
**Response by TISA to Social Media and customer communications. The FCA's
Supervisory approach to financial promotions in social media**



TISA is a not-for-profit membership association operating within the financial services industry.

TISA's membership comprises over 145 member firms involved in the supply and distribution of savings and investment products and services. These members represent many different sectors of the financial services industry, including banks, stockbrokers, asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, consultants and advisers, software providers, financial advisers and pension providers.

Having a legacy of focusing predominantly within the tax incentivised products area, TISA has in recent years moved into the broader savings and investment world, extending our status of 'trusted advisor' to the authorities over a much greater remit. This has been welcomed by our members and the authorities as a natural progression.

TISA has a highly successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve the performance of the industry and the outcomes for consumers. Policy and regulation continues to be the major focus for our members with regard to corporate responsibility.

TISA and its members' remit is evolving into a clearer focus on pro-active consultation in the regulatory world in order to influence policy and associated regulation before its creation, rather than reacting to issue policy directives. This will help to ensure a more considered policy creation from the authorities.

What makes TISA unique is that we cover the entire industry, incorporating cross sector policy, industry and technical expertise. Whilst we maintain a solid partnership with government, the regulators and wider industry, we remain independent and develop neutral views and opinions. This impartiality is reflected in our ability to drive development projects which improves industry performance and puts us in the unique position of being able to constantly challenge the status quo to bring about material improvement. At the forefront in all of our recommendations and actions is to consider national and consumer outcomes.

Consultation Response

TISA is keen to work with the FCA to produce a best practice guide. This will help practitioners within UK financial services firms, to embed and develop the key principles of this GC paper and other interlinking papers.

It is clear that the FCA wants to promote effective competition in the interests of consumers, as well as consumer protection. Digital media can allow new and smaller firms to have a presence in the marketplace. Social media specifically may allow businesses to reach a wider audience and make it easier for consumers to switch providers, and so enhance competition.

There are significant potential benefits from the use of all digital media by firms, provided this is responsible and customer-focused. TISA fully supports this and wishes to actively work with its members and the regulator to help develop the acceptance of this method of distribution for the good of UK consumers whilst ensuring they are adequately protected from misleading practice and receiving inappropriate investment solutions.

TISA would like to call for a single standard on the presentation of key financial information, including the use of information tools, electronic communications etc. These standard criteria to be set or agreed by FCA. TISA would be happy to utilize its project group to facilitate this.

In addition TISA would like to see a standard also for the simplification of the long list of information that needs to be passed to consumers when utilizing online facilities.

We would like to make the following points and observations:

General

TISA members generally feel that the guidance did not highlight any significant issues or concerns. It is consistent with our understanding of the application of relevant rules to 'new media', and the majority of members are currently happy that their current guidance and procedures is compliant with the proposed guidance. A key observation would be that the examples provided were useful and that the guidance could be greatly improved by providing more examples, particularly those highlighting the perceived 'problem areas', i.e. those that the FCA find themselves having to ask firms to deal with. It may also be useful to provide examples of good and poor practice

TISA believes that the barriers are around 'ease of doing business' between customer and an organisation – the regulatory environment does not make it easy (for the customer and the journey they go on) for the things they need to read and the terminology/language that is used to be understood. The complexity of language used by companies, because of



regulatory requirements, acts as a barrier to entry for firms wishing to enter the market. TISA believes that lowering barriers to entry will encourage competition. This is likely to result in more choice for customers and better outcomes. This is particularly applicable with the use of social media.

Currently, either through policy or interpretation, the industry produces a large volume of customer correspondence, which does not lend itself to engaging the customer easily.

There is a general nervousness and inertia in the adoption of technology aids which are widely accepted and valued in other, non-regulated businesses. (Automated guidance, predictive analytics, simplified journeys based on presumed norms, etc.)

The over arching view is for us to focus on the simplification of products/advice/terminology as well as being able to fully utilise all types of appropriate media. The use of new media and delivery channels for innovators (from new and existing financial services providers) could assist with set up costs and distribution costs and therefore regulation should support this trend. We should like to make it easier for customers to be able to access information and guidance on-line without providers fearing that they will be trapped into being deemed to offer personalised advice. Technological innovation should enable customers to have more control over their investments and the information available where they feel comfortable doing so. Where customers need or want advice, they should seek it. Will this paper link to Project Innovate, where on-line access is being considered.

TISA has set up a Technology Innovation Forum and would be willing to help scope this area further, and possibly produce a market best practice guide. This group has already responded to FCA's Project Innovate paper and Simplified Advice consultation. We are also currently working on Retirement New Guidance Consultation with Maggie Craig's team at the FCA. There appears to be interrelated issues and cross over with Simplified Advice paper and those other 3. Will there be coordination between the individual responses?

Example scenarios would help to clarify what circumstances lead to regulated advice. The TISA group would be happy to attempt this.

TISA appreciates that the FCA has sought to provide practical guidance in this paper helping firms draw the line between financial promotions, invitations to engage in financial activities and other forms of online communication. The issue for practitioners and product providers is still the clear definition as to where product promotion and information supply ends and the advice line starts.

This social media consultation is not only relevant to financial promotions, but also may have relevance to the discussion of what constitutes financial advice. The key question is around what amounts to influence and persuasion in the context of financial promotions are worth considering when assessing whether or not digital information presented has the potential to influence the customer's decision to enter into an online transaction. If social media is being used it is likely that the customer journey will continue within that digital environment.

In many instances social media and digital technology are intertwined with smart-phone and tablet use driving mobile communication. To meet this digital demand, organisations need to find ways to develop social media and digital platforms which will drive customer experiences. It would be helpful to establish a code of 'Industry Best Practice' to help those businesses delivering content via this medium to have a commonly agreed set of principles. TISA would be willing in its Council work to help establish this.

TISA welcomes the understanding of the regulator taking a principled-based approach, in the consultation there lies the danger of setting out prescriptive rules that may quickly become outdated or unsuitable as the technology innovations develop rapidly.

More specific comments

We have the following more specific comments on sections of the paper.

1.1.1 - 1.7: The objectives in these sections are clearly set out and understood.

TISA supports the use of social media and sees it as a growing medium for UK financial services and consumers. Our research indicates that 90% of UK adults currently engage on various matters via the Internet. The growth of digital media will drive competition which has to be good for the end consumer. We clearly support the overriding principle that in the use of this medium all communications and information should be fair, clear and not misleading.

1.7: The industry is currently grappling with a number of consultative papers covering D2C, simplified advice; retirement new guidance and project innovate. In the work TISA is doing in its project groups there appears to be an amount of cross over which all revolve around digital engagement and social media, and yet the consultation papers do not seem to link up or cross refer. It is felt that this would be helpful.

In addition the advice line from FCA, ESMA & MiFID is still confusing to UK financial service providers.



2.4: The interpretation that financial activity means investment activity is confusing. Why not clarify by just calling it financial activity and specifically list what this definition will apply to in terms of mortgages, insurance, banking and consumer credit as well as investments. TISA would be happy to work with the regulator to produce a market best practice definition guide.

While we understand the FCA's preference for each financial promotion, however short, to be compliant on a standalone basis, we think that given the transitory nature of social media, there should be some flexibility. We would point out that, in the case of long-term savings and investments at least, there is now little chance of any individual signing up to a product or service without going through a process which will serve them with comprehensive risk warnings; the jeopardy of taking a lighter touch approach on social media is, we would argue, mitigated by this to the point where it is non-existent.

A suggestion from TISA members is that instead of warnings of this type, FCA should (in collaboration with TISA and other interested groups) create a pre-approved list of hash tag warnings for character-limited media such as Twitter, Pinterest and others, to go with '#ad'. We would suggest '#capitalatrisk' '#pastperf' and so on. These would be attractive to customers and distributors alike and firms could be required to create a repository which gives a fuller risk warning for each hash tag.

2.4 – 2.16: In this section, the following should be noted:

- character limitations: the impact of limiting characters per communication, such as the 140 character limitation imposed by Twitter, on compliance with both the high level 'fair, clear and not misleading' rules and other sub-sector specific rules need to be addressed. The FCA has said that the use of the hashtag #ad to help consumers identify that "a promotion is a promotion" may in some circumstances be an appropriate response to addressing the risk of non-compliance.
- 'Advergames': financial businesses will need to assess whether any entertainment applications also contain promotional messages.
- personal communications: communications made by senior persons in the business and whether their personal views are clearly sign-posted as 'not made in the course of business', should be monitored, even when made from personal accounts.
- Non-intended recipients: the impression a social media communication could have on a non-intended recipient, for example, after re-tweeting or re-posting a Facebook page, blog or other social media communication, must be considered.
- Links to more information: the effectiveness of linking to more comprehensive information and the FCA's preference that firms use 'image advertising', where a link would be inadequate as a risk warning needs to be assessed.
- Benefits and past performance: there is a need to avoid over-emphasis of benefits and past performance, particularly where character limitations apply.



- Prominence rules: the importance of the FCA's existing prominence rules should be taken into account. Firms should be able to demonstrate that they have thought about factors such as target audience, nature of the product being advertised and "likely information needs of the average recipient".
- Dynamic banners: standalone compliance in the context of dynamic banner advertisements that flicker between promotions and risk warnings needs to be met.
- Infographics: using infographics as images in communications to address character limitation concerns may be a way to address compliance concerns.
- Re-tweeting: the consequences of sharing communications of others must be considered. The paper highlights that firms will bear responsibility if they re-tweet a customer's tweets. This needs to be fully understood. The ability of firms to engage with clients or potential clients by twitter is also somewhat limited, as anything that the firm retweets, even if it was not the originator of the tweet, also needs to be compliant. The firm would therefore be unable to retweet an endorsement if it contained an invitation to engage in financial activity. Overall, this means the companies will have to continue to explore the use of alternative social marketing mediums such as blogs and video and we expect to see a shift to promotional activity where the social media will support suitable risk warnings. The requirement to have a risk warning on every financial promotion has significant implications for the use of twitter and other limited character social media. In essence, it is very difficult to communicate a financial promotion in 140 characters that is meaningful and effective as well as compliant. The CP itself highlights this, stating in paragraph 2.9 that 'firms should consider the appropriateness of character-limited media as a means of promoting complex features of products or services'.

2.19: The guidance on 'real-time' is not particularly informative. Our interpretation is that it isn't that the message can be delivered instantly that decides the matter, but whether it is 'interactive', or permits interaction. Thus a one-off tweet will be 'non-real time' but a conversation via twitter would be 'real time'. We would appreciate further clarification on this point.

2.21 – 2.25: The objectives in these sections are clearly set out and understood.

Further Commentary:

Any business engaging with a customer online for financial products or services must comply with EU laws that set out common standards for information to be given to consumers, before any contract for a financial product or service is entered into. This information should include details about the firm itself, the service provided, the online contract formed and means of dispute resolution. These laws also provide consumers with withdrawal rights in some circumstances. Data protection laws must also be met.

Risks arise particularly where information has been gained in one context and the firm intends to use it for another. Dealing with these risks is best achieved by being transparent as to the current and future intended uses of data. The current data protection regime does not however, require that businesses obtain consent from each customer to use their personal data in all instances. If a financial business can identify a legitimate business interest that does not ‘override’ their customers’ ‘fundamental rights and freedoms’, including data privacy, they may be able to use that person’s data without their consent. Where data is to be used in a context that could lead to an adverse inference being drawn about a customer however, in general, the expectation of most regulators is that consent must first be obtained. The Article 29 Working Party, a representative body of data protection regulators across Europe, has provided recent guidance on the issue of the circumstances in which data can be used for purposes to which the persons to whom they relate have not consented. This may need to be considered in the context of this paper. Unfortunately, the opinion gave little in the way of practical steps that businesses can take to determine when a business interest will override a person’s right to privacy. Clarification on this interpretation from FCA would be appreciated.

It does however state that where there is “a risk of damaging the reputation, negotiating power, or autonomy of the data subject” it would be difficult to demonstrate that a business’ legitimate interests overrode those of a customer. Businesses looking to use data about customers generated in the contexts of either providing online advice or social media need to be aware that their ability to do so is limited, if specific consent has not been obtained for the purpose for which the data is intended to be used.

Businesses operating in the financial services sector must also consider the impact of the Privacy and Electronic Communications Regulations (PECR) when engaging with existing and potential customers online. Among other things, PECR permits unsolicited email and online communications to be sent only in limited circumstances, the broadest of which is where a prior relationship between the sender and the recipient of a communication can be established. PECR provides that for a prior relationship to be established, the recipient’s contact details must have been obtained “in the course of the sale or negotiations for the sale of a product or service” and that the communication must relate to “similar products and services only”. While the Information Commissioner’s Office’s guidance indicates that “it is enough if ‘negotiations for a sale’ took place” and that “[t]he customer does not have to have bought anything to trigger [a] soft opt-in”, a recent lower court decision has cast doubt on the reliability of this guidance in the context of web communications. We would appreciate further clarification on this.



Guide to the Privacy and Electronic Communications Regulations can be found at http://ico.org.uk/for_organisations/privacy_and_electronic_communications/the_guide. This is published by ICO, Information Commissioners Office.

This Social Media paper is targeted at the compliance implications of digital and social media as the pathway of choice for customer communication and specifically for financial promotions. In the light of this being a consultation about social media, we note the FCA is tweeting key comments via #smfca and in the process illustrating how the use of attachments and pictures can enhance the ability to produce character-limited messages which still cover compliance regulations. Hopefully, once the review has concluded the guidance issued will help organisations to see that there is another way to interact with customers and this will act as a catalyst for innovative solutions being offered via digital platforms.

TISA would like to call for a single standard on the presentation of key financial information, including the use of information tools, electronic communications etc. These standard criteria to be set or agreed by FCA. TISA would be happy to utilize its project group to facilitate this.

In addition TISA would like to see a standard also for the simplification of the long list of information that needs to be passed to consumers when utilizing online facilities.

TISA would welcome working with the FCA after this consultation closes, to agree and produce a best practice guide for the industry which they could then share with our membership and the wider financial services community.