	01/04/2021	26/04/2021	4,572
May	04/05/2021	25/05/2021	4,552
June	02/06/2021	23/06/2021	4,303

## Annex 6

### Abbreviations in this document

Abbreviation	Description
<b>CATF</b>	Cryptoasset Taskforce
<b>CP</b>	Consultation Paper
<b>COBS</b>	Conduct of Business Sourcebook
<b>DLT</b>	Distributed Ledger Technology
<b>DP</b>	Discussion Paper
<b>FCA</b>	Financial Conduct Authority
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FOS</b>	Financial Ombudsman Service
<b>FPO</b>	Financial Promotion Order
<b>FSMA</b>	Financial Services and Markets Act
<b>IBCF</b>	Investment Based Crowdfunding
<b>IFISA</b>	Innovative Finance Individual Savings Account
<b>ISA</b>	Individual Savings Account
<b>LTAF</b>	Long Term Asset Fund
<b>NMMI</b>	Non-Mass Market Investment
<b>NMPI</b>	Non-Mainstream Pooled Investment
<b>NRRS</b>	Non-Readily Realisable Security
<b>P2P</b>	Peer to Peer
<b>RMMI</b>	Restricted Mass Market Investment
<b>RRS</b>	Readily Realisable Security

Abbreviation	Description
SIS	Speculative Illiquid Security
UCIS	Unregulated Collective Investment Scheme
s21 approver	Section 21 approver

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Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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# Appendix 1

## Draft Handbook text

## FINANCIAL PROMOTIONS AND HIGH-RISK INVESTMENTS INSTRUMENT 2022

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137D (FCA general rules: product intervention);
  - (3) section 137R (Financial promotion rules);
  - (4) section 137T (General supplementary powers);
  - (5) section 138C (Evidential provisions);
  - (6) section 139A (Power of the FCA to give guidance); and
  - (7) section 238(5) (Restrictions on Promotion).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on *[date]*.

### Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Glossary	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Banking: Conduct of Business sourcebook (BCOBS)	Annex C
Collective Investment Schemes sourcebook (COLL)	Annex D
Credit Unions sourcebook (CREDS)	Annex E
Listing Rules sourcebook (LR)	Annex F

### Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

### Citation

- F. This instrument may be cited as the Financial Promotions and High-Risk Investments Instrument 2022.

By order of the Board  
[*date*]

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>non-mass market investment</i>	<p>either of the following:</p> <p>(a) a <i>non-mainstream pooled investment</i>;</p> <p>(b) a <i>speculative illiquid security</i>.</p>
<i>qualifying cryptoasset</i>	<p>[in accordance with paragraph XX of Schedule 1 to the <i>Financial Promotion Order</i>] any cryptographically secured digital representation of value or contractual rights which is:</p> <p>(a) fungible;</p> <p>(b) transferable or confers transferable rights, or is promoted as being transferable or as conferring transferable rights, except if transferable or conferring transferable rights, or promoted as such, only to one or more vendors or merchants in payment for goods or services;</p> <p>(c) not any other <i>controlled investment</i>;</p> <p>(d) not <i>electronic money</i>; and</p> <p>(e) not currency issued by a central bank or other public authority,</p> <p>or a right to or interest in the same falling under paragraph 27 in Schedule 1 to the <i>Financial Promotion Order</i>.</p>
<i>restricted mass market investment</i>	<p>any of the following:</p> <p>(a) a <i>non-readily realisable security</i>;</p> <p>(b) a <i>P2P agreement</i>;</p> <p>(c) a <i>P2P portfolio</i>;</p> <p>(d) a <i>qualifying cryptoasset</i>.</p>

Amend the following definitions as shown.

...

<i>controlled activity</i>	<p>(d) dealing in securities <del>and</del>, contractually based investments <u>and qualifying cryptoassets</u> as principal or agent (paragraph 3(1));</p> <p>(e) <del>arranging (bringing about) deals in investments</del> <u>arranging (bringing about) deals in investments</u> (paragraph 4(1));</p> <p>(f) <del>making arrangements with a view to transactions in investments</del> <u>making arrangements with a view to transactions in investments</u> (paragraph 4(2));</p> <p>...</p> <p>(g) <del>managing investments</del> <u>managing investments</u> (paragraph 5);</p> <p>...</p> <p>(i) <del>advising on investments (except P2P agreements)</del> <u>advising on investments (except P2P agreements)</u> (paragraph 7(1));</p> <p>...</p>
<i>investment trust</i>	<p>a company which:</p> <p>(a) ...</p> <p>(b) (for the purposes of <i>COBS 4.14 4.12</i> and the definitions of <i>non-mainstream pooled investment</i> and <i>packaged product</i> only) is resident in an <i>EEA State</i> and would qualify for such approval if resident in the <i>United Kingdom</i>.</p>
<i>non-readily realisable security</i>	<p>a security which is not any of the following:</p> <p>...</p> <p>(c) a <del>non-mainstream pooled investment</del> <u>non-mass market investment</u>;</p> <p>...</p> <p>(e) a deferred share issued by a <i>credit union</i>; <u>or</u></p> <p>(f) <i>credit union subordinated debt</i>; <del>or</del>;</p> <p>(g) <del>a speculative illiquid security</del>. <u>[deleted]</u></p> <p>(except in <i>COBS 4.14 4.12</i>, <i>COLL</i> and for the purposes of the definition of <i>non-readily realisable security</i>):</p>

	...
<i>readily realisable security</i>	(in <i>COBS 4.14 4.12</i> , <i>COLL</i> and for the purposes of the definition of <i>non-readily realisable security</i> ):
	...
<i>retail investment product</i>	<p>whether or not any of (a) to (h) are held within an <i>ISA</i> or a <i>CTF</i>.</p> <p>[Note: Section 238 of the <i>Act</i> and <i>COBS 4.12.3R 4.12</i> set out restrictions on the promotion of <del><i>non-mainstream pooled investments</i></del> <i>non-mass market investments</i> to <i>retail clients</i>. See also <i>COBS 9.3.5G</i> and <i>COBS 9A.2.22G</i> (<del><i>Non-mainstream pooled investments</i></del> <u><i>Investments subject to restrictions on retail distribution</i></u>).]</p>
<i>single company</i>	<p>a <i>single company</i> that is not part of the same <i>group</i> as the <i>single-company holding vehicle</i> investing in it and which:</p> <p>(a) ...</p> <p>(b) does not undertake any of the activities in <i>COBS 4.14.20R(2)(a) to (e) 4.12.15R(2)(a) to (e)</i> subject to <i>COBS 4.14.22R 4.12.17R</i> and <i>COBS 4.14.24R(1) 4.12.19R(1)</i> (for these purposes, <i>COBS 4.14.20R(2)(a) to (e) 4.12.15R(2)(a) to (e)</i>, <i>COBS 4.14.22R 4.12.17R</i> and <i>COBS 4.14.24R(1) 4.12.19R(1)</i> must be read as though references to the <i>issuer</i> are to the <i>single company</i>).</p>
<i>single- company holding vehicle</i>	<p>a <i>single body corporate</i> which:</p> <p>...</p> <p>(3) ensures that neither the <i>single company</i>, nor members of its <i>group</i>, will use any of the monies received from the <i>single-company holding vehicle</i> directly or indirectly for one or more of the purposes in <i>COBS 4.14.20R(2) 4.12.15R(2)</i> as modified by limb (b) of the <i>single company Glossary</i> definition.</p>
<i>speculative illiquid security</i>	has the meaning in <i>COBS 4.14.20R 4.12.15R</i> .

## Annex B

### Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 1 Application

### 1.1 General application

...

Deposits (including structured deposits)

#### 1.1.1A R ...

	Section / chapter	Application in relation to deposits
...		
(4)	<del>COBS 4.10 (Systems and controls and approving and communicating</del> <u>Approving and confirming compliance of financial promotions)</u>	To the extent that other <i>rules</i> in <i>COBS 4</i> apply.
...		

...

## 2 Conduct of business obligations

...

### 2.2 Information disclosure before providing services (other than MiFID and insurance distribution)

Application

#### 2.2.-1 R ...

(2) ...

- (a) in relation to a *derivative*, a *warrant*, a *non-readily realisable security*, a ~~*speculative illiquid security*~~ *non-mass market investment*, a *P2P agreement*, or *stock lending activity*, but as regards the matters in *COBS 2.2.1R(1)(b)* only; and

...

- (3) Where a *rule* in this section applies to a *firm* carrying on *designated investment business* in relation to a ~~*speculative illiquid security non-mass market investment*~~ the *rule* also applies to:
- (a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of *GEN 2.2.26R*); and
  - (b) a ~~Gibraltar-based firm (having the same meaning as in the Gibraltar Order)~~ *Gibraltar-based firm* to the extent that the *rule* does not already apply to such a ~~Gibraltar-based firm~~ *Gibraltar-based firm* as a result of *GEN 2.3.1R*).

...

#### 4 Communicating with clients, including financial promotions

...

#### 4.5 Communicating with retail clients (non-MiFID provisions)

...

##### General rule

- 4.5.2 R A *firm* must ensure that information:
- (1) includes the name of the *firm* (and also, where relevant, the name of the *firm* that has confirmed the compliance of the *financial promotion* for the purposes of *COBS 4.10.9AR(3)(a)*);
  - (1A) where relevant, includes the date on which the *financial promotion* was approved;
  - (2) ...
- ...
- 4.5.3 G (1) The effect of *COBS 4.5.2R(1)* is that, where relevant, the name of the *firm* that approved or confirmed the compliance of a *financial promotion* must be included in that *financial promotion*.
- (2) The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *retail client* can identify the *firm* communicating the information and, if different, the *firm* that approved or confirmed the compliance of the *financial promotion*.

- (3) The name of the *firm* should be given sufficient prominence to enable the *retail client* to easily identify the *firm* responsible for the compliance of the *financial promotion* with applicable rules.

...

#### Innovative finance ISA

- 4.5.9 G Examples of information about relevant risks (*COBS 4.5.2R*) that a *firm* should give a *retail client* in relation to an *innovative finance ISA* include:

...

- (2) ...
- (b) a request for transfer of all or part of the *innovative finance components* in the *innovative finance ISA*; ~~and~~
- (3) a warning, as relevant, that it may, or will, not be possible to sell or trade *P2P agreements* at market value on a secondary market; and
- (4) an express warning that holding an *investment* within an *innovative finance ISA* does not reduce the risks associated with that *investment* or guarantee returns and that it is possible to lose all of the money invested. This warning should be additional to any more general warning that a product or service places a *client's* capital at risk (*COBS 4.2.4G(1)*).

...

#### 4.7 Direct offer financial promotions

...

[*Editor's note*: *COBS 4.7.7R* to *COBS 4.7.13G* are deleted in their entirety, as shown below. Equivalent provisions now appear at *COBS 4.12A*.]

#### ~~Non-readily realisable securities and P2P agreements~~

- 4.7.7 R (1) ~~Unless permitted by *COBS 4.7.8 R*, a *firm* must not *communicate* or *approve* a *direct offer financial promotion* relating to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio* to or for *communication* to a *retail client* without the conditions in (2) and (3) being satisfied. [deleted]~~
- (2) ~~The first condition is that the *retail client* recipient of the *direct offer financial promotion* is one of the following:~~

- (a) ~~certified as a ‘high net worth investor’ in accordance with COBS 4.7.9 R;~~
  - (b) ~~certified as a ‘sophisticated investor’ in accordance with COBS 4.7.9 R;~~
  - (c) ~~self-certified as a ‘sophisticated investor’ in accordance with COBS 4.7.9 R; or~~
  - (d) ~~certified as a ‘restricted investor’ in accordance with COBS 4.7.10 R.~~
- (3) The second condition is that the *firm* itself or:
- (a) ~~the person who will arrange or deal in relation to the non-readily realisable security; or~~
  - (b) ~~the person who will facilitate the retail client becoming a lender under a P2P agreement or a P2P portfolio;~~

~~will comply with the rules on appropriateness (see COBS 10 and COBS 10A) or equivalent requirements for any application or order that the *firm* or *person* is aware, or ought reasonably to be aware, is in response to the direct offer financial promotion.~~

4.7.8 R ~~A *firm* may communicate or approve a direct offer financial promotion relating to a non-readily realisable security, a P2P agreement or a P2P portfolio to or for communication to a retail client if: [deleted]~~

- (1) ~~the *firm* itself will comply with the suitability rules (COBS 9 and 9A) in relation to the investment promoted; or~~
- (2) ~~the *retail client* has confirmed before the promotion is made that they are a *retail client* of another *firm* that will comply with the suitability rules (COBS 9 and 9A) in relation to the investment promoted; or~~
- (3) ~~the *retail client* is a corporate finance contact or a venture capital contact.~~

4.7.9 R (1) ~~A certified high net worth investor, a certified sophisticated investor or a self-certified sophisticated investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the terms set out in the applicable *rule* listed below and as modified by (2): [deleted]~~

- (a) ~~certified high net worth investor: COBS 4.12.6 R;~~
- (b) ~~certified sophisticated investor: COBS 4.12.7 R;~~
- (c) ~~self-certified sophisticated investor: COBS 4.12.8 R.~~

- (2) Each of the statements in (1), when used in relation to *non-readily realisable securities*, *P2P agreements* or a *P2P portfolio*, must, as appropriate, be modified as follows:
- (a) in all of the statements, any references to “non-mainstream pooled investments” must be replaced with references to “non-readily realisable securities” or “P2P agreements or P2P portfolios”, as applicable;
  - (b) in the statement in *COBS 4.12.8R*, the reference to “unlisted company” must be replaced with a reference to “P2P agreement or P2P portfolio”; and
  - (c) in the statement in *COBS 4.12.8R*, the reference to “private equity sector, or in the provision of finance for small and medium enterprises” must be replaced with a reference to “provision of finance, resulting in an understanding of the P2P agreements or P2P portfolios to which the promotions will relate.”

4.7.10 R A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms, substituting “P2P agreements or P2P portfolios” for “non-readily realisable securities”, as appropriate: [deleted]

<b>“RESTRICTED INVESTOR STATEMENT</b>	
I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because:	
(a)	in the twelve months preceding the date below, I have not invested more than 10% of my net assets in non-readily realisable securities; and
(b)	I undertake that in the twelve months following the date below, I will not invest more than 10% of my net assets in non-readily realisable securities.
Net assets for these purposes do not include:	
(a)	the property which is my primary residence or any money raised through a loan secured on that property;
(b)	any rights of mine under a qualifying contract of insurance; or
(c)	any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled; or

(d)	any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).
<p>I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities.</p> <p>Signature:</p> <p>Date:??</p>	

- 4.7.11 G ~~COBS 4.7.7R does not apply in relation to credit union subordinated debt or to deferred shares issued by a credit union. Firms are reminded that CREDS 3A contains requirements regarding the retail distribution and financial promotion of these instruments. [deleted]~~
- 4.7.11A G ~~COBS 4.7.7R does not apply to speculative illiquid securities. Firms, TP firms and Gibraltar-based firms (having the same meaning as in the Gibraltar Order) are reminded of the restrictions on financial promotions in relation to speculative illiquid securities in COBS 4.14. [deleted]~~
- 4.7.12 G ~~Where a firm communicates or approves direct offer financial promotions relating to both non-readily realisable securities and P2P agreements or P2P portfolios, the condition in COBS 4.7.7R(2) may be satisfied by the retail client signing a combined statement that meets the requirements in COBS 4.7.9R or COBS 4.7.10R, as applicable, in respect of both non-readily realisable securities and P2P agreements or P2P portfolios. [deleted]~~
- 4.7.13 G ~~In relation to a P2P agreement or a P2P portfolio, a firm may communicate to a retail client information about a P2P agreement or a P2P portfolio before needing to satisfy the conditions in COBS 4.7.7R(2) and (3), provided that the defining elements of a direct offer financial promotion are not present in that communication. This information may comprise, without limitation, mandatory disclosures applicable to that firm, such as those set out in COBS 18.12.24R to 18.12.28R, including information about: [deleted]~~
- (1) the identity of the borrower(s);
  - (2) the price or target rate, provided they are accompanied by a fair description of the anticipated actual return, taking into account fees, default rates and taxation;
  - (3) the term;

- (4) ~~the risk categorisation; and~~
- (5) ~~a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the *firm*.~~

...

#### 4.10 ~~Systems and controls and approving and communicating~~ Approving and confirming compliance of financial promotions

Systems and controls

4.10.1 G ...

Approving financial promotions

4.10.1A G The purpose of COBS 4.10.2R is to ensure that a *firm* that *approves* a *financial promotion* for communication by an *unauthorised person*:

- (1) satisfies itself of the compliance of that *financial promotion* with the *financial promotion rules*; and
- (2) having *approved* that *financial promotion*, takes appropriate steps to ensure that the *financial promotion* remains compliant for the lifetime of its *communication*.

4.10.2 R (1) ...

(1A) After a *firm* has complied with (1), and for as long as the *financial promotion* is *communicated*, the *firm* must take reasonable steps to monitor the continuing compliance of that *financial promotion* with the *financial promotion rules*.

[Note: for the *FCA's* guidance on 'Ongoing monitoring' see: [insert link]]

(1B) A *firm* that has *approved* a *financial promotion* issued, and for *communication* by, an *unauthorised person* must require from that *person*, a written quarterly attestation that there has been no material change:

- (a) to the *financial promotion*; or
- (b) in circumstances which might affect the continuing compliance of the *financial promotion* with the *financial promotion rules*.

[Note: for the *FCA's* guidance on material changes, see: [insert link]]

(1C) For the purpose of (1B), a *firm* must:

- (a) require the first attestation no less than 3 months after it approves the financial promotion; and
- (b) thereafter, require attestations at least once every 3 months for as long as the financial promotion is communicated.

...

- 4.10.2A R (1) This rule applies to a firm that approves a direct offer financial promotion relating to a restricted mass market investment for communication to a retail client.
- (2) A firm must take reasonable steps to ensure, on a continuing basis:
- (a) that the conditions specified in COBS 4.12A.18R(1)(b) are being satisfied in relation to each communication of the direct offer financial promotion; and
  - (b) if the firm will not itself carry out the appropriateness assessment required by COBS 4.12A.30R, that the appropriateness assessments undertaken comply with the rules specified in COBS 4.12A.30R.
- (3) If the firm is not satisfied that the relevant conditions are being satisfied or that the appropriateness assessments undertaken comply with the relevant rules then it must withdraw its approval of the financial promotion in accordance with COBS 4.10.2R(2).

4.10.3 G ...

- (5) The rules in COBS 4.12 prevent a firm from approving a financial promotion for a non-mass market investment for communication to retail clients unless an exemption applies. Where an exemption requires a preliminary assessment of suitability, the effect of COBS 4.12.4R is that this assessment must be undertaken by the firm approving the financial promotion.
- (6) For the purposes of COBS 4.10.2R(1B), a financial promotion should be considered to be issued by an unauthorised person where that unauthorised person is responsible for the overall contents of the financial promotion (see also PERG 8.6.1G).
- (7) The effect of COBS 4.10.2R(1A) and (2) and COBS 4.10.2AR(3) is that where a firm identifies that a financial promotion that it has approved is no longer compliant with the financial promotion rules, the firm must withdraw its approval.

4.10.3A G If a firm:

- (1) is unable to obtain an attestation required by COBS 4.10.2R(1B), that firm should consider whether to withdraw its approval;

- (2) in response to a request to provide an attestation, is informed of changes which indicate that the *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its approval,

in each case in accordance with COBS 4.10.2R(2).

...

- 4.10.7A G An approved financial promotion that is addressed to, or disseminated in such a way that it is likely to be received by, a retail client is required to include the name of the firm that approved it and the date on which it was approved (COBS 4.5.2R).

...

#### Competence and expertise

- 4.10.9A R (1) A firm must not communicate or approve a financial promotion unless the individual or individuals responsible for the compliance of the financial promotion with the financial promotion rules has or have appropriate competence and expertise.
- (2) Appropriate competence and expertise for the purposes of (1) means competence and expertise in the product or service to which the financial promotion relates.
- (3) If a firm (A) determines that it lacks appropriate competence and expertise in relation to a financial promotion, it must:
- (a) have another firm (B) confirm that the financial promotion complies with the financial promotion rules before A communicates that financial promotion; or
- (b) decline to approve that financial promotion.
- 4.10.9B R (1) A firm must not confirm the compliance of a financial promotion for the purpose of COBS 4.10.9AR(3)(a) unless:
- (a) it is satisfied that the financial promotion complies with the financial promotion rules; and
- (b) the individual or individuals responsible for providing that confirmation has or have appropriate competence and expertise.
- (2) A firm must not confirm the compliance of a financial promotion to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

...

Conflicts of interest

- 4.10.12 R (1) This rule applies to a firm that:
- (a) approves a financial promotion for communication by an unauthorised person; or
  - (b) confirms the compliance of a financial promotion for the purposes of COBS 4.10.9AR(3)(a).
- (2) A firm must take all appropriate steps to identify and to prevent or manage conflicts of interest between the firm, including its managers, employees and appointed representatives (or, where applicable, tied agents), or any person directly or indirectly linked to them by control, and a person for whom the firm:
- (a) approves a financial promotion; or
  - (b) confirms the compliance of a financial promotion.

**4.11 Record keeping: financial promotion**General

- 4.11.1 R (1) A firm must make an adequate record of any financial promotion:
- (a) it communicates; or
  - (b) it approves; or
  - (c) of which it confirms compliance (COBS 4.10.9AR(3)(a)),
- other than a financial promotion made in the course of a personal visit, telephone conversation or other interactive dialogue.
- ...
- (2A) ~~If a firm communicates or approves an invitation or inducement to participate in, acquire, or underwrite a non-mainstream pooled investment which is addressed to or disseminated in such a way that it is likely to be received by a retail client: [deleted]~~
- [Editor's note: This provision now appears with minor amendments at COBS 4.11.4R]
- (a) ~~the person allocated the compliance oversight function in the firm must make a record at or near the time of the communication or approval certifying that the invitation or inducement complies with the restrictions set out in section 238 of the Act and in COBS 4.12.3R, as applicable;~~

- (b) ~~the making of the record required in (a) may be delegated to one or more *employees* of the *firm* who report to and are supervised by the *person* allocated the *compliance oversight function*, provided the process for certification of compliance has been reviewed and approved by the *person* allocated the *compliance oversight function* no more than 12 months before the date of the invitation or inducement;~~
- (c) ~~when making the record required in (a), the *firm* must make a record of which exemption was relied on for the purposes of the invitation or inducement, together with the reason why the *firm* is satisfied that that exemption applies;~~
- (d) ~~where the *firm* relies on an exemption that requires investor certification and warnings to investors, the record required in (a) must include a record of any certificate or investor statement (as signed by the investor) and of any warnings or indications required by the exemption;~~
- (e) ~~if the exemption relied on is that for an *excluded communication* under COBS 4.12.4R(5), the *firm* must identify in the record required in (a) which type of *financial promotion* defined as an *excluded communication* corresponds to the invitation or inducement being made, including, where applicable, which article in the *Financial Promotion Order* or in the *Promotion of Collective Investment Schemes Order* was relied on for the purposes of the invitation or inducement, together with the reason why the *firm* is satisfied that the exemption applies;~~

(2B) In respect of each *financial promotion* in (1), a *firm* must make an adequate record demonstrating how it has satisfied itself that it has the necessary competence and expertise required by COBS 4.10.9AR.

...

...

[*Editor's note*: The provision at COBS 4.11.4R is not new; it is moved with minor amendments from COBS 4.11.1R(2A).]

Promotions of restricted mass market investments and non-mass market investments

4.11.4 R If a *firm* communicates or approves a *financial promotion* which relates to a non-mass market investment where that *financial promotion* is addressed to or disseminated in such a way that it is likely to be received by a *retail client*:

- (1) the person allocated the compliance oversight function in the firm must make a record at or near the time of the communication or approval certifying that the promotion complies with the restrictions set out in section 238 of the Act and in COBS 4.12, as applicable;
- (2) the making of the record required in (1) may be delegated to one or more employees of the firm who report to and are supervised by the person allocated the compliance oversight function, provided the process for certification of compliance has been reviewed and approved by the person allocated the compliance oversight function no more than 12 months before the date of the promotion;
- (3) as part of the record required in (1), the firm must make a record of which exemption was relied on for the purposes of the promotion, together with the reason why the firm is satisfied that that exemption applies;
- (4) where the firm relies on an exemption that requires investor certification and warnings to investors, the record required in (1) must include a record of any certificate or investor statement (as signed by the investor) and of any warnings or indications required by the exemption;
- (5) if the rules in COBS 4.12 do not apply because the promotion is an excluded communication (COBS 4.12.-2R), the firm must identify in the record required in (1) which type of financial promotion defined as an excluded communication corresponds to the promotion being made, including, where applicable, which article in the Financial Promotion Order or in the Promotion of Collective Investment Schemes Order was relied on for the purposes of the promotion, together with the reason why the firm is satisfied that the exemption applies.

- 4.11.5      R      (1) This rule applies to a firm that communicates or may communicate:
- (a) a financial promotion in relation to a non-mass market investment to which COBS 4.12.3R applies;
  - (b) a direct offer financial promotion in relation to a restricted mass market investment to which COBS 4.12A.18R applies.
- (2) A firm must make an adequate record of:
- (a) for promotions relating to restricted mass market investments:
    - (i) the number of recipients of a financial promotion that includes the risk warning required by COBS 4.12A.10R;

- (ii) the number of *clients* that activate the link that delivers the appropriate risk summary (COBS 4.12A.11R(3)(b));
  - (iii) the number of *clients* that request to receive a *direct offer financial promotion* (COBS 4.12A.18R);
  - (iv) the categorisation of each *retail client* (COBS 4.12A.23R) and the evidence obtained in support of that categorisation;
- (b) for promotions relating to *restricted mass market investments* or *non-mass market investments*:
- (i) the number of *retail client* recipients of a *financial promotion* that includes the personalised risk warning required by COBS 4.12.5DR or COBS 4.12A.21R;
  - (ii) the number of *retail clients* that activate the link that delivers the appropriate risk summary (COBS 4.12.5DR(2)(b) and COBS 4.12A.21R(2)(b));
  - (iii) the number of *retail clients* that elect to leave the investment journey after receiving the personalised risk warning in (2)(b)(i);
  - (iv) the number of *retail clients* that are subject to the cooling off period in COBS 4.125ER or COBS 4.12A.22R;
  - (v) the number of *retail clients* that elect to leave the investment journey after the cooling off period in (2)(b)(iv);
  - (vi) the number of *retail clients* that cannot be categorised in such a way as to enable them to receive a relevant *financial promotion* (COBS 4.12.4R or COBS 4.12A.23R);
- (c) where an appropriateness assessment is undertaken (COBS 4.12A.30R):
- (i) the total number of assessments undertaken;
  - (ii) the number of assessments resulting in a determination that the *investment* was appropriate;
  - (iii) the number of assessments resulting in a determination that the *investment* was not appropriate;

(iv) in respect of each *retail client*, the outcome of the appropriateness process; and

(v) in respect of each *retail client*, the number of times that *retail client* was subject to an appropriateness assessment in respect of the same *investment*.

4.11.6 G Where applicable, *firms* should distinguish in the records required by COBS 4.11.5R between individuals who are already invested in the relevant *investment* and those who are not.

4.11.7 R A *firm* must retain the records required by COBS 4.11.4R and COBS 4.11.5R for 3 years.

#### 4.12 ~~Restrictions on the promotion of non-mainstream pooled investments~~ Promotion of non-mass market investments

##### Application

4.12.- R This section applies to:  
5

(1) *firms*;

(2) *TP firms*, to the extent that this section does not already apply to those *TP firms* as a result of GEN 2.2.26R; and

(3) *Gibraltar-based firms*, to the extent that this section does not already apply to such a *Gibraltar-based firm* as a result of GEN 2.3.1R,

when approving or communicating financial promotions in relation to non-mass market investments.

4.12.- G In addition to the *persons* listed in COBS 4.12.-5R, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the general prohibition under:  
4

(1) Part 7 of the *EU Exit Passport Regulations*; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361),

are required to comply with the *rules* in this section as a consequence of:

(3) regulation 59 of the *EU Exit Passport Regulations*; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

4.12.- G Throughout this section, references to a *firm* include a *TP firm* and a *Gibraltar-*  
3 *based firm.*

4.12.- R The *rules* in this section do not apply to *excluded communications.*  
2

Purpose and overview of the rules

4.12.- G (1) *The rules* in this section are intended to ensure that *financial promotions*  
1 relating to *non-mass market investments* are not *communicated* to  
ordinary retail investors. They do not apply to *excluded communications*  
or to *financial promotions* insofar as they are directed at *clients* other  
than *retail clients.*

(2) *The rules* in this section reflect the often complex and high-risk nature of  
*non-mass market investments.*

(3) *The rules* in this section therefore restrict *firms* from *approving* or  
*communicating financial promotions* in relation to *non-mass market*  
*investments* which are addressed to, or disseminated in such a way that  
they are likely to be received by, a *retail client*, subject to certain  
exemptions.

(4) The exemptions referred to in (3) are set out in *COBS 4.12.4R(5).*

(5) (a) *Firms* must also comply with *COBS 4.12.5DR* to *COBS 4.12.5OG*  
relating to the matters in (b) where:

(i) *the financial promotion* relates to a *non-mass market*  
*investment* other than a *unit* in a *long-term asset fund*; and

(ii) *the firm* wishes to rely on exemptions 7C (certified high net  
worth investors), 8 (certified sophisticated investors) or 9  
(self-certified sophisticated investors).

(b) The matters are:

(i) *preliminary assessment of suitability* (in relation to  
*exemptions 7A and 9*);

(ii) *personalised risk warning, risk summary and cooling off*  
*period*;

(iii) *risk warnings*; and

(iv) *monetary and non-monetary incentives.*

- (6) Where the *financial promotion* relates to a *speculative illiquid security*, *firms* must also comply with *COBS 4.12.5PR* to *COBS 4.12.5SR* which relate to the disclosure of costs, charges and commission.
- (7) The table below explains how the *rules* apply and to which *non-mass market investments* the *rules* apply.

<u>Handbook provision</u>	<u>Description of the provision</u>	<u>Which investments does the provision apply to</u>	<u>When does the provision apply</u>
<u><i>COBS 4.12.3R</i></u>	<u><i>Firms must not communicate or approve financial promotions in relation to non-mass market investments to retail clients</i></u>	<u><i>All non-mass market investments</i></u>	<u><i>At all times.</i></u>
<u><i>COBS 4.12.4R(1)(b)</i></u>	<u><i>Firms must carry out a preliminary assessment of suitability</i></u>	<u><i>All non-mass market investments</i></u>	<u><i>Before the <i>financial promotion</i> is communicated to a certified high net worth investor or self-certified sophisticated investor in reliance on the relevant exemption.</i></u>
<u><i>COBS 4.12.5DR and COBS 4.12.5ER</i></u>	<u><i>Firms must ensure that a summary of the risks is made available to the client followed by a period of at least 24 hours during which the client is unable to make an investment</i></u>	<u><i>All non-mass market investments except for units in long-term asset funds</i></u>	<u><i>Before the <i>financial promotion</i> is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption.</i></u>

<u>COBS</u> <u>4.12.5FR</u>	<u>Restrictions on monetary and non-monetary benefits being included within the financial promotions</u>	<u>All non-mass market investments except for units in long-term asset funds</u>	<u>At the time the financial promotion is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption.</u>
<u>COBS</u> <u>4.12.5IR,</u> <u>COBS</u> <u>4.12.5JR,</u> <u>COBS</u> <u>4.12.5LR,</u> <u>and COBS</u> <u>4.12.5NR</u>	<u>Firms must ensure that a risk warning is provided to the client</u>	<u>All non-mass market investments except for units in long-term asset funds</u>	<u>At the time the financial promotion is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption.</u>
<u>COBS</u> <u>4.12.5PR,</u> <u>COBS</u> <u>4.12.5QR,</u> <u>and COBS</u> <u>4.12.5SR</u>	<u>Firms must ensure that statements disclosing all costs, charges and commission are provided to the client</u>	<u>Only speculative illiquid securities</u>	<u>At the time the financial promotion is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption.</u>

- (8) There is guidance in COBS 4.12.9G to 4.12.11G on the application of the exemptions set out in the table in COBS 4.12.4R(5).

Restrictions on the promotion of non-mainstream pooled investments Promotion of non-mass market investments

- 4.12.3 R (1) A firm must not communicate or approve an invitation or inducement to participate in, acquire, or underwrite a non-mainstream pooled investment a financial promotion which relates to a non-mass market investment where that invitation or inducement financial promotion is addressed to, or disseminated in such a way that it is likely to be received by, a retail client.
- (2) The restriction in (1) is subject to COBS 4.12.4R and does not apply to units in unregulated collective investment schemes, which are subject to a statutory restriction on promotion in section 238 of the Act.

- (3) ~~References to a *firm* in this section include a *TP firm* to the extent that this section does not already apply to those *TP firms* as a result of *GEN 2.2.26R*. [deleted]~~
- (4) ~~References to a *firm* in this section include a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of *GEN 2.3.1R*. [deleted]~~

Exemptions from the restrictions on the promotion of ~~non-mainstream-pooled investments~~ non-mass market investments

- 4.12.4 R (1) The restriction in *COBS 4.12.3R* does not apply if ~~the promotion falls within an exemption in the table in (5) below in accordance with (3)~~ the following conditions are met:
- (a) the *financial promotion* falls within an applicable exemption in the first column in the table in (5) because either:
- (i) it is made to, or directed at, only those recipients whom the *firm communicating the financial promotion* has taken reasonable steps to establish are *persons* in the third column of the table; or
- (ii) the *firm approving the financial promotion* has taken reasonable steps to establish that the *financial promotion* will be made to, or directed at, only those recipients who are *persons* in the third column of the table;
- (b) where the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is undertaken before the *financial promotion* is made to or directed at the recipient;
- (c) the *firm* complies with the relevant *rules* in *COBS 4.12.5DR* to *4.12.5SR* relating to the use of exemptions 7C (certified high net worth investors), 8 (certified sophisticated investors) or 9 (self-certified sophisticated investors), as provided by *COBS 4.12.4R(5)*.
- (1A) For the purposes of *COBS 4.12.4R(1)(a)*, a *firm* will have taken reasonable steps to establish that the recipients of the *financial promotion* are *persons* in the third column of the table where the *firm* has:
- (a) obtained the relevant completed certificate from the *retail client*;  
and

(b) satisfied itself that the *retail client's* completion of the certificate evidences that the *retail client* meets the criteria to be certified as such.

(1B) Where a *firm* approves or communicates a financial promotion the preliminary assessment of suitability required by COBS 4.12.4R(1)(b) must be undertaken by that *firm*.

(2) ~~A *firm* may communicate an invitation or inducement to participate in an unregulated collective investment scheme without breaching the restriction on promotion in section 238 of the Act if the promotion falls within an exemption in the table in (5) below in accordance with (3). [deleted]~~

[Editor's note: The provision at COBS 4.12.4R(2) has not been permanently deleted; it has been moved to COBS 4.12.4AR]

(3) ~~A promotion falls within an exemption in the table in (5) below if:~~

(a) ~~it is made to or directed at only those recipients whom the *firm* has taken reasonable steps to establish are *persons* in the middle column of the table; and~~

(b) ~~where the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is undertaken before the promotion is made to or directed at the recipient. [deleted]~~

(4) ~~A *firm* may rely on more than one exemption in relation to the same invitation or inducement financial promotion.~~

(5)

Title of Exemption	Promotion to:	Promotion of <del>non-mainstream pooled investment</del> <u>non-mass market investment</u> which is:
<u>Exemptions applicable to promotions of non-mainstream pooled investments only:</u>		
1. Replacement products and rights issues	...	...
2. Certified high net worth	An individual who meets the requirements set out	Any <del>non-mainstream pooled investment</del> the firm considers is likely to be suitable for that individual, based on a preliminary

investors [deleted]	in <del>COBS 4.12.6R,</del> or a person (or persons) legally empowered to make investment decisions on behalf of such an individual.	assessment of the <i>client's</i> profile and objectives. [See <del>COBS 4.12.5G(2).</del> ]
3. Enterprise and charitable funds	...	...
4. Eligible employees	...	...
5. Members of the Society of Lloyd's	...	...
6. Exempt Persons	...	...
7. Non- retail clients	...	...
<u>7A.</u> <u>Solicited advice</u>	<u>Any person.</u>	<u>Any non-mainstream pooled investment,</u> <u>provided the communication meets all of the</u> <u>following requirements:</u>  <u>(a) the communication only amounts to a</u> <u>financial promotion because it is a personal</u> <u>recommendation on a non-mainstream</u> <u>pooled investment;</u>  <u>(b) the personal recommendation is made</u> <u>following a specific request by that client for</u> <u>advice on the merits of investing in the non-</u> <u>mainstream pooled investment; and</u>  <u>(c) the client has not previously received a</u> <u>financial promotion or any other</u> <u>communication from the firm (or from a</u> <u>person connected to the firm) which is</u> <u>intended to influence the client in relation to</u>

		that <i>non-mainstream pooled investment</i> [See Note 3.]
<u>7B. US persons</u>	<u>A person who is classified as a United States person for tax purposes under United States legislation or who owns a US qualified retirement plan.</u>	<u>Any investment company registered and operated in the United States under the Investment Company Act 1940.</u>
<u>Exemptions applicable to promotions of all non-mass market investments</u>		
<u>7C. Certified high net worth investor</u>	<u>An individual who meets the requirements set out in COBS 4.12.6R or a person (or persons) legally empowered to make investment decisions on behalf of such an individual.</u>	<u>Any non-mass market investment the firm considers is likely to be suitable for that individual, based on a preliminary assessment of the client's profile and objectives.</u> <u>[See COBS 4.12.5G(2).]</u>
8. Certified sophisticated investor	An individual who meets the requirements set out in COBS 4.12.7R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm's client.	<u>Any <i>non-mainstream pooled investment non-mass market investment</i>.</u>
9. Self-certified sophisticated investor	An individual who meets the requirements set out in COBS 4.12.8R, including an individual who is	<u>Any <i>non-mainstream pooled investment non-mass market investment</i> the firm considers is likely to be suitable for that client, based on a preliminary assessment of the client's profile and objectives.</u>

	legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i> who is the <i>firm's client</i> .	[See <i>COBS 4.12.5G(2)</i> ].
10. Solicited advice [deleted]	<del>Any person.</del>	<del>Any non-mainstream pooled investment, provided the communication meets all of the following requirements:  (a) the communication only amounts to a financial promotion because it is a personal recommendation on a non-mainstream pooled investment;  (b) the personal recommendation is made following a specific request by that client for advice on the merits of investing in the non-mainstream pooled investment; and  (c) the client has not previously received a financial promotion or any other communication from the firm (or from a person connected to the firm) which is intended to influence the client in relation to that non-mainstream pooled investment [See Note 3.]</del>
11. Excluded communications [deleted]	<del>Any person.</del>	<del>Any non-mainstream pooled investment, provided the financial promotion is an excluded communication.  [See <i>COBS 4.12.12G</i>, <i>COBS 4.12.13G</i> and <i>COBS 4.12.13AG</i>.]</del>
12. [deleted]		
13. US persons [deleted]	<del>A person who is classified as a United States person for tax purposes under United States legislation or who</del>	<del>Any investment company registered and operated in the United States under the Investment Company Act 1940.</del>

	owns a US-qualified retirement plan.	
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[Editor's note: Exemption 11 (Excluded Communications) has not been permanently deleted; it has been moved to COBS 4.12.-2R]

...

4.12.4 R A firm may communicate an invitation or inducement to participate in an unregulated collective investment scheme without breaching the restriction on promotion in section 238 of the Act if the promotion falls within an exemption in the table in COBS 4.12.4R(5) and is in accordance with COBS 4.12.4R(1)(a)-(b).  
A

Advice and preliminary assessment of suitability

- 4.12.5 G (1) Where a *firm* communicates any promotion of a ~~*non-mainstream pooled investment*~~ *non-mass market investment* in the context of advice, it should have regard to and comply with its obligations under COBS 9 or 9A (as applicable). *Firms* should also be mindful of the appropriateness requirements in COBS 10 and 10A which apply to a wide range of non-advised services.
- (2) (a) The effect of ~~COBS 4.12.4R(3)(b)~~ 4.12.4R(1)(b) is that where a *firm* wishes to rely on exemptions ~~2~~ 7C (certified high net worth investors) or 9 (self-certified sophisticated investors), as provided by COBS 4.12.4R(5), the preliminary assessment of suitability must be undertaken before promotion of the ~~*non-mainstream pooled investment*~~ *non-mass market investment* is made to or directed at *clients* (in addition to other requirements). Where a *firm* approves or communicates a financial promotion the preliminary assessment of suitability must be undertaken by that *firm* as required by COBS 4.12.4R(1B).
- (b) ...
- (c) The requirement for a preliminary assessment of suitability does not extend to a full suitability assessment, unless advice is being offered in relation to the ~~*non-mainstream pooled investment*~~ *non-mass market investment* being promoted, in which case the requirements in COBS 9 or 9A apply (as applicable). However, it requires that the *firm* takes reasonable steps to acquaint itself with the *client's* profile and objectives in order to ascertain whether the ~~*non-mainstream pooled investment*~~ *non-mass market investment* under contemplation is likely to be suitable for that *client*. The *firm* should not promote the ~~*non-mainstream pooled investment*~~ *non-mass market investment* to the *client* if it does not consider it likely to be suitable for that *client* following such preliminary assessment.

Promotions to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors

- 4.12.5 R (1) COBS 4.12.5AR to COBS 4.12.5OG apply to financial promotions  
A which:
- (a) relate to non-mass market investments unless the only non-mass market investment to which the financial promotion relates is a unit in a long-term asset fund; and
  - (b) are communicated to or are to be communicated to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors.
- (2) A firm may only rely on exemptions 7C (certified high net worth investors), 8 (certified sophisticated investors) or 9 (self-certified sophisticated investors) to:
- (a) communicate a financial promotion to which this rule applies if the firm has complied with the conditions and requirements in COBS 4.12.5DR to 4.12.5SR, as appropriate; or
  - (b) approve for communication a financial promotion to which this rule applies if the firm is satisfied that the conditions and requirements in COBS 4.12.5DR to 4.12.5SR, as appropriate, will be satisfied in relation to each communication of the financial promotion.
- (3) The conditions in COBS 4.12.5DR (risk warning) and COBS 4.12.5ER (cooling off period) do not need to be satisfied if the retail client has previously received a financial promotion relating to a non-mass market investment from the same person as would otherwise need to satisfy them.

4.12.5 G Where a firm is relying on exemptions 7C (certified high net worth investors), 8  
B (certified sophisticated investors) or 9 (self-certified sophisticated investors), in  
accordance with COBS 4.12.4R(1)(a), it must first take reasonable steps to  
establish that the retail client falls into one of those categories and then the firm  
must undertake a preliminary assessment of suitability in accordance with COBS  
4.12.4R(1)(b), where relevant. Once a firm has completed these steps, it must  
comply with the conditions and requirements in COBS 4.12.5DR to COBS  
4.12.5SR.

4.12.5 G The effect of COBS 4.12.5AR(3) and related provisions in this section is that a  
C personalised risk warning and cooling off period are only required on the first  
occasion that a firm, or other person communicating a financial promotion,  
communicates a financial promotion relating to a non-mass market investment to  
a particular retail client.

Prior conditions for communication to certified high net worth investors, certified  
sophisticated investors or self-certified sophisticated investors

4.12.5 R (1) The first condition is that before communicating the financial promotion,  
D the firm, or other person communicating the financial promotion:

- (a) obtains the *retail client's* full name; and
  - (b) having obtained the *retail client's* name, communicates to that *retail client* the following warning:

**[Client name] this is a high-risk investment. How would you feel if you lost the money you're about to invest? Take 2 mins to learn more.**
- (2) If the *financial promotion* is, or is to be, *communicated* by means of a website, mobile application or other digital medium, the warning in (1)(b) must:
- (a) be clearly brought to the *retail client's* attention by means of a pop-up box (or equivalent);
  - (b) include a link which, when activated, delivers an appropriate risk summary in a further pop-up box (or equivalent):
    - (i) relating to the type of *non-mass market investment* that is the subject of the *financial promotion*; and
    - (ii) selected from COBS 4 Annex 1R; and
  - (c) be accompanied by an invitation to the *retail client* to specify whether they wish to:
    - (i) leave the investment journey; or
    - (ii) continue to receive the *financial promotion*.
- (3) If the *financial promotion* is, or is to be, *communicated* other than by means of a website, mobile application or other digital medium:
- (a) the warning in (1)(b) must be:
    - (i) provided to the *retail client* in a *durable medium*; and
    - (ii) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from COBS 4 Annex 1R; and
  - (b) the *retail client* must then be invited to specify whether they wish to:
    - (i) leave the investment journey; or
    - (ii) continue to receive the *financial promotion*.
- (4) The options in 2(c) and (3)(b) must be presented with equal prominence.

- 4.12.5 R (1) The second condition applies if the *retail client* requests to continue for the purposes of *COBS 4.12.5DR(2)(c)(ii)* or *COBS 4.12.5DR(3)(b)(ii)*.  
E
- (2) The second condition is that, following the *retail client's* request and before *communicating the financial promotion*, the *firm* or other *person communicating the financial promotion*:
- (a) allows a period of at least 24 hours to elapse; and
- (b) following the lapse of time in (a), invites the *retail client* to specify whether they wish to:
- (i) leave the investment journey; or
- (ii) continue to receive the *financial promotion*.
- (3) The options in (2)(b) must be presented with equal prominence.

Restrictions on monetary and non-monetary incentives

- 4.12.5 R A *firm* must not *communicate* or *approve a financial promotion* which relates to a *non-mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive to invest.  
F
- 4.12.5 G For the purposes of *COBS 4.12.5FR* monetary and non-monetary incentives include, but are not limited to:  
G
- (1) offering bonuses when investing in a *non-mass market investment* for the first time;
- (2) offering bonuses where the *client* refers another *person*;
- (3) offering cashback when investing in a *non-mass market investment*;
- (4) offering discounts when investing a particular amount in *non-mass market investments*; or
- (5) offering free gifts once an investment in a *non-mass market investment* has been made such as laptops or mobile telephones.

- 4.12.5 G Information and research tools do not constitute non-monetary incentives.  
H

Risk warning to be included in the financial promotion

- 4.12.5 R A *firm* must not *communicate* or *approve a financial promotion* which relates to a *non-mass market investment* unless it contains a risk warning that complies with *COBS 4.12.5JR* to *COBS 4.12.5NR*.  
I
- 4.12.5 R (1) For the purposes of *COBS 4.12.5IR* the *financial promotion* must contain the following risk warning:  
J
-

**Don't invest unless you're prepared to lose all your money invested.**  
**This is a high-risk investment. You could lose all the money you invest and are unlikely to be protected if something goes wrong.**

- (2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider, the following risk warning must be used:

**Don't invest unless you're prepared to lose all your money.**

- (3) Where the *financial promotion* is, or is to be, *communicated* by way of a website, mobile application or other digital medium, the risk warning in (1) or (2) must also include the following:
- (a) the text: **Take 2 mins to learn more;** and
  - (b) a link which, when activated, delivers an appropriate risk summary in a pop-up box (or equivalent):
    - (i) relating to the type of *non-mass market investment*; and
    - (ii) selected from *COBS 4 Annex 1R*.
- (4) Where the *financial promotion* is *communicated* other than by way of a website, mobile application or other digital medium, and including where the *financial promotion* is a *real time financial promotion*, the risk warning in (1) and the risk summary in (3) must be:
- (a) provided in a *durable medium*; and
  - (b) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from *COBS 4 Annex 1R*,

unless the medium of *communication* means that this is not possible.

4.12.5 G It is unlikely to be possible to comply with *COBS 4.12.5JR(4)* where the *financial promotion* is *communicated* by means of (without limitation) a television or radio broadcast. In such a case, the *financial promotion* must still include the risk warning specified in *COBS 4.12.5JR(1)*.

4.12.5 R The relevant risk warning in *COBS 4.12.5JR(1)* or (2) must be:

L

- (1) prominent, taking into account the content, size and orientation of the *financial promotion* as a whole;

- (2) unless the risk warning cannot be provided in writing, clearly legible, contained within its own border and with bold and underlined text as indicated in COBS 4.12.5JR;
- (3) if the *financial promotion* is, or is to be, *communicated* by means of:
  - (a) a website or mobile application:
    - (i) statically fixed and visible at the top of the screen, below anything else that also stays static, even when the *retail client* scrolls up or down the webpage; and
    - (ii) included as described in (i) on each linked webpage on the website or page on the application relating to the *non-mass market investment*;
  - (b) a television broadcast, prominently fixed on the screen for the duration of the broadcast.

4.12.5 G The FCA expects *firms* to take account of the international Web Content Accessibility Guidelines (WCAG) 2.1 AA accessibility standard when designing how the risk warning will be displayed:  
<https://www.w3.org/WAI/WCAG21/quickref/>

4.12.5 R The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the risk warning.

[Note: The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12.5 G For the purposes of COBS 4.12.5NR, design features which might reduce the visibility or prominence of a risk warning include, but are not limited to:

- (1) using a font size for the risk warning that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *client* to read the text;
- (3) fading the text of the risk warning;
- (4) placing the risk warning at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional links to be clicked in order for the full text of the risk warning to be seen;

- (6) using a font or background in the risk warning in the same colours as the firm's brand, or using a font or background in the same colours as the rest of the financial promotion; and
- (7) using a font or background in the risk warning in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk warning from other forms of information.

Further requirement to include a statement of costs, charges and commission where the financial promotion relates to speculative illiquid securities

4.12.5 R A firm must not communicate or approve a financial promotion which relates to a P speculative illiquid security unless it contains statements that comply with COBS 4.12.5QR.

4.12.5 R For the purposes of COBS 4.12.5PR, the financial promotion must contain: Q

- (1) a statement which expresses as a percentage the total amount of the capital raised by the issue of the speculative illiquid security which will be paid out in costs, fees, charges and commissions and other expenses to any third party;
- (2) a statement which expresses as a cash sum the percentage referred to in (1) above; and
- (3) in addition to the statements in (1) and (2) above, a statement which provides a breakdown of the actual or potential expenditure to be paid out of an investor's capital and details of the third party (or parties) who will receive it.

4.12.5 G (1) There is an illustration of how a firm should comply with COBS R 4.12.5QR(2) in (2) below.

- (2) Where a firm pays 30% of the total amount of capital raised by the issue of speculative illiquid securities towards costs, fees, charges and commissions and other expenses to any third party, the statement should say: **“For every £100 you invest, £30 will be paid to third parties to meet costs, fees, charges and commissions.”**

4.12.5 R The statements providing the percentage figure in COBS 4.12.5QR(1) and the S cash sum in COBS 4.12.5QR(2) must be:

- (1) prominent;
- (2) contained together within their own border and with bold text;

(3) immediately follow the most prominent reference to the expected return on the *speculative illiquid security*; and

(4) published so that they are clearly legible against a neutral background.

4.12.5 G The statement providing the breakdown of expenditure in COBS 4.12.5QR(3) should be included in the *financial promotion* in a clear and prominent way.  
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4.12.5 G The purpose of the statements required by COBS 4.12.5QR is to enable an investor to consider the proportion of capital raised by an issue of a *speculative illiquid security* that will not be invested. This information should help the investor to assess the risk that the *issuer* will be unable to pay any advertised interest payments, other income or otherwise to repay the investor's capital at maturity.  
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#### Definition of sophisticated and high net worth investors

4.12.6 R A *certified high net worth investor* is an individual who has completed and signed, within the period of twelve *months* ending with on the day on which the communication is made, a statement in the following terms set out in COBS 4 Annex 2R, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.:

#### “HIGH NET WORTH INVESTOR STATEMENT

~~I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of non-mainstream pooled investments. The exemption relates to certified high net worth investors and I declare that I qualify as such because at least one of the following applies to me:~~

~~I had, throughout the financial year immediately preceding the date below, an annual **income** to the value of **£100,000 or more**. Annual income for these purposes does not include money withdrawn from my pension savings (except where the withdrawals are used directly for income in retirement).~~

~~I held, throughout the financial year immediately preceding the date below, **net assets** to the value of **£250,000 or more**. Net assets for these purposes do **not** include:~~

~~(a) the property which is my primary residence or any money raised through a loan secured on that property; or~~

~~(b) any rights of mine under a qualifying contract of insurance; or~~

~~(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled; or~~

~~(d) any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).~~

~~**I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested.** I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-mainstream pooled investments.~~

~~Signature:~~

~~Date: "~~

4.12.7 R A *certified sophisticated investor* ~~is~~ includes an individual:

- (1) who has a written certificate signed within the last 36 *months* by a *firm* confirming ~~he has~~ they have been assessed by that *firm* as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in ~~*non-mainstream pooled investments*~~ *non-mass market investments*; and
- (2) who has completed and signed, within the period of twelve *months* ending ~~with~~ on the day on which the communication is made, a statement in the ~~following~~ terms set out in COBS 4 Annex 3R, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

~~“SOPHISTICATED INVESTOR STATEMENT~~

~~I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of non-mainstream pooled investments. The exemption relates to certified sophisticated investors and I declare that I qualify as such.~~

~~**I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested.** I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-mainstream pooled investments.~~

~~Signature:~~

~~Date: "~~

4.12.8 R A *self-certified sophisticated investor* ~~is~~ includes an individual who has completed and signed, within the period of twelve *months* ending ~~with~~ on the day on which the communication is made, a statement in the ~~following~~ terms set out in COBS 4 Annex 4R, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

~~“SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT~~

~~I declare that I am a self-certified sophisticated investor for the purposes of the restriction on promotion of non-mainstream pooled investments. I understand that this means:~~

- ~~(i) I can receive promotional communications made by a person who is authorised by the Financial Conduct Authority which relate to investment activity in non-mainstream pooled investments;~~
- ~~(ii) the investments to which the promotions will relate may expose me to a significant risk of losing all of the property invested.~~

~~I am a self-certified sophisticated investor because at least one of the following applies:~~

- ~~(a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;~~
- ~~(b) I have made more than one investment in an unlisted company in the two years prior to the date below;~~
- ~~(c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;~~
- ~~(d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.~~

~~I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me seek advice from someone who specialises in advising on non-mainstream pooled investments.~~

~~Signature:~~

~~Date:”~~

4.12.8 G Where the *financial promotion* will relate to more than one type of *non-mass market investment*, the *retail client* may sign a combined statement that meets the requirements in *COBS 4 Annex 2R* to *COBS 4 Annex 4R*, as applicable, in respect of each type of *non-mass market investment* to which the *financial promotion* will relate.

4.12.8 R *A firm* must not:  
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- (1) *influence*, or seek to influence, the information that a *retail client* provides when completing a certificate for the purposes of *COBS 4.12.6R* to *COBS 4.12.8R*; or

- (2) encourage a retail client to complete a further certificate in the event that a client's signed certificate indicates that they do not meet the criteria to be categorised as a certified high net worth investor, certified sophisticated investor or self-certified sophisticated investor, as applicable.

Sophisticated and high net worth investors: guidance on certification by authorised person and reliance on self-certification

4.12.9 G (1) ...

- (2) In addition, the firm should consider whether the promotion of the ~~non-mainstream pooled investment~~ non-mass market investment is in the interests of the retail client and whether it is fair to make the promotion to that client on the basis that the client is a certified high net worth investor, having regard to the generally complex nature of ~~non-mainstream pooled investments~~ non-mass market investments. A retail client who meets the criteria for a certified high net worth investor but not for a certified sophisticated investor may be unable to properly understand and evaluate the risks of the ~~non-mainstream pooled investment~~ non-mass market investment in question.

4.12.1 G (1)  
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- (1) A firm which is asked to or proposes to assess and certify a retail client as a certified sophisticated investor (see article 23 of the *Promotion of Collective Investment Schemes Order*, article 50 of the *Financial Promotions Order* and *COBS 4.12.7R*) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the firm should carry out that assessment with due skill, care and diligence, having regard to the generally complex nature of ~~non-mainstream pooled investments~~ non-mass market investments and the level of experience, knowledge and expertise that the retail client being assessed must possess in order to be fairly and reasonably assessed and certified as a sophisticated investor.
- (2) (a) For example, a retail client whose investment experience is limited to mainstream investments such as regularly traded securities issued by listed companies, life policies or units in regulated collective investment schemes (other than qualified investor schemes or long-term asset funds) is generally unlikely to possess the requisite knowledge to adequately understand the risks associate with investing in ~~non-mainstream pooled investments~~ non-mass market investments.
- (b) In exceptional circumstances, however, the retail client may have acquired the requisite knowledge through means other than ~~his~~ their own investment experience, for example, if the retail client is a professional of several years' experience with the design, operation or marketing of complex investments such as *options*,

*futures, contracts for differences or ~~non-mainstream-pooled investments~~ non-mass market investments.*

- 4.12.1 G (1) 1 A firm which wishes to rely on any of the *self-certified sophisticated investor* exemptions (see Part II of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part II of Schedule 5 to the *Financial Promotions Order* and COBS 4.12.8R) should have regard to its duties under the *Principles* and the *client's best interest rule*. In particular, the firm should consider whether the promotion of the ~~*non-mainstream-pooled investment*~~ *non-mass market investment* is in the interests of the *client* and whether it is fair to make the promotion to that *client* on the basis of self-certification.
- (2) For example, it is unlikely to be appropriate for a firm to make a promotion under any of the *self-certified sophisticated investor* ~~exemption~~ exemptions without first taking reasonable steps to satisfy itself that the investor does in fact have the requisite experience, knowledge or expertise to understand the risks of the ~~*non-mainstream-pooled investment*~~ *non-mass market investment* in question. A retail *client* who meets the criteria for a *self-certified sophisticated investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of a ~~*non-mainstream-pooled investment*~~ *non-mass market investment* ~~which invests wholly or predominantly in assets other than shares in or debentures of unlisted companies.~~

#### One-off promotions

- 4.12.1 G (1) 2 A firm which wishes to rely on one of the *one-off promotion* exemptions provided by the *Promotion of Collective Investment Schemes Order* or the *Financial Promotions Order* to promote a ~~*non-mainstream-pooled investment*~~ *non-mass market investment* to a retail *client* should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the firm should consider whether the ~~promotion~~ *financial promotion* of the ~~*non-mainstream-pooled investment*~~ *non-mass market investment* is in the interests of the *client* and whether it is fair to make the ~~promotion~~ *financial promotion* to that *client* on the basis of a *one-off promotion* exemption.
- (2) The *one-off promotion* exemptions permit the promotion of investments to *clients* under certain conditions (see PERG 8.14.3G to PERG 8.14.13G for guidance on the scope of the one-off exemptions in the *Financial Promotions Order*). Firms should note that, in the FCA's view, promotion of a ~~*non-mainstream-pooled investment*~~ *non-mass market investment* to a retail *client* who is not a *certified high net worth investor*, a *certified sophisticated investor* or a *self-certified sophisticated investor* is unlikely to be appropriate or in that *client's* best interests.

...

Definition of speculative illiquid security

- 4.12.1 5 **R** For the purposes of this section, and subject to COBS 4.12.17R to COBS 4.12.19R, a *speculative illiquid security* is a *debenture* or *preference share* which:
- (1) has a denomination or minimum investment of less than £100,000 (or an equivalent amount as defined in COBS 4.12.16R); and
  - (2) has been issued, or is to be issued, in circumstances where the *issuer* or a member of the *issuer's group* uses, will use or purports to use some or all of the proceeds of the issue directly or indirectly for one or more of the following:
    - (a) the provision of loans or finance to any *person* other than a member of the *issuer's group*;
    - (b) buying or acquiring *specified investments* (whether they are to be held directly or indirectly);
    - (c) buying or acquiring *investments* other than *specified investments* (whether they are to be held directly or indirectly);
    - (d) buying real property or an interest in real property (whether it is to be held directly or indirectly);
    - (e) paying for or funding the construction of real property.
- 4.12.1 6 **R** For the purposes of COBS 4.12.15R(1):
- (1) an equivalent amount in relation to an amount denominated in any currency other than sterling is an amount of equal value denominated wholly or partly in another currency; and
  - (2) the equivalent amount is to be calculated at the latest practicable date before (but in any event not more than three *business days* before) the date of the issue of *debentures* or *preference shares*.
- 4.12.1 7 **R** A *debenture* or *preference share* that does not otherwise fall within COBS 4.12.15R is not a *speculative illiquid security* by virtue only of the fact that the proceeds of the issue are used to *buy* or *acquire specified investments* as part of the ordinary cash management activities or treasury functions of an *issuer* (or its *group*) carrying on a general commercial or industrial purpose as defined in COBS 4.12.20R(1).
- 4.12.1 8 **R** For the purposes of COBS 4.12.15R, and notwithstanding the exemption for *readily realisable securities* in COBS 4.12.19R(3)(d), a *debenture* is also a *speculative illiquid security* if:

- (1) it meets the conditions set out in COBS 4.12.15R; and
- (2) it:
  - (a) is admitted to official listing on an exchange in the United Kingdom or an EEA State; and
  - (b) is not regularly traded on or under the rules of such an exchange; or
- (3) it:
  - (a) is a newly issued debenture which can be reasonably expected to be admitted to official listing on an exchange in the United Kingdom or an EEA State; and
  - (b) cannot reasonably be expected to be regularly traded on or under the rules of such an exchange when it begins to be traded.

4.12.1 R A debenture or preference share is not a speculative illiquid security where one or more of the exemptions in (1), (3) or (4) below applies.

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- (1) This exemption applies where:
  - (a) the issuer or a member of the issuer's group uses the proceeds of the issue for the purpose of the activities in COBS 4.12.15R(2)(c) (buying or acquiring investments other than specified investments), (d) (buying real property or an interest in real property) or (e) (paying for or funding the construction of real property); and
  - (b) the relevant property or investment is or will be used by the issuer or a member of the issuer's group for a general commercial or industrial purpose which it carries on.
- (2) The exemption in (1) will not apply in respect of a debenture or preference share within COBS 4.12.15R(2)(d) or (e) if the ability of the issuer to pay in relation to the debenture or preference share:
  - (a) any coupon or other income; and/or
  - (b) capital at maturity,

is wholly or predominantly linked to, contingent on, highly sensitive to, or dependent, on a return generated as a result of the matters referred to in COBS 4.12.15R(2)(d) or (e).
- (3) This exemption applies where the debenture or preference share is:
  - (a) issued, or to be issued, by a credit institution;

- (b) issued, or to be issued, by an *investment trust*;
- (c) a *non-mainstream pooled investment*;
- (d) a *readily realisable security* except for a *debenture* within *COBS* 4.12.18R; or
- (e) a *P2P agreement*.

(4) This exemption applies where:

- (a) the *issuer* is:
  - (i) a *property holding vehicle*; or
  - (ii) a *single company holding vehicle*;
- (b) any *financial promotions* made relating to the investment comply with *COBS* 4.12A as appropriate; and
- (c) any *financial promotion* made relating to a *single-company holding vehicle* clearly and prominently states which *single company* the investment relates to.

4.12.2 R (1) For the purposes of *COBS* 4.12.19R(1)(b), a general commercial or industrial purpose includes the following:

- (a) a commercial activity, involving the purchase, sale and/or exchange of goods or commodities and/or the supply of services; or
- (b) an industrial activity involving the production of goods; or
- (c) a combination of (a) and (b).

(2) For the purposes of *COBS* 4.12.19R(1)(b), a general commercial or industrial purpose does not include:

- (a) investment to generate a pooled return;
- (b) property development or construction services; and
- (c) hiring, leasing or rental services.

Guidance on general commercial or industrial purpose

4.12.2 G (1) *COBS* 4.12.15R provides that a *debenture* or *preference share* will fall within the definition of a *speculative illiquid security* where the proceeds of the issue are to be used by the *issuer* or a member of the *issuer's group* to fund various activities including *buying* or *acquiring*

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investments (other than specified investments) or the buying or construction of real property.

- (2) However, COBS 4.12.19R(1) provides an exemption in cases where the investments (other than specified investments) that are bought or acquired, or the property which is bought or constructed are or will be used by the issuer or a member of the issuer's group for a general commercial or industrial purpose which it carries on.
- (3) General commercial or industrial purpose is defined in COBS 4.12.20R.
- (4) The effect of the exemption in COBS 4.12.19R(1) is that a debenture or preference share will not be a speculative illiquid security where the proceeds of the issue are used by the issuer or a member of the issuer's group to buy or acquire investments (other than specified investments), or to buy or construct real property, and the relevant investments or property are or will be used by the issuer or group member for the purposes of its own commercial or industrial activities. This is illustrated in the examples in (5) and (6) below.
- (5) In relation to COBS 4.12.15R(2)(c) (buying or acquiring investments other than specified investments):
- (a) where a company issues a debenture or preference share and uses the proceeds to purchase IT equipment for use in its business, to the extent that the IT equipment might be considered an investment, the debenture or preference share will benefit from the exemption because the IT equipment is used by the company for its own commercial activities (in this case, for use by its staff to provide services to customers);
- (b) where a supermarket chain issues a debenture or preference share and uses the proceeds to purchase stock (for example wine) for sale as part of its retail business, to the extent that the wine might be considered an investment, the debenture or preference share will benefit from the exemption because the wine is used by the supermarket for its own commercial activities (in this case, to sell it on to its retail customers for a profit);
- (c) where a company issues a debenture or preference share and uses the proceeds to buy or acquire art or fine wine as an investment, it will not benefit from the exemption because the art or fine wine will not be used by the company itself for its own commercial activities; if the art or fine wine is used to generate a pooled return, then the exemption would also not apply as a result of COBS 4.12.20R(2)(a); and

- (d) where a company issues a debenture or preference share and uses the proceeds to purchase IT equipment for the purpose of hiring or leasing those out to another company, it will not benefit from the exemption because it is not using the IT equipment for its own commercial activities and hiring and leasing services are excluded from the definition of general commercial or industrial purpose as a result of COBS 4.12.20R(2)(c).
- (6) In relation to COBS 4.12.15R(2)(d) or (e) (buying or constructing real property):
- (a) where a retailer issues a debenture or preference share and uses the proceeds to build a shop, the debenture or preference share will benefit from the exemption because the property is used by the retailer for its own commercial activities (in this case, the sale of goods);
- (b) where a property developer issues a debenture or preference share and uses the proceeds to fund the costs of a property development or construction of property, which is intended to be sold or rented out for commercial purposes or as residential dwellings, it will not benefit from the exemption because the development will not be used by the developer itself, and property development and construction services are excluded from the definition of general commercial or industrial purpose (see COBS 4.12.20R(2)(b));
- (c) where a company issues a debenture or preference share to fund the costs of constructing a power station which the company intends to operate itself with a view to selling the electricity it produces, the debenture or preference share will benefit from the exemption (unless COBS 4.12.19R(2) applies). That is because it will use the property for its own commercial or industrial activities (generating electricity). However, firms should also consider COBS 4.12.19R(2) and the guidance in (7) below.
- (7) COBS 4.12.19R(2) provides that the general commercial or industrial purposes exemption does not apply where the ability of the issuer to pay the coupon or other income or to repay capital on maturity in relation to the debenture or preference share is wholly or predominantly linked to, contingent on, highly sensitive to, or dependent on, a return generated as a result of the matters referred to in COBS 4.12.15R(2)(d) or (e) (buying or construction of real property).
- (8) The effect of the above is that where a company issues a debenture or preference share for the purpose of buying real property, an interest in real property or funding the construction of a particular project and the company's ability to pay interest on the debenture or preference share or repay capital depends on the success of that purchase or project, the

exemption in COBS 4.12.19R(1) will not apply. In those circumstances, the debenture or preference share will be a speculative illiquid security unless one of the other exemptions in COBS 4.12.19R applies.

Insert the following new section COBS 4.12A after COBS 4.12 (Restrictions on the promotion of non-mainstream pooled investments). The text is not underlined.

#### **4.12A Promotion of restricted mass market investments**

##### Purpose

- 4.12A.1 G The *rules* in this section:
- (1) require that any *financial promotion* relating to a *restricted mass market investment*:
    - (a) includes a prescribed form of risk warning;
    - (b) does not include any form of incentive to invest; and
  - (2) restrict the *communication* and *approval* of *direct offer financial promotions* in relation to *restricted mass market investments* except where certain conditions are satisfied.

##### Application

- 4.12A.2 R This section applies to a *firm* when *communicating a financial promotion, or approving a financial promotion for communication, to a retail client* in relation to a *restricted mass market investment*.
- 4.12A.3 R In COBS 4.12A.2R, reference to a *firm* includes:
- (1) *TP firms*, to the extent that this section does not already apply to those *TP firms* as a result of GEN 2.2.26R; and
  - (2) *Gibraltar-based firms*, to the extent that this section does not already apply to such a *Gibraltar-based firm* as a result of GEN 2.3.1R.
- 4.12A.4 R This section does not apply to:
- (1) *excluded communications*; or
  - (2) *image advertising*.
- 4.12A.5 G COBS 4.12A.18R does not apply in relation to *credit union subordinated debt* or to deferred shares issued by a *credit union*. *Firms* are reminded that CREDS 3A contains requirements regarding the retail distribution and *financial promotion* of these instruments.

- 4.12A.6 G The requirements in this section relating to the provision of risk warnings are in addition, and without prejudice, to *firms'* other obligations in relation to the provision of information.

Restrictions on monetary and non-monetary incentives

- 4.12A.7 R A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *restricted mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive to invest.

- 4.12A.8 G For the purposes of COBS 4.12A.7R, monetary and non-monetary incentives include, but are not limited to:

- (1) offering bonuses when investing in a *restricted mass market investment* for the first time;
- (2) offering bonuses where the *client* refers another *person*;
- (3) offering cashback when investing in a *restricted mass market investment*;
- (4) offering discounts when investing a particular amount in *restricted mass market investments*; or
- (5) offering free gifts once an investment in a *restricted mass market investment* has been made such as laptops or mobile telephones.

- 4.12A.9 G Information and research tools do not constitute non-monetary incentives.

Risk warning

- 4.12A.1 R A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *restricted mass market investment* unless it contains a risk warning that complies with COBS 4.12A.11R, COBS 4.12A.13R and COBS 4.12A.15R.

- 4.12A.1 R (1) For the purposes of COBS 4.12A.10R, the *financial promotion* must contain the following risk warning:

**Don't invest unless you're prepared to lose all your money invested. This is a high-risk investment. You could lose all the money you invest and are unlikely to be protected if something goes wrong.**

- (2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider, the following risk warning must be used:

**Don't invest unless you're prepared to lose all your money.**

- 
- (3) Where the *financial promotion* is, or is to be, *communicated* by way of a website, mobile application or other digital medium, the risk warning in (1) or (2) must also include the following:
- (a) the text: **Take 2 mins to learn more**; and
  - (b) a link which, when activated, delivers an appropriate risk summary in a pop-up box (or equivalent):
    - (i) relating to the type of *restricted mass market investment* that is the subject of the *financial promotion*; and
    - (ii) selected from *COBS 4 Annex 1R*.

- (4) Where the *financial promotion* is *communicated* other than by way of a website, mobile application or other digital medium (and including where the *financial promotion* is a *real time financial promotion*), the risk warning in (1) must be:

- (a) provided in a *durable medium*; and
- (a) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *restricted mass market investment* that is the subject of the *financial promotion* selected from *COBS 4 Annex 1R*,

unless the medium of *communication* means that this is not possible.

4.12A.1 G 2 It is unlikely to be possible to comply with *COBS 4.12A.11R(4)* where the *financial promotion* is *communicated* by means of (without limitation) a television or radio broadcast. In such a case, the *financial promotion* must still include the risk warning specified in *COBS 4.12A.11R(1)*.

4.12A.1 R 3 The relevant risk warning in *COBS 4.12A.11R(1)* or (2) must be:

- (1) prominent, taking into account the content, size, format and orientation of the *financial promotion* as a whole;
- (2) unless the risk warning cannot be provided in writing, clearly legible, contained within its own border and with bold and underlined text as indicated in *COBS 4.12A.11R*;
- (3) if the *financial promotion* is, or is to be, *communicated* by means of:
  - (a) a website or mobile application:
    - (i) statically fixed and visible at the top of the screen, below anything else that also stays static, even when the *retail client* scrolls up or down the webpage; and

(ii) included as described in (3)(a)(i) on each linked webpage on the website or page on the application relating to the *restricted mass market investment*;

(b) a television broadcast, prominently fixed on the screen for the duration of the broadcast.

4.12A.1 G The *FCA* expects *firms* to take account of the international Web Content  
4 Accessibility Guidelines (WCAG) 2.1 AA accessibility standard when designing how the risk warning will be displayed:  
<https://www.w3.org/WAI/WCAG21/quickref/>

4.12A.1 R The *financial promotion* must not contain any design feature which has the  
5 intent or effect of reducing the visibility or prominence of the risk warning.

[**Note:** The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12A.1 G For the purposes of *COBS* 4.12A.15R, design features which might reduce  
6 the visibility or prominence of a risk warning include, but are not limited to:

- (1) using a font size for the risk warning that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *client* to read the text;
- (3) fading the text of the risk warning;
- (4) placing the risk warning at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional links to be clicked in order for the full text of the risk warning to be seen;
- (6) using a font or background in the risk warning in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk warning from other forms of information.

#### Direct offer financial promotions

4.12A.1 G (1) *COBS* 4.12A.18R to *COBS* 4.12A.35G apply in relation to *direct*  
7 *offer financial promotions* to *retail clients* in relation to *restricted mass market investments*.

- (2) A *firm* may communicate information about a *P2P agreement* or a *P2P portfolio* to a *retail client* before *COBS 4.12A.18R* applies, provided that the defining elements of a *direct offer financial promotion* are not present in that communication. This information may comprise, without limitation, mandatory disclosures applicable to that *firm*, such as those set out in *COBS 18.12.24R* to *COBS 18.12.28R*, including information about:
- (a) the identity of the borrower(s);
  - (b) the *price* or *target rate*, provided they are accompanied by a fair description of the anticipated actual return, taking into account fees, default rates and taxation;
  - (c) the term;
  - (d) the risk categorisation; and
  - (e) a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the *firm*.

4.12A.1 R  
8

- (1) Unless permitted by *COBS 4.12A.19R*, a *firm* must not:
- (a) *communicate a direct offer financial promotion* relating to a *restricted mass market investment* to a *retail client* unless the conditions in *COBS 4.12A.21R* (risk warning), *COBS 4.12A.22R* (cooling off period), *COBS 4.12A.23R* (categorisation) and *COBS 4.12A.30R* (appropriateness) are satisfied; or
  - (b) *approve a direct offer financial promotion* relating to a *restricted mass market investment* for *communication* to a *retail client* unless the *firm* is satisfied that the conditions in *COBS 4.12A.21R* (risk warning), *COBS 4.12A.22R* (cooling off period), *COBS 4.12A.23R* (categorisation) and *COBS 4.12A.30R* (appropriateness) will be satisfied in relation to each *communication* of the *direct offer financial promotion*.
- (2) The conditions in *COBS 4.12A.21R* (risk warning) and *COBS 4.12A.22R* (cooling off period) do not need to be satisfied if the *retail client* has previously received a *direct offer financial promotion* relating to a *restricted mass market investment* from the same *person* as would otherwise need to satisfy them.
- (3) The condition in *COBS 4.12A.30R* (appropriateness) does not need to be satisfied if the type of *restricted mass market investment* to which the *direct offer financial promotion* relates has previously been assessed as appropriate for the *retail client* by the same *person* as would otherwise need to undertake the assessment.

4.12A.1 G The effect of COBS 4.12A.18R and related provisions in this section is that:  
9

- (1) a personalised risk warning and cooling off period are only required on the first occasion that a *firm*, or other *person communicating an approved direct offer financial promotion*, communicates a *direct offer financial promotion* relating to a *restricted mass market investment* to a particular *retail client*;
- (2) an appropriateness assessment is only required on the first occasion that a particular *retail client* responds to a *direct offer financial promotion* relating to a particular type of *restricted mass market investment* (although a *firm* should consider whether it would be in the best interests of the *retail client* for a further assessment to be undertaken, for example due to lapse of time, even where this is not required); and
- (3) in any case, a *direct offer financial promotion* relating to a *restricted mass market investment* can only be *communicated* to a *retail client* who has a current statement (completed and signed within the period of 12 *months* ending with on the day on which the *communication* is to be made) of a type falling within COBS 4.12A.24R and which applies to the type of *restricted mass market investment* to which the *direct offer financial promotion* relates.

4.12A.2 R A *firm* may *communicate* or *approve* a *direct offer financial promotion*  
0 relating to a *restricted mass market investment* to, or for *communication* to, a *retail client* if:

- (1) where the *direct offer financial promotion* relates to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio*:
  - (a) the *firm* itself will comply with the *suitability rules* (COBS 9 and 9A) in relation to the *investment* promoted; or
  - (b) the *retail client* has confirmed before the promotion is made that they are a *retail client* of another *firm* that will comply with the *suitability rules* (COBS 9 and COBS 9A) in relation to the *investment* promoted; or
- (2) the *retail client* is a *corporate finance contact* or a *venture capital contact*.

First condition: risk warning

4.12A.2 R (1) The first condition is that before *communicating* the *direct offer*  
1 *financial promotion*, the *firm*, or other *person communicating* the *direct offer financial promotion*:

- (a) obtains the *retail client's* full name; and

- (b) having obtained the *retail client's* name, communicates to that *retail client* the following warning:

**[Client name] this is a high-risk investment. How would you feel if you lost the money you're about to invest? Take 2 mins to learn more.**

- (2) If the *direct offer financial promotion* is, or is to be, *communicated* by means of a website, mobile application or other digital medium, the warning in (1)(b) must:
- (a) be clearly brought to the *retail client's* attention by means of a pop-up box (or equivalent);
- (b) include a link which, when activated, delivers an appropriate risk summary in a further pop-up box (or equivalent):
- (i) relating to the type of *restricted mass market investment* that is the subject of the *direct offer financial promotion*; and
- (ii) selected from COBS 4 Annex 1R; and
- (c) be accompanied by an invitation to the *retail client* to specify whether they wish to:
- (i) leave the investment journey; or
- (ii) continue to receive the *direct offer financial promotion*.
- (3) If the *direct offer financial promotion* is, or is to be, *communicated* other than by means of a website, mobile application or other digital medium:
- (a) the warning in (1)(b) must be:
- (i) provided to the *retail client* in a *durable medium*; and
- (ii) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *restricted mass market investment* that is the subject of the *direct offer financial promotion* selected from COBS 4 Annex 1R; and
- (b) the *retail client* must then be invited to specify whether they wish to:
- (i) leave the investment journey; or

(ii) continue to receive the *direct offer financial promotion*.

(4) The options in (2)(c) and (3)(b) must be presented with equal prominence.

Second condition: cooling off period

- 4.12A.2 R (1) The second condition applies if the *retail client* requests to continue  
2 for the purposes of *COBS* 4.12A.21R(2)(c) or *COBS* 4.12A.21R(3)(b).
- (2) The second condition is that following the *retail client's* request and before *communicating* the *direct offer financial promotion*, the *firm*, or other *person communicating* the *direct offer financial promotion*:
- (a) allows a period of at least 24 hours to elapse; and
- (b) following the lapse of time in (a), invites the *retail client* to specify whether they wish to:
- (i) leave the investment journey; or
- (ii) continue to receive the *direct offer financial promotion*.
- (3) The options in (2)(b) must be presented with equal prominence.

Third condition: categorisation

- 4.12A.2 R (1) The third condition applies if the *retail client* requests to continue  
3 for the purposes of *COBS* 4.12A.22R(2)(b).
- (2) The third condition is that following the *retail client's* request and before *communicating* the *direct offer financial promotion*, the *firm*, or other *person communicating* the *direct offer financial promotion*, takes reasonable steps to establish that the *retail client* is:
- (a) certified as:
- (i) a 'high net worth investor';
- (ii) a 'sophisticated investor'; or
- (iii) a 'restricted investor'; or
- (b) if the *direct offer financial promotion* relates to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio*, self-certified as a 'sophisticated investor',

in each case in accordance with *COBS* 4.12A.24R.

- 4.12A.2 R (1) A certified high net worth investor, a certified sophisticated  
4 investor, a self-certified sophisticated investor or a restricted investor is an individual:
- (a) who has completed and signed, within the period of 12 *months* ending on the day on which the *communication* is made, a statement in the terms set out in the applicable *rule* listed below and as modified by (2):
    - (i) certified high net worth investor: *COBS 4 Annex 2R*;
    - (ii) certified sophisticated investor: *COBS 4 Annex 3R*;
    - (iii) self-certified sophisticated investor: *COBS 4 Annex 4R*;
    - (iv) restricted investor: *COBS 4 Annex 5R*; and
  - (b) whose completion of the statement in (a) indicates that they meet the relevant criteria to be categorised as such.
- (2) When used in relation to *P2P agreements* or a *P2P portfolio*, the statement in *COBS 4 Annex 4R* (self-certified sophisticated investor) must be modified as follows:
- (a) the reference to “unlisted company” must be replaced with a reference to “P2P agreement or P2P portfolio”; and
  - (b) the reference to “private equity sector, or in the provision of finance for small and medium enterprises” must be replaced with a reference to “provision of finance, resulting in an understanding of the P2P agreements or P2P portfolios to which the promotions will relate”.
- 4.12A.2 E For the purposes of *COBS 4.12A.23R(2)*, a *firm* will have taken reasonable  
5 steps to establish the certification of a *retail client* where:
- (1) the *firm* has obtained the relevant completed certificate from the *retail client*; and
  - (2) the *retail client*’s completion of the certificate evidences that the *retail client* meets the criteria to be certified as such.
- 4.12A.2 G Where the *direct offer financial promotion* will relate to more than one type  
6 of *restricted mass market investment*, the condition in *COBS 4.12A.23R(2)* may be satisfied by the *retail client* signing a combined statement that meets the requirements in *COBS 4 Annex 2R* to *COBS 4 Annex 5R*, as applicable, in respect of each type of *restricted mass market investment* to which the *direct offer financial promotion* will relate.

4.12A.2 G Where the restricted investor statement (*COBS* 4 Annex 5R) refers to a  
7 restricted investor not investing more than 10% of their net assets, this refers to the *retail client's* aggregate investment across all types of *restricted mass market investment*.

4.12A.2 R A *firm* must not:  
8

- (1) influence, or seek to influence, the information that a *retail client* provides when completing a certificate in *COBS* 4.12A.24R; or
- (2) encourage a *retail client* to complete a further certificate in the event that a *client's* signed certificate indicates that they do not meet the criteria to be categorised as a high net worth, sophisticated or restricted investor, as applicable.

Fourth condition: appropriateness

4.12A.2 G The fourth condition is relevant if the recipient of the *direct offer financial*  
9 *promotion* makes an application or order for a *restricted mass market investment* in response to that *direct offer financial promotion*.

4.12A.3 R (1) The fourth condition applies where the *firm* itself or the *person* who  
0 will:

- (a) *arrange* or *deal* in relation to a *non-readily realisable security* or *qualifying cryptoasset*; or
- (b) facilitate the *retail client* becoming a *lender* under a *P2P agreement* or a *P2P portfolio*,

is aware, or ought reasonably to be aware, that an application or order is in response to the *direct offer financial promotion*.

- (2) The condition is that the *firm* or *person* in (1) will only process the application or order once it has assessed that the *restricted mass market investment* is appropriate for the *retail client* in compliance with the *rules* in *COBS* 10 or *COBS* 10A (as applicable) or equivalent requirements as modified and supplemented by *COBS* 4.12A.31R and *COBS* 4.12A.32R.

4.12A.3 R In the course of providing information regarding their knowledge and  
1 experience for the purpose of the appropriateness assessment required by *COBS* 4.12A.30R, the *retail client* must not be provided with assistance, information, guidance or feedback which might affect the substance of the information that they provide.

4.12A.3 R If a *restricted mass market investment* is assessed as not being appropriate  
2 for a particular *retail client*:

- (1) where the assessment is based on a series of questions which the *retail client* is required to answer:
  - (a) that *retail client* must not be informed of the particular answers which led to the *restricted mass market investment* being assessed as not appropriate for them;
  - (b) any further assessment of the appropriateness of that *restricted mass market investment* for that *retail client* must not be based on the same questions as were used for the purpose of a previous assessment of the appropriateness of that *restricted mass market investment* for that *retail client*; and
- (2) any further assessment of the appropriateness of that *restricted mass market investment* for that *retail client* must not be undertaken for at least 24 hours.

4.12A.3 G The effect of COBS 4.12A.30R to COBS 4.12A.32R is that:  
3

- (1) *direct offer financial promotions* for *restricted mass market investments* may only be *communicated*, or *approved for communication*, to *retail clients* if any application or order received in response to that *direct offer financial promotion* will be fulfilled only where that *restricted mass market investment* has been assessed as being appropriate for that *retail client*;
- (2) if the assessment of appropriateness results in the provision of a warning (a determination that the *restricted mass market investment* is not appropriate for the *retail client* (COBS 10.3 or COBS 10A.3)), then an order or application received in response to a *direct offer financial promotion* may not be fulfilled; and
- (3) the circumstances in which an assessment of appropriateness need not be undertaken (COBS 10.4 and COBS 10A.4) are not relevant for the purpose of the fourth condition.

4.12A.3 G When gathering information regarding a *retail client's* knowledge and  
4 experience for the purpose of assessing whether a *restricted mass market investment* is appropriate for that *retail client*, the *firm* or *person* undertaking the assessment should:

- (1) avoid asking the *retail client* questions that invite binary (yes/no) answers;
- (2) if asking multiple-choice questions, use questions which offer at least 3 plausible answers (excluding the option to answer 'do not know', or similar); and

- (3) ensure that questions address matters that are relevant to the specific type of *investment* in which the *retail client* has expressed interest (see also *COBS* 10.2.2R).
- 4.12A.3 G (1) A *retail client* should only be informed of the outcome of an appropriateness assessment once they have provided all of the information required for the assessment to be undertaken.
- 5 (2) *COBS* 4.12A.32R(1)(a) does not prevent a *retail client* from being informed of the broad reasons for which a *restricted mass market investment* was assessed not to be appropriate for them.
- (3) For the purposes of *COBS* 4.12A.32R(1), any questions used to undertake a further assessment of appropriateness should be sufficiently different such that the *retail client* could not simply infer the answers that would lead to an assessment of appropriateness from the outcome of their responses to a previous set of questions.
- (4) A *firm* should consider whether the particular features of a *restricted mass market investment* mean that an interval of greater than 24 hours should be applied following an assessment that that *investment* is not appropriate for a *retail client* (*COBS* 4.12A.32R(2)).
- (5) A *retail client* may be informed of the option to re-apply to *buy* a *restricted mass market investment* following a determination that the *restricted mass market investment* is not appropriate for them. However, the *retail client* should not be encouraged to do so.

...

COBS 4.14 (Restrictions on the promotion of speculative illiquid securities to retail clients) is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

[*Editor's note*: The substance of the provisions in COBS 4.14 are now incorporated in, and appear at, COBS 4.12.]

**4.14      ~~Restrictions on the promotion of speculative illiquid securities to retail clients~~ [deleted]**

Insert the following new annexes, COBS 4 Annex 1 to COBS 4 Annex 5, after COBS 4.14 (Restrictions on the promotion of speculative illiquid securities to retail clients). The text is not underlined.

**4 Annex   R   Risk summaries**  
**1**

This Annex belongs to *COBS 4.12.5DR*, *COBS 4.12.5JR*, *COBS 4.12A.11R* and *COBS 4.12A.21R*.

Where a risk summary in this Annex includes two alternative formulations of text in square brackets, the first should be used where the *person* offering the *investment* is not an *authorised person* and the second where the *person* offering the *investment* is an *authorised person*. A *firm* should select the correct statement in the relevant section and omit the statement in that section that is not appropriate. *Firms* should omit square brackets.

The risk summary in (1) is expected ordinarily to be used where a *financial promotion* will be *communicated* by a *firm* intermediating investment in *non-readily realisable securities*. The risk summaries in (3) and (4) are expected ordinarily to be used where a *financial promotion* will be *communicated* by an *issuer* of *non-readily realisable securities*.

1	Risk summary for investments in <i>non-readily realisable securities</i> which are <i>arranged</i> by a <i>firm</i>
	<p><b>Estimated reading time: 2 min</b></p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p><b>What are the key risks?</b></p> <p><b>1. You could lose all your money invested</b></p> <ul style="list-style-type: none"> <li>• Most investments are shares in start-up businesses or bonds issued by them. Investors in these shares or bonds often lose 100% of the money they invested, as most start-up businesses fail.</li> <li>• Certain of these investments can be held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all your money. It only means that any potential returns will be tax free.</li> <li>• Checks on the businesses you are investing in, such as how well they are expected to perform, may not have been carried out by the platform you are investing through. You should do your own research before investing.</li> </ul> <p><b>2. You won't get your money back quickly</b></p> <ul style="list-style-type: none"> <li>• Even if the business you invest in is successful, it will likely take several years to get your money back.</li> <li>• The most likely way to get your money back is if the business is bought by another business or lists its shares on an exchange such as the London Stock Exchange. These events are not common.</li> <li>• Start-up businesses very rarely pay you back through dividends. You should not expect to get your money back this way.</li> <li>• Some platforms may give you the opportunity to sell your investment early through a 'secondary market' or 'bulletin board',</li> </ul>

	<p>but there is no guarantee you will find a buyer at the price you are willing to sell.</p> <p><b>3. Don't put all your eggs in one basket</b></p> <ul style="list-style-type: none"> <li>• Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.</li> <li>• A good rule of thumb is not to invest more than 10% of your money in <u>high-risk investments</u>.</li> </ul> <p><b>4. The value of your investment can be reduced</b></p> <ul style="list-style-type: none"> <li>• If your investment is shares, the percentage of the business that you own will decrease if the business issues more shares. This could mean that the value of your investment reduces, depending on how much the business grows. Most start-up businesses issue multiple rounds of shares.</li> <li>• These new shares could have additional rights that your shares don't have, such as the right to receive a fixed dividend, which could further reduce your chances of getting a return on your investment.</li> </ul> <p><b>5. You are unlikely to be protected if something goes wrong</b></p> <ul style="list-style-type: none"> <li>• Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Learn more about FSCS protection <u>here</u>.</li> <li>• Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated platform, FOS may be able to consider it. Learn more about FOS protection <u>here</u>.</li> </ul> <p><b>If you are interested in learning more about how to protect yourself, visit the FCA's website <u>here</u>.</b></p> <p><b>For further information about investment-based crowdfunding, visit the FCA's website <u>here</u>.</b></p>
2	<p>Risk summary for <i>P2P agreements</i> or <i>P2P portfolios</i></p>
	<p><b>Estimated reading time: 2 min</b></p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p><b>What are the key risks?</b></p> <p><b>1. You could lose all your money invested</b></p> <ul style="list-style-type: none"> <li>• Many peer-to-peer (P2P) loans are made to borrowers who can't borrow money from traditional lenders such as banks. These borrowers have a higher risk of not paying you back.</li> <li>• Advertised rates of return aren't guaranteed. If a borrower doesn't pay you back as agreed, you could earn less money than expected. A</li> </ul>

higher advertised rate of return means a higher risk of losing your money.

- These investments can be held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all your money. It only means that any potential gains from your investment will be tax free.

## **2. You are unlikely to get your money back quickly**

- Some P2P loans last for several years. You should be prepared to wait for your money to be returned even if the borrower repays on time.
- Some platforms may give you the opportunity to sell your investment early through a ‘secondary market’, but there is no guarantee you will be able to find someone willing to buy.
- Even if your agreement is advertised as affording early access to your money, you will only get your money early if someone else wants to buy your loan(s). If no one wants to buy, it could take longer to get your money back.

## **3. Don’t put all your eggs in one basket**

- Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.
- A good rule of thumb is not to invest more than 10% of your money in high-risk investments.

## **4. The P2P platform could fail**

- If the platform fails, it may be impossible for you to collect money on your loan. It could take years to get your money back, or you may not get it back at all. Even if the platform has plans in place to prevent this, they may not work in a disorderly failure.

## **5. You are unlikely to be protected if something goes wrong**

- Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Learn more about FSCS protection here.
- Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated platform, FOS may be able to consider it. Learn more about FOS protection here.

**If you are interested in learning more about how to protect yourself, visit the FCA’s website here.**

**For further information about peer to peer lending (loan-based crowdfunding), visit the FCA’s website here.**

3	Risk summary for <i>non-readily realisable securities</i> which are <i>shares</i>
	<p><b>Estimated reading time: 2 min</b></p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p><b>What are the key risks?</b></p> <ol style="list-style-type: none"> <li><b>1. You could lose all your money invested</b> <ul style="list-style-type: none"> <li>• If the business you invest in fails, you are likely to lose 100% of the money you invested. Most start-up businesses fail.</li> </ul> </li> <li><b>2. [You are unlikely to be protected if something goes wrong] or [You have little protection if something goes wrong]</b> <ul style="list-style-type: none"> <li>• [The business offering this investment is not regulated by the FCA] or [The FCA does not regulate this investment].</li> <li>• Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Learn more about FSCS protection <a href="#">here</a>.</li> <li>• [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] or [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection <a href="#">here</a>.</li> </ul> </li> <li><b>3. You won't get your money back quickly</b> <ul style="list-style-type: none"> <li>• Even if the business you invest in is successful, it may take several years to get your money back. You are unlikely to be able to sell your investment early.</li> <li>• The most likely way to get your money back is if the business is bought by another business or lists its shares on an exchange such as the London Stock Exchange. These events are not common.</li> <li>• If you are investing in a start-up business, you should not expect to get your money back through dividends. Start-up businesses rarely pay these.</li> </ul> </li> <li><b>4. Don't put all your eggs in one basket</b> <ul style="list-style-type: none"> <li>• Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.</li> <li>• A good rule of thumb is not to invest more than 10% of your money in <a href="#">high-risk investments</a>.</li> </ul> </li> <li><b>5. The value of your investment can be reduced</b> <ul style="list-style-type: none"> <li>• The percentage of the business that you own will decrease if the business issues more shares. This could mean that the value of your</li> </ul> </li> </ol>

	<p>investment reduces, depending on how much the business grows. Most start-up businesses issue multiple rounds of shares.</p> <ul style="list-style-type: none"> <li>• These new shares could have additional rights that your shares don't have, such as the right to receive a fixed dividend, which could further reduce your chances of getting a return on your investment.</li> </ul> <p><b>If you are interested in learning more about how to protect yourself, visit the FCA's website <a href="#">here</a>.</b></p>
4	<p>Risk summary for <i>non-readily realisable securities</i> which are <i>debentures</i></p>
	<p><b>Estimated reading time: 2 min</b></p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p><b>What are the key risks?</b></p> <p><b>1. You could lose all your money invested</b></p> <ul style="list-style-type: none"> <li>• If the business you are investing in fails, there is a high risk that you will lose your money. Most start-up and early-stage businesses fail.</li> <li>• Advertised rates of return aren't guaranteed. This is not a savings account. If the borrower doesn't pay you back as agreed, you could earn less money than expected. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.</li> <li>• These investments are sometimes held in an Innovative Finance ISA (IFISA). An IFISA does not reduce the risk of the investment or protect you from losses, so you can still lose all your money. It only means that any potential gains from your investment will be tax free.</li> </ul> <p><b>2. [You are unlikely to be protected if something goes wrong] or [You have little protection if something goes wrong]</b></p> <ul style="list-style-type: none"> <li>• [The business offering this investment is not regulated by the FCA] <b>or</b> [The FCA does not regulate this investment].</li> <li>• Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Learn more about FSCS protection <a href="#">here</a>.</li> <li>• [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] <b>or</b> [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection <a href="#">here</a>.</li> </ul> <p><b>3. You are unlikely to get your money back quickly</b></p>

	<ul style="list-style-type: none"> <li>• Many bonds last for several years, so you should be prepared to wait for your money to be returned even if the business you're investing in repays on time.</li> <li>• You are unlikely to be able to cash in your investment early by selling your bond. You are usually locked in until the business has paid you back over the period agreed.</li> </ul> <p><b>4. Don't put all your eggs in one basket</b></p> <ul style="list-style-type: none"> <li>• Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.</li> <li>• A good rule of thumb is not to invest more than 10% of your money in <u>high-risk investments</u>.</li> </ul> <p><b>If you are interested in learning more about how to protect yourself, visit the FCA's website <a href="#">here</a>.</b></p>
5	Risk summary for <i>qualifying cryptoassets</i>
	<p><b>Estimated reading time: 2 min</b></p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be high risk.</p> <p><b>What are the key risks?</b></p> <p><b>1. You could lose all the money you invest</b></p> <ul style="list-style-type: none"> <li>• The performance of most cryptoassets can be highly volatile, with their value dropping as quickly as it can rise. You should be prepared to lose all the money you invest in cryptoassets.</li> <li>• The cryptoasset market is generally unregulated. There is a risk of losing money or any cryptoassets you purchase due to risks such as cyber-attacks, financial crime and firm failure.</li> </ul> <p><b>2. You may not be able to sell your investment when you want to</b></p> <ul style="list-style-type: none"> <li>• There is no guarantee that investments in cryptoassets can be easily sold at any given time. The ability to sell a cryptoasset depends on various factors, including the supply and demand in the market at that time.</li> <li>• Operational failings such as technology outages could cause unwanted delay and you may be unable to sell your cryptoassets at the time you want.</li> </ul> <p><b>3. [You are unlikely to be protected if something goes wrong] or [You have little protection if something goes wrong]</b></p> <ul style="list-style-type: none"> <li>• [The business offering this investment is not regulated by the FCA] or [The FCA does not regulate this investment].</li> <li>• Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not</li> </ul>

	<p>cover poor investment performance. Learn more about FSCS protection <a href="#">here</a>.</p> <ul style="list-style-type: none"> <li>• [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] <b>or</b> [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection <a href="#">here</a>.</li> </ul> <p><b>4. Cryptoasset investments can be complex</b></p> <ul style="list-style-type: none"> <li>• Investments in cryptoassets can be complex, making it difficult to understand the risks associated with the investment.</li> </ul> <p><b>5. Don't put all your eggs in one basket</b></p> <ul style="list-style-type: none"> <li>• Putting all your money into a single type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.</li> <li>• A good rule of thumb is not to invest more than 10% of your money in <a href="#">high-risk investments</a>.</li> </ul> <p><b>If you are interested in learning more about how to protect yourself, visit the FCA's website <a href="#">here</a>.</b></p> <p><b>For further information about cryptoassets, visit the FCA's website <a href="#">here</a>.</b></p>
6	Risk summary for <i>speculative illiquid securities</i>
	<p><b>Estimated reading time: 2 min</b></p> <p>Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be very complex and high risk.</p> <p><b>What are the key risks?</b></p> <p><b>1. You could lose all your money invested</b></p> <ul style="list-style-type: none"> <li>• If the business offering this investment fails, there is a high risk that you will lose all your money. Businesses like this often fail as they usually use risky investment strategies.</li> <li>• Advertised rates of return aren't guaranteed. This is not a savings account. If the issuer doesn't pay you back as agreed, you could earn less money than expected or nothing at all. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.</li> <li>• These investments are sometimes held in an Innovative Finance ISA (IFISA). While any potential gains from your investment will be tax free, you can still lose all your money. An IFISA does not reduce the risk of the investment or protect you from losses.</li> </ul> <p><b>2. [You are unlikely to be protected if something goes wrong] or [You have little protection if something goes wrong]</b></p>

	<ul style="list-style-type: none"> <li>• [The business offering this investment is not regulated by the FCA] <b>or</b> [The FCA does not regulate this investment].</li> <li>• Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Learn more about FSCS protection <a href="#">here</a>.</li> <li>• [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] <b>or</b> [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection <a href="#">here</a>.</li> </ul> <p><b>3. You are unlikely to get your money back quickly</b></p> <ul style="list-style-type: none"> <li>• This type of business could face cash-flow problems that delay interest payments. It could also fail altogether and be unable to repay investors their money.</li> <li>• You are unlikely to be able to cash in your investment early by selling it. You are usually locked in until the business has paid you back over the period agreed. In the rare circumstances where it is possible to sell your investment in a ‘secondary market’, you may not find a buyer at the price you are willing to sell.</li> </ul> <p><b>4. This is a complex investment</b></p> <ul style="list-style-type: none"> <li>• This investment has a complex structure based on other risky investments. A business that raises money like this lends it to, or invests it in, other businesses or property. This makes it difficult for the investor to know where their money is going.</li> <li>• This makes it difficult to predict how risky the investment is, but it will most likely be high.</li> <li>• You may wish to get financial advice before deciding to invest.</li> </ul> <p><b>5. Don’t put all your eggs in one basket</b></p> <ul style="list-style-type: none"> <li>• Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.</li> <li>• A good rule of thumb is not to invest more than 10% of your money in <a href="#">high-risk investments</a>.</li> </ul> <p><b>If you are interested in learning more about how to protect yourself, visit the FCA’s website <a href="#">here</a>.</b></p> <p><b>For further information about minibonds, visit the FCA’s website <a href="#">here</a>.</b></p>
7	Risk summary for <i>non-mainstream pooled investments</i>
	<b>Estimated reading time: 2 min</b>

Due to the potential for losses, the Financial Conduct Authority (FCA) considers this investment to be very complex and high risk.

**What are the key risks?**

**1. You could lose all your money invested**

- If the business offering this investment fails, there is a high risk that you will lose all your money. Businesses like this often fail as they usually use risky investment strategies.
- Advertised rates of return aren't guaranteed. This is not a savings account. If the issuer doesn't pay you back as agreed, you could earn less money than expected or nothing at all. A higher advertised rate of return means a higher risk of losing your money. If it looks too good to be true, it probably is.
- These investments are very occasionally held in an Innovative Finance ISA (IFISA). While any potential gains from your investment will be tax free, you can still lose all your money. An IFISA does not reduce the risk of the investment or protect you from losses.

**2. [You are unlikely to be protected if something goes wrong] or [You have little protection if something goes wrong]**

- [The business offering this investment is not regulated by the FCA] **or** [The FCA does not regulate this investment].
- Protection from the Financial Services Compensation Scheme (FSCS), in relation to claims against failed regulated firms, does not cover poor investment performance. Learn more about FSCS protection [here](#).
- [The Financial Ombudsman Service (FOS) will not be able to consider complaints related to this firm] **or** [Protection from the Financial Ombudsman Service (FOS) does not cover poor investment performance. If you have a complaint against an FCA-regulated firm, FOS may be able to consider it.] Learn more about FOS protection [here](#).

**3. You are unlikely to get your money back quickly**

- This type of business could face cash-flow problems that delay payments to investors. It could also fail altogether and be unable to repay any of the money owed to you.
- You are unlikely to be able to cash in your investment early by selling your investment. In the rare circumstances where it is possible to sell your investment in a 'secondary market', you may not find a buyer at the price you are willing to sell.
- You may have to pay exit fees or additional charges to take any money out of your investment early.

**4. This is a complex investment**

	<ul style="list-style-type: none"> <li>• This kind of investment has a complex structure based on other risky investments, which makes it difficult for the investor to know where their money is going.</li> <li>• This makes it difficult to predict how risky the investment is, but it will most likely be high.</li> <li>• You may wish to get financial advice before deciding to invest.</li> </ul> <p><b>5. Don't put all your eggs in one basket</b></p> <ul style="list-style-type: none"> <li>• Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.</li> <li>• A good rule of thumb is not to invest more than 10% of your money in <u>high-risk investments</u>.</li> </ul> <p><b>If you are interested in learning more about how to protect yourself, visit the FCA's website <a href="#">here</a>.</b></p> <p><b>For further information about unregulated collective investment schemes (UCIS), visit the FCA's website <a href="#">here</a>.</b></p>
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**4 Annex 2 R Certified high net worth investor statement**

This Annex belongs to *COBS* 4.12.6R and *COBS* 4.12A.24R.

<b>HIGH-NET-WORTH INVESTOR STATEMENT</b>
<p>Please confirm whether you qualify as a high-net-worth investor on the basis that A or B apply to you.</p> <p>In the last financial year did you have:</p> <p>A) an annual <b>income of £100,000 or more</b>? Income does <b>NOT</b> include any one-off pension withdrawals.</p> <p style="margin-left: 40px;"> <input type="checkbox"/> No  <input type="checkbox"/> Yes         </p> <p style="margin-left: 80px;">If yes, please specify your income (as defined above) in the last financial year _____</p> <p>B) <b>net assets of £250,000 or more</b>? Net assets do <b>NOT</b> include: your home (primary residence), your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance.</p> <p style="margin-left: 40px;"> <input type="checkbox"/> No  <input type="checkbox"/> Yes         </p> <p style="margin-left: 80px;">If yes, please specify your net assets (as defined above) in the last financial year _____</p> <p><b>OR</b></p> <p>C) None of these apply to me.</p>

<input type="checkbox"/> Yes
<p><b>I accept that being a high-net-worth investor will expose me to promotions for investment where there is a significant risk of losing all the money I invest.</b> I am aware that it is open to me seek professional advice before making any investment in a high-risk investment.</p> <p>Signature:</p> <p>Date:</p>

**4 Annex 3 R Certified sophisticated investor statement**

This Annex belongs to *COBS 4.12.7R* and *COBS 4.12A.24R*.

*Firms* must omit the notes and square brackets which appear in the following form of certificate.

<b>SOPHISTICATED INVESTOR STATEMENT</b>
<p>Please confirm whether you qualify as a sophisticated investor on the basis that in the <b>last three years</b> you have received a certificate from an authorised firm confirming you understand the risks involved with [type of investment] [<b>Note 1</b>].</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, what is the name of the authorised firm _____</p> <p><b>OR</b></p> <p>This does not apply to me.</p> <p><input type="checkbox"/> Yes</p>
<p><b>I accept that being a sophisticated investor will expose me to promotions for investment where there is a significant risk of losing all the money I invest.</b> I am aware that it is open to me seek professional advice before making any investment in a high-risk investment.</p> <p>Signature:</p> <p>Date:</p>

**Note 1:** The *firm* must insert the type of *investment* in relation to which the *client* wishes to be categorised for the purpose of receiving *financial promotions*.

**4 Annex 4 R Self-certified sophisticated investor statement**

This Annex belongs to *COBS 4.12.8R* and *COBS 4.12A.24R*.

*Firms* must omit the notes and square brackets which appear in the following form of certificate.

### SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT

Please confirm whether you qualify as a self-certified sophisticated investor on the basis that A, B, C or D apply to you.

In the **last two years** have you:

A) worked in **private equity** or in the **provision of finance for small and medium enterprises**?

- No  
 Yes

If yes, what is/was the name of the business or organisation? \_\_\_\_\_

B) been the **director of a company** with an annual turnover of at least £1 million?

- No  
 Yes

If yes, what is/was the name of the company? \_\_\_\_\_

C) made two or more **investments in an unlisted company**?

- No  
 Yes

If yes, how many investments in unlisted companies have you made in the last two years? \_\_\_\_\_

D) been a **member of a network or syndicate of business angels for more than six months**?

- No  
 Yes

If yes, what is the name of the network or syndicate? \_\_\_\_\_

**OR**

E) None of these apply to me.

- Yes

**I accept that being a self-certified sophisticated investor will expose me to promotions for investments where there is a significant risk of losing all the money I invest.** I am aware that it is open to me seek advice from someone who specialises in advising on [type of investment] [**Note 1**].

Signature:

Date:
-------

**Note 1:** The *firm* must insert the type of *investment* in relation to which the *client* wishes to be categorised for the purpose of receiving *financial promotions*.

#### 4 Annex R Restricted investor statement 5

This Annex belongs to COBS 4.12A.24R.

### RESTRICTED INVESTOR STATEMENT

Putting all your money into a single business or type of investment is risky. Spreading your money across different investments makes you less dependent on any one to do well.

You should not invest more than 10% of your net assets in high-risk investments. Doing so could expose you to significant losses.

For the purposes of this statement, **net assets do NOT include:** your home (primary residence), your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance.

For the purposes of this statement **high-risk investments are:** cryptoassets; peer-to-peer (P2P) loans; investment based crowdfunding; and unlisted debt and equity (such as in companies not listed on an exchange like the London Stock Exchange).

Please confirm whether you qualify as a restricted investor on the basis that A and B apply to you.

A) In the **past twelve months** have you invested less than 10% of your net assets in high-risk investments (as defined above)?

- Yes (I have invested *less* than 10% of my net assets)  
 No (I have invested *more* than 10% of my net assets)

If yes, over the last twelve months roughly what percentage of your net assets have you invested in high-risk investments (as defined above)? \_\_\_\_\_

**and**

B) In the **next twelve months** do you intend to limit your investment in high-risk investments (as defined above) to less than 10% of your net assets?

- Yes (I intend to invest *less* than 10% of my net assets)  
 No (I intend to invest *more* than 10% of my net assets)

If yes, in the next twelve months roughly what percentage of your net assets do you intend to invest in high-risk investments (as defined above)?  
 \_\_\_\_\_

**I accept that being a restricted investor will expose me to promotions for investment where there is a risk of losing all the money I invest. I am aware**

that it is open to me seek professional advice before making any investment in a high-risk investment.

Signature:

Date:

Amend the following text as shown.

**9 Suitability (including basic advice) (other than MiFID and insurance-based investment products)**

...

**9.3 Guidance on assessing suitability**

...

Investments subject to restrictions on retail distribution

9.3.5 G (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:

(a) ~~*non-mainstream-pooled-investments*~~ *non-mass market investments* are subject to a restriction on *financial promotions* (see section 238 of the ~~Act~~ *Act* and *COBS* 4.12);

(b) ~~*non-readily-realisable-securities*~~ *restricted mass market investments* are subject to a restriction on *direct offer financial promotions* (see *COBS* 4.7 4.12A);

...

(f) *credit union subordinated debt* is subject to a restriction on *direct offer financial promotions* (see *CREDS* 3A.5);

(g) ~~*speculative illiquid securities*~~ are subject to a restriction on ~~*financial promotions*~~ (see ~~*COBS* 4.14~~). [deleted]

...

...

**9A Suitability (MiFID and insurance-based investment products provisions)**

...

**9A.2 Assessing suitability: the obligations**

...

Investments subject to restrictions on retail distribution: MiFID business and insurance-based investment products

- 9A.2.22 G (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:
- (a) ~~*non-mainstream-pooled-investments*~~ *non-mass market investments* are subject to a restriction on *financial promotions* (see section 238 of the *Act* and *COBS* 4.12);
  - (b) ~~*non-readily-realisable-securities*~~ *restricted mass market investments* are subject to a restriction on *direct offer financial promotions* (see *COBS* 4.7 4.12A);
  - ...
  - (d) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and on promotions (see *COBS* 22.3);
  - (e) ~~*speculative illiquid securities*~~ are subject to a restriction on *financial promotions* (see *COBS* 4.14). [deleted]
  - ...

...

## 10 Appropriateness (for ~~non-MiFID and non-insurance-based investment products~~ non-advised services) (non-MiFID and non-insurance-based investment products provisions)

### 10.1 Application

...

- 10.1.2 R (1) This chapter applies to a *firm* which:
- (a) arranges or deals in relation to a:
    - (i) *non-readily realisable security*;
    - (ii) *speculative illiquid security*;
    - (iii) *derivative*; or
    - (iv) *warrant*,

with or for a *retail client*, other than in the course of *MiFID* or *equivalent third country business*; or
  - (b) facilitates a *retail client* becoming a lender under a *P2P agreement*;

(c) transacts in a *qualifying cryptoasset* with or for a *retail client*, and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.

(2) ~~Where a *rule* in this chapter applies to a *firm* which *arranges or deals* in relation to a *speculative illiquid security*, the *rule* also applies to~~ The rules in this chapter also apply to:

- (a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of *GEN 2.2.26R*); and
- (b) a ~~Gibraltar-based firm~~ *Gibraltar-based firm* (having the same meaning as in the ~~*Gibraltar Order*~~) to the extent that the *rule* does not already apply to such a ~~Gibraltar-based firm~~ *Gibraltar-based firm* as a result of *GEN 2.3.1R*).

...

## 10.2 Assessing appropriateness: the obligations

...

### P2P agreements Restricted mass market investments

- 10.2.9 G (1) When determining whether a *client* has the necessary knowledge to understand the risks involved in relation to a ~~*P2P agreement* or a *P2P portfolio*~~ *restricted mass market investment*, a *firm* should consider asking the *client* ~~multiple-choice~~ questions that avoid binary (yes/no) answers and cover, at least, the following matters in:
- (a) ~~the nature of the *client's* contractual relationships with the borrower and the *firm*~~ *COBS 10 Annex 1G in relation to non-readily realisable securities*;
  - (b) ~~the *client's* exposure to the credit risk of the borrower~~ *COBS 10 Annex 2G in relation to P2P agreements or P2P portfolios*; or
  - (c) ~~that all capital invested in a *P2P agreement* or *P2P portfolio* is at risk~~ *COBS 10 Annex 3G in relation to qualifying cryptoassets*;
  - (d) ~~that *P2P agreements* or *P2P portfolios* are not covered by *FSCS*~~; [deleted]
  - (e) ~~that returns may vary over time~~; [deleted]

- (f) ~~that entering into a *P2P agreement* or investing in a *P2P portfolio* is not comparable to depositing money in a savings account; [deleted]~~
- (g) ~~the characteristics of any: [deleted]~~
  - (i) ~~security interest, insurance or guarantee taken in relation to the *P2P agreements* or *P2P portfolio*; or~~
  - (ii) ~~risk diversification facilitated by the *firm*; or~~
  - (iii) ~~*contingency fund* offered by the *firm*; or~~
  - (iv) ~~any other risk mitigation measure adopted by the *firm*;~~
- (h) ~~that any of the measures in (g) adopted by the *firm* cannot guarantee that the *client* will not suffer a loss in relation to the capital invested; [deleted]~~
- (i) ~~that where a *firm* has not adopted any risk mitigation measures (such as those in (g)), the extent of any capital losses is likely to be greater than if risk mitigation measures were adopted by the *firm*; [deleted]~~
- (j) ~~illiquidity in the context of a *P2P agreement* or *P2P portfolio*, including the risk that the lender may be unable to exit a *P2P agreement* before maturity even where the *firm* operates a secondary market; [deleted]~~
- (k) ~~the role of the *firm* and the scope of its services, including what the *firm* does and does not do on behalf of lenders; and [deleted]~~
- (l) ~~the risks to the management and administration of a *P2P agreement* or *P2P portfolio* in the event of the *firm's* becoming insolvent or otherwise failing. [deleted]~~

...

Insert the following new annexes COBS 10 Annex 1, COBS 10 Annex 2 and COBS 10 Annex 3, after COBS 10.7 (Record keeping and retention periods for appropriateness records). The text is not underlined.

## **10            G    Assessing appropriateness: non-readily realisable securities Annex 1**

This Annex belongs to *COBS 10.2.9G(1)(a)*.

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *non-readily realisable*

*security*, a *firm* should consider asking the *client* questions that cover, at least, the following matters:

- (1) the nature of the *client's* contractual relationship with the *issuer* and any underlying beneficiaries of the investment;
- (2) the possibility that the *client* could lose all the money they invest;
- (3) the risk of failure of the *issuer* and the associated risk of losing all of the money invested;
- (4) the regulated status of the investment activity, including that the issuance of *securities* does not ordinarily involve *regulated activity* and the implications in relation to *FCA* regulation;
- (5) the extent to which the protection of the *Financial Ombudsman Service* or *FSCS* apply to the investment activity (including the fact that these services do not protect investors against poor investment performance and that the *Financial Ombudsman Service* cannot ordinarily consider complaints in relation to *unauthorised persons*);
- (6) the potential illiquidity of *non-readily realisable securities* (including the unlikelihood or impossibility that the *client* will be able to sell the *security* and the nature of the mechanisms through which the *client* could be paid their money back);
- (7) the risk to any management and administration of the *client's* investment in the event of the *issuer* becoming insolvent or otherwise failing;
- (8) the role of the *issuer* (including its role in assessing and making underlying investments);
- (9) that where a *security* is held in an *innovative finance ISA* (IFISA), this does not reduce the risk of the *security* or otherwise protect the *client* from the risk of losing their money;
- (10) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*;
- (11) where the *security* is a *share*:
  - (a) the likelihood of dividend payments;
  - (b) the risk of dilution from further issues of *shares* and the implications for the value of the *security*; and
  - (c) the risk of any further issues of *shares* granting preferential rights that negatively impact existing investors and the implications for the value of the *security*;

- (12) where the *security* is a *debenture*:
  - (a) the *client's* exposure to the credit risk of the *issuer*;
  - (b) that investing in a *debenture* is not comparable to depositing money in a savings account; and
  - (c) that returns may vary over time; and
- (13) where an investment in a *non-readily realisable security* is, or is to be, *arranged* by a *firm*:
  - (a) the nature of the *client's* contractual relationships with the *firm*;
  - (b) the role of the *firm* and the scope of the service it provides to *clients* (including the extent of the due diligence that the *firm* undertakes in relation to the *securities* that it distributes); and
  - (c) the risk to any management and administration of the *client's* investment in the event of the *firm* becoming insolvent or otherwise failing.

## 10 Annex 2 G Assessing appropriateness: P2P agreements and P2P portfolios

This Annex belongs to COBS 10.2.9G(1)(b).

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *P2P agreement* or a *P2P portfolio*, a *firm* should consider asking the *client* questions that cover, at least, the following matters:

- (1) the nature of the *client's* contractual relationships with the borrower and the *firm*;
- (2) the *client's* exposure to the credit risk of the borrower;
- (3) that the *client* can lose all of the money that they invest in a *P2P agreement* or *P2P portfolio*;
- (4) that *P2P agreements* or *P2P portfolios* are not covered by FSCS and that the *Financial Ombudsman Service* does not protect investors against poor performance of *P2P agreements* or *P2P portfolios*;
- (5) that returns may vary over time;
- (6) that entering into a *P2P agreement* or investing in a *P2P portfolio* is not comparable to depositing money in a savings account;
- (7) the characteristics of any:

- (a) security interest, insurance or guarantee taken in relation to the *P2P agreements* or *P2P portfolio*; or
  - (b) risk diversification facilitated by the *firm*; or
  - (c) *contingency fund* offered by the *firm*; or
  - (d) any other risk mitigation measure adopted by the *firm*;
- (8) that any of the measures in (7) adopted by the *firm* cannot guarantee that the *client* will not suffer a loss in relation to the money invested;
  - (9) that where a *firm* has not adopted any risk mitigation measures (such as those in (7)), the extent of any loss of money invested is likely to be greater than if risk mitigation measures were adopted by the *firm*;
  - (10) illiquidity in the context of a *P2P agreement* or *P2P portfolio*, including the risk that the lender may be unable to exit a *P2P agreement* before maturity even where the *firm* operates a secondary market (including the fact that any advertised access to money invested is not guaranteed);
  - (11) the role of the *firm* and the scope of its services, including what the *firm* does and does not do on behalf of *clients*;
  - (12) the risks to the management and administration of a *P2P agreement* or *P2P portfolio* in the event of the *firm's* becoming insolvent or otherwise failing;
  - (13) that where a *P2P agreement* or *P2P portfolio* is held in an *innovative finance ISA* (IFISA), this does not reduce the risk of the *P2P agreement* or *P2P portfolio* or otherwise protect the *client* from the risk of losing their money; and
  - (14) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*.

## 10 Annex 3 G Assessing appropriateness: qualifying cryptoassets

This Annex belongs to COBS 10.2.9G(1)(c).

When determining whether a *retail client* has the necessary knowledge to understand the risks involved in relation to a *qualifying cryptoasset*, a *firm* should consider asking the *client* questions that cover, at least, the following matters:

- (1) the role of the business offering or marketing the *qualifying cryptoasset* ('the business') and the scope of its services, including what the business does and does not do on behalf of *clients*, such as

- what due diligence is and isn't undertaken by the business on any underlying investments;
- (2) the nature of the *client's* rights and obligations with the business;
  - (3) that the *client* can lose all of the money that they invest in *qualifying cryptoassets*;
  - (4) the potential complexity of investments in *qualifying cryptoassets* and the associated difficulty of understanding the risks of the investment;
  - (5) that the performance of many *qualifying cryptoassets* can be highly volatile and that the value of an investment in a *qualifying cryptoasset* can fall as quickly as it can rise;
  - (6) the risk of losing money or any *qualifying cryptoassets* purchased as a result of cyber-attacks or *financial crime*;
  - (7) the risk to any management and administration of the *client's* investment in the event of the business becoming insolvent or otherwise failing;
  - (8) that the *client* may not be able to readily sell their *qualifying cryptoasset* investment, including as a result of market illiquidity or operational outages;
  - (9) the regulated status of the investment activity and the implications in relation to *FCA* regulation;
  - (10) the extent to which the protection of the *Financial Ombudsman Service* or *FSCS* apply to the investment activity (including the fact that these services do not protect investors against poor investment performance and that the *Financial Ombudsman Service* cannot ordinarily consider complaints in relation to *unauthorised persons*);
  - (11) that investing in, and holding, *qualifying cryptoassets* is not comparable to investing in traditional *investments* such as stocks and shares; and
  - (12) the benefits of diversification and that *retail clients* should not generally invest more than 10% of their net assets in *restricted mass market investments*.

...

Amend the following text as shown.

## 22            **Restrictions on the distribution of certain complex investment products**

...

## 22.2 Restrictions on the retail distribution of mutual society shares

...

Adaptation of other rules and guidance to mutual society shares

- 22.2.5 R (1) For the purposes of any assessments or certifications required by the exemptions in *COBS 22.2.4R*, any references in *COBS 4.12* provisions to ~~*non-mainstream pooled investments*~~ *non-mass market investments* must be read as though they are references to *mutual society shares*.
- (2) ~~If the firm is relying on the exemptions for *certified high net worth investors*, *certified sophisticated investors* or *self-certified sophisticated investors* to comply with this section, the statement the investor must sign should have references to *non-mainstream pooled investments* replaced with references to *mutual society shares*.~~ [deleted]
- (3) ...

...

## 22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

...

Adaptation of other rules and guidance to contingent convertible instruments and CoCo funds

- 22.3.3 R (1) For the purposes of any assessments or certifications required by the exemptions in *COBS 22.3.2R*, any references in *COBS 4.12* provisions to ~~*non-mainstream pooled investments*~~ *non-mass market investments* must be read as though they are references to *contingent convertible instruments* or *CoCo funds*, as relevant.
- (2) ~~If the firm is relying on the high net worth investor, the sophisticated investor or the *self-certified sophisticated investor* exemption to comply with this section, the statement the investor must sign should have references to *non-mainstream pooled investments* replaced with references to *contingent convertible instruments* or *CoCo funds*, as relevant.~~ [deleted]
- (3) ...

...

## Schedule 1 Record keeping requirements

...

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>COBS</i> 4.11.1R(1)	<i>Financial promotion</i>	<i>A financial promotion communicated, <del>or approved or</del> in relation to which the firm has confirmed compliance (subject to exemptions)</i>	When <i>communicated, <del>or approved or</del> confirmed</i>	See <i>COBS</i> 4.11.1R(3)
...				
<del><i>COBS</i> 4.11.1R(2A) [deleted]</del>	<del><i>Non-mainstream pooled investments: certification of compliance</i></del>	<del>Certification by the person allocated the compliance oversight function or employees of the firm reporting to and supervised by that person confirming that the financial promotion is compliant with the restrictions in section 238 of the Act and <i>COBS</i> 4.12.3 R, as applicable. Which exemption applies and the reason why that exemption applies. Where the exemption</del>	<del>Date of certification Date the invitation or inducement is communicated or approved</del>	

		requires a certificate, investor statement, warning or indication, a copy of that certificate, investment statement, warning or indication.		
<u>COBS 4.11.1R(2B)</u>	<u>Financial promotion</u>	<u>Evidence of how the firm has satisfied the competence and expertise requirement in COBS 4.10.9AR</u>	<u>When relevant financial promotion communicated or approved, or compliance confirmed</u>	<u>See COBS 4.11.1R(3)</u>
<u>COBS 4.11.2G</u>	<u>Compliance of financial promotions</u>	<u>Firms encouraged to consider recording why a financial promotion is considered compliant.</u>	<u>Date of assessment of compliance</u>	
<u>COBS 4.11.4R</u>	<u>Non-mass market investments: certification of compliance</u>	<u>Certification by the person allocated the compliance oversight function or employees of the firm reporting to and supervised by that person confirming that the financial promotion is compliant with the restrictions in section 238 of the Act and</u>	<u>Date of certification</u> <u>Date the financial promotion is communicated or approved</u>	<u>3 years</u>

		<p><u>COBS 4.12.3R</u>, as applicable.</p> <p><u>Which exemption applies and the reason why that exemption applies. Where the exemption requires a certificate, investor statement, warning or indication, a copy of that certificate, investment statement, warning or indication.</u></p>		
<p><u>COBS 4.11.5R</u></p>	<p><u>Restricted mass market investments and non-mass market investments: consumer journey</u></p>	<p><u>Records of the outcomes of the firm's compliance with the requirements in COBS 4.12 and COBS 4.12A</u></p>	<p><u>Ongoing basis in connection with the communication of financial promotions relating to restricted mass market investments and non-mass market investments</u></p>	<p><u>3 years</u></p>
...				

## Annex C

### Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2           **Communications and financial promotions**

...

### 2.2           **The fair, clear and not misleading rule**

...

- 2.2.3       G       The *rules* in SYSC 3 (Systems and Controls) and SYSC 4 (General organisational requirements) require a *firm* to put in place systems and controls or policies and procedures in order to comply with the *rules* in COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1R (Direct offer financial promotions), COBS 4.10 (~~Systems and controls and approving and communicating~~ Approving and confirming compliance of financial promotions) and this chapter of *BCOBS*.

...

## Annex D

### Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 15 Long-term asset funds

##### 15.1 Introduction

...

Long-term asset funds: eligible investors

- 15.1.3 R (1) Subject to (3), the *authorised fund manager* of a *long-term asset fund* must take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* to whom such *units* may be promoted under COBS 4.12.4R (Exemptions from the restrictions on the promotion of ~~non-mainstream pooled~~ non-mass market investments).

...

Long-term asset funds - explanation

- 15.1.4 G (1) *Long-term asset funds* are *authorised funds* which are intended only for *professional clients* and for *retail clients* who are sophisticated investors or *certified high net worth investors*. For this reason, *long-term asset funds* are subject to a restriction on promotion under COBS 4.12.3R (Restrictions on the promotion of ~~non-mainstream pooled~~ non-mass market investments).
- (2) The *authorised contractual scheme manager* of a *long-term asset fund* which is an *ACS* must take reasonable care to ensure that it accepts subscription to units in the *LTAF* only from a *person* to whom such *units* may be promoted under COBS 4.12.4R (Exemptions from the restrictions on the promotion of ~~non-mainstream pooled~~ non-mass market investments) and who also meets the criteria in COLL 15 Annex 1R.

...

## Annex E

### Amendments to the Credit Unions sourcebook (CREDS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 3A Shares, deposits and borrowing

...

#### 3A.5 Requirements on the retail distribution and financial promotion of capital instruments

...

Application of exemptions in COBS 22.2.4R

##### 3A.5.8 R ...

- (2) For the purposes of any assessments or certifications required by the exemptions in *COBS 22.2.4R*, as applied for the purposes of this section under *CREDS 3A.5.1R(3)*, any reference in *COBS 4.12* provisions to ~~*non-mainstream pooled investments*~~ *non-mass market investments* must be read as though it is a reference to *deferred shares* or *credit union subordinated debt*, as applicable.
- (3) If the *firm* is relying on the exemptions for ~~*certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors*~~ to comply with this section, the statement the investor must sign should have any reference to ~~*non-mainstream pooled investments*~~ replaced with a reference to *deferred shares* or *credit union subordinated debt*, as applicable. [deleted]

...

...

#### 10 Application of other parts of the Handbook to credit unions

##### 10.1 Application and purpose

...

Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

##### 10.1.3

G

Module	Relevance to Credit Unions
...	

<p>Conduct of Business sourcebook (COBS)</p>	<p>A <i>credit union</i> which acts as a <i>CTF provider</i> or provides a <i>cash-deposit ISA</i> will need to be aware of the relevant requirements in <i>COBS</i>. <i>COBS</i> 4.6 (Past, simulated past and future performance), <i>COBS</i> 4.7.1R (Direct offer financial promotions), <i>COBS</i> 4.10 (<del>Systems and controls and approving and communicating</del> <u>Approving and confirming compliance of</u> financial promotions), <i>COBS</i> 13 (Preparing product information) and <i>COBS</i> 14 (Providing product information to clients) apply with respect to <i>accepting deposits</i> as set out in those provisions, <i>COBS</i> 4.1 and <i>BCOBS</i>. A <i>credit union</i> that communicates with clients, including in a <i>financial promotion</i>, in relation to the promotion of <i>deferred shares</i> and <i>credit union subordinated debt</i> will need to be aware of the requirements of <i>COBS</i> 4.2 (Fair, clear and not misleading communications) and <i>COBS</i> 4.5 (Communicating with retail clients).</p>
<p>...</p>	

## Annex F

## Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## Appendix 1 Relevant definitions

### App 1.1 Relevant definitions

**Note:** The following definitions relevant to the listing rules are extracted from the Glossary.

...		
<i>investment trust</i>	a company which:	
	(a)	...
	(b)	(for the purposes of <i>COBS 4.14</i> <u>4.12</u> and the definitions of <i>non-mainstream pooled investment</i> and <i>packaged product</i> only) is resident in an <i>EEA State</i> and would qualify for such approval if resident in the <i>United Kingdom</i> .
...		

