

## Consultation Response

6 November 2014

### **AFME Response to FCA Guidance consultation on social media and customer Communications: The FCA's supervisory approach to financial promotions in social media**

The Association for Financial Markets in Europe ("AFME")<sup>1</sup> welcomes the opportunity to comment on the FCA Guidance consultation on social media and customer communications (the "Guidance").

AFME welcomes the Guidance and FCA's efforts to provide further regulatory clarity and engage in dialogue with the industry on this important topic. We also support further exploratory qualitative research on consumer behaviour. The publication is very timely given the rapid technological developments since the publication of the FSA's initial guidance in 2010. As FCA recognises, the use of media is increasing and social media are becoming the preferred medium of communication for a large proportion of customers.

Some of the clarifications provided e.g. on sign-posting and image advertising are helpful and so are the real-life examples of financial promotions. However, whilst we agree with FCA that the Guidance should not be too prescriptive, we note that the scope of the Guidance is relatively limited and only covers financial promotions although firms' social media strategies are likely to go much wider. We are aware that other regulators such as FINRA and SEC have published more extensive guidelines and are concerned that a lack of regulatory guidance may lead to firms being overly conservative in their communication approach and may prevent financial institutions from fully harnessing the benefits of client engagement through social media. We would also be interested in exploring discussions on the risks of social media to financial firms.

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<sup>1</sup> AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association. AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the US Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

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We welcome FCA's recognition of the difficulties firms face in complying with financial promotion rules e.g. as a result of character, space or time limitations, and therefore believe that the strict application of concepts such as "stand-alone compliance" or "media-neutrality" may not always be appropriate in all circumstances.

A particular example is the ability to provide appropriate disclaimers within tweets, which is severely constrained by the 140 character limitation.

Areas in which FCA may wish to consider providing additional Guidance could include:

- More extensive Guidance on social media interactions other than advertisements/ financial promotions. For example, additional examples on interactive engagement with customers e.g. in the context of customer service interactions or complaints handling would be helpful.
- A wider range of examples also relevant to business-to-business scenarios as the examples appear focused on financial promotions directed at retail clients.
- Clarification of some inconsistencies regarding the issue of unauthorized persons re-promoting financial promotions first issued by authorised persons and/or communications ending up with non-intended recipients. Whilst we agree with the principle of "fair, clear and not misleading", application of this principle will to some extent depend on the nature of the recipient and we are not clear on how FCA could expect a firm to anticipate to whom their clients will forward tweets.
- A better indication of the interaction of the Guidance with other elements of the regulatory framework including data privacy and security, protection of intellectual property rights, general advertising and marketing rules and unfair terms and trading rules.

Please do not hesitate to contact me if you would like to discuss the issues covered in this submission or would like us to provide further information about any of the matters which our members have raised. We would be happy to continue to engage with the FCA in ongoing dialogue on this and, in due course, may raise with you any further issues on the subject that AFME members bring to our attention.

Yours faithfully

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