
SECOND SUPERVISORY NOTICE

To: **Freetrade Ltd**

Firm Reference Number: **783189**

Address: **10 Devonshire Square,
London,
EC2M 4YP**

DATE: **08 February 2022**

ACTION

Directions

1. For the reasons given in this Second Supervisory Notice, and pursuant to section 137S of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided not to rescind the Directions imposed on Freetrade Ltd ("the Firm") and notified to it in the First Supervisory Notice ("the FSN") dated 14 December 2021.
2. The FSN notified the Firm that the Authority had decided to impose the following Directions, pursuant to s137S of the Act with immediate effect:
 - a. within 24 hours of the date of this First Supervisory Notice remove all paid for sponsored influencer advertisements and posts across all social media platforms, including without limitation Instagram, TikTok, Facebook and YouTube; and
 - b. confirm to the Authority that it has done so together with a list of all advertisements and posts removed.
3. The Directions take effect immediately. They are given for the reasons set out below and are given pursuant to section 137S(1) and (2) of the Act. They are to remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

REASONS FOR ACTION

Summary

4. The FSN notified the Firm that the Authority had decided to impose Directions on it, in the terms set out in paragraphs 2 and 3 above.
5. On 27 January 2022, the Authority received representations from the Firm in relation to the FSN ("the Representations"). The Firm did not seek to revoke the Directions imposed within the FSN, but instead put forward an alternative draft of certain sections of the FSN. The Authority has considered the Representations. The Authority considers that the imposition of the Directions remains necessary and appropriate. The Directions continue unchanged and are not revoked; the alternative draft of certain sections of the FSN is accepted in part. These amendments have been incorporated into the body of the SSN. A summary of the key Representations received but not accepted by the Authority is set out in Annex 1.
6. The Firm is authorised by the Authority with various permissions which include dealing in and arranging investment business. Chapter 4 of the Authority's Conduct of Business Sourcebook ("COBS") states all financial promotions issued or approved by a firm must be "*fair, clear and not misleading*" (COBS 4.2.1R).
7. The Authority has concluded that the Firm has breached COBS 4.2.1R by failing to consider the extent to which vulnerable customers might access a financial promotion ("the Promotion") it had approved under section 21 of the Act to be made by a social media influencer, in order to promote its services of commission free investments. The Authority defines a vulnerable customer as someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.
8. The Authority considers that the promotions provide consumers with the impression that they could reduce debt by following the steps taken by the social media influencer and use the Firm as a mechanism to make money. However, the Authority considers this to be misleading as there are no guarantees that any investment will result in positive gains in the short or long term. Consumers already in debt are likely to be particularly vulnerable to this.
9. In addition, the Authority has identified a TikTok video which was posted to an Instagram story on the influencer's profile, that promotes the benefits of using the Firm to engage in investment business but does not include the required risk disclosure. COBS 4.5.2R(2) states that a firm must ensure that information does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks. In this case the omission of a capital at risk warning contravenes this rule and has the capacity to mislead consumers. FreeTrade did not have appropriate oversight of the influencer's financial promotion which would have allowed the Firm to identify and request the removal of the TikTok video posted.
10. The Authority has previously provided feedback to the Firm in relation to breaches of the financial promotions rules in March 2020 and March 2021. The Firm conducted an internal review of its financial promotions, at the Authority's request, following this feedback. In April 2021, the Firm was advised that if the Authority identified further breaches of the

financial promotion rules in the future it would consider taking further Supervisory or Enforcement action, which could include use of the banning powers under section 137S of the Act.

DEFINITIONS

11. The definitions below are used in this Second Supervisory Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the Financial Conduct Authority;

"COBS" means the Authority's Conduct of Business Sourcebook which forms part of the Handbook;

"Directions" means the terms set out in paragraphs 1 and 2 above;

"FSN" means the First Supervisory Notice issued to the Firm on xx December 2021;

"GEN" means the Authority's General Provisions, which form part of the Handbook;

"Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"ISA" means Individual Savings Account;

"Representations" means the representations submitted by the Firm in response to the FSN;

"Supervision" means the Authority's Supervision Division;

"Freetrade" or "the Firm" means Freetrade Ltd; and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS CONCERNING THE FINANCIAL PROMOTIONS

12. The Authority wrote to the Firm on 6 March 2020, when it expressed concerns with some of the financial promotions issued by the Firm which the Authority considered were non-compliant with applicable financial promotion rules.

13. In particular, the Firm's social media promotions (Instagram, Twitter and Facebook) did not mention the required warnings in relation to risks to clients' capital and were consequently in breach of COBS 4.2.1R and COBS 4.5.2R(2). For example, the ISA landing page did not have a capital at risk warning whilst the statement that "*Your customers are able to invest in a variety of asset classes such as stocks, Exchange Traded Funds, and bonds*" did not provide a fair and prominent indication of any relevant risks when referencing potential benefits.

14. On 24 March 2020, the Firm responded confirming changes had been made to its systems and controls and stated that *"we now fully accept that our standards have not been high enough on ensuring that risk disclosures are included and are prominent (especially on social media), having reviewed your observations and further investigated ourselves"*.
15. The Firm also confirmed that:
- a. it had established a new policy for communications with customers (including financial promotions) to more effectively ensure compliance and appropriate balance;
 - b. it was building and strengthening the review processes for financial promotions, including appropriate review by Marketing and Compliance to publish a dedicated article / note on the risks involved in investing and different products to be distributed to customers; and
 - c. a member of senior staff had attended a day's course on financial promotions regulation for social media.
16. The Authority subsequently identified further financial promotions issued by the Firm that appeared not to comply with the Authority's rules and wrote to the Firm again about these breaches on 11 March 2021. The Firm's financial promotion was coupled with the headline *"invest with trust"* and a tick. The Authority considered that this gave a misleading impression to consumers in relation to the extent of Authority's approval and that it was being used to promote the Firm's service breaching GEN 1.2.2AR.
17. As a result of the concerns identified, the Authority requested the Firm conduct a review of its advertising to ensure compliance with applicable rules. This included a review of:
- a. the full portfolio of current advertisements, and whether any were identified as having further instances of non-compliance;
 - b. why non-compliant promotions were in circulation and an explanation for these failings;
 - c. any actions taken as a result of the Authority's previous correspondence in respect of financial promotions;
 - d. systems and controls in respect of financial promotions;
 - e. data on any action taken in relation to consumers who may have taken out a product having seen potentially misleading promotion(s).
18. The Firm responded with the findings of its review on 12 April 2021. This review identified further breaches, resulting in various adverts and social media posts being amended or withdrawn by the Firm.
19. The Firm also confirmed in its response that it *"would be recruiting a 'financial promotions specialist to their compliance team"*. The Firm has since confirmed that it has increased resource in this area.
20. On 23 April 2021, the Authority wrote to the Firm noting: *"it is a matter of particular concern to the FCA [...] that over the past 12 months we have written to you on two occasions concerning deficiencies in your promotions. We do not expect to identify any further breaches in respect of deficiencies in financial promotions from Freetrade Limited. Should we identify further breaches, the FCA will consider taking further Supervisory or Enforcement action against Freetrade Limited in order to reduce the risk of consumer harm. This may include the use of formal Enforcement powers such as those under Financial Services and Markets Act 2000 ("FSMA") to ban a financial promotion (s137S)"*.

FAILINGS AND RISKS IDENTIFIED

21. Since the Authority's communication with the Firm in April 2021, the Firm has "*sponsored and partnered*" with a social media influencer to promote the Firm's commission free investments on the social media platforms TikTok and Instagram. The social media influencer mentions in their TikTok video they are "*partnered with the Firm*" and goes on to explain the use of the link to gain a "*free*" share. To the extent that (i) there is a commercial partnership between the Firm and a social media influencer and (ii) the social media influencer operates within the scope of that agreement with the Firm, the Firm is responsible for ensuring the compliance with FCA rules of the influencer's financial promotions that are relevant to the Firm's business.
22. Communications through social media platforms can reach a wide audience very rapidly and risk being accessed by vulnerable customers. The Authority's concerns relate to the type of consumers some of these social media influencer posts may have reached.
23. The social media influencer has a following in excess of 64,000 followers on TikTok, and her profile page on the TikTok platform predominantly includes information about how the influencer is paying off £38,000 of debt, having paid off £14,000 in 18 weeks. This influencer also has widespread media interest reporting on her story of "*clearing her debt*". The Authority therefore considers that her profile is one which vulnerable or indebted consumers could be particularly attracted to (alongside other audiences who are not vulnerable or indebted). The Authority considers that the influencer's financial promotion video, viewed in the context of her profile, may lead viewers to believe that if they invest with the Firm they will clear their debt, encouraging them to invest. However, the Authority considers this to be misleading as there are no guarantees of positive returns on any investment, which may further exacerbate the financial position of those already in debt. Despite the inclusion of the capital at risk warning included in the TikTok promotion, the Authority considers the risk disclosure to be insufficient, the promotion misleading and the influencer's financial promotion to therefore be in breach of COBS 4.2.1R.
24. In addition, the Authority has identified an Instagram promotion by the same social media influencer promoting the benefits of using the Firm to engage in investment business but which does not include the required risk disclosure. COBS 4.5.2R (2) states that a firm must ensure that information does not emphasise any potential benefits of *relevant business* or a *relevant investment* without also giving a fair and prominent indication of any relevant risks. The omission of a capital at risk warning contravenes this rule. The Authority maintains that the Firm did not have appropriate oversight of the influencer's financial promotion which would have allowed the Firm to identify and request the removal of the TikTok video posted.

CONCLUSION

25. The further breaches of related financial promotion rules indicates to the Authority that the Firm did not adequately amend its approach to approving and issuing financial promotions when it conducted its internal reviews. The previous breaches related to financial promotions originated and communicated by the Firm, and the Authority

considers that the financial promotions communicated by paid for or sponsored influencers also breach the financial promotion rules. As such, the Authority is seeking the Directions unless or until varied or cancelled by the Authority.

26. The Authority considers the Directions to be proportionate in the circumstances, particularly given the two previous breaches identified by the Authority. Firms authorised by the Authority must comply with the applicable financial promotions rules, as a failure to do so poses a risk to the Authority's statutory objective or securing an appropriate degree of protection for consumers.

PROCEDURE

Decision Maker

27. The decision which gave rise to the obligation to give this Second Supervisory Notice was made by an Authority staff member under Executive Procedures.
28. This Second Supervisory Notice is given under sections 137S(8(a)), and in accordance with section 137S(9) of the Act, and takes effect immediately.

The Tribunal

29. The Firm has the first to refer the Directions contained in this Second Supervisory Notice to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
30. A reference to the Tribunal can be made by way of a reference notice (form FTC3) signed by or behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone 020 7612 9730; email uttc@hmcts.gsi.gov.uk)
31. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
32. The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to SPCDecisionMakingSecretariat@fca.org.uk

Publication

33. The Firm should note that sections 137S(11) of the Act enables the Authority to publish such information about the Directions as it considers appropriate.

Authority Contacts

34. For more information concerning the procedures relating to this notice or this matter generally, the Firm should contact SPCDecisionMakingSecretariat@fca.org.uk/.

Decision made by an FCA Head of Department under Executive Procedures

RELEVANT STATUTORY PROVISIONS

1. Section 137S of the Act provides that the FCA may give a direction under s137S is (a) an authorised person has made, or proposes to make, a communication or has approved, or proposes to approve another person's communication, and (b) the FCA considers that there has been, or is likely to be, a contravention of the financial promotion rules in respect of the communication or approval.
2. Section 137(2) states that a direction under this section may require the authorised person to (a) withdraw the communication or approval; (b) to refrain from making the communication or giving the approval; (c) to publish details of the direction; and (d) to do anything else specified in the direction in relation to the communication or approval.
3. If the FCA gives a direction under s137S, under s137S(4) a requirement to publish details of the direction has effect at such time (if any) as the FCA gives a notice under subsection (8)(a); any other requirement takes effect immediately.
4. Section 391 of the Act provides that:

"[...]

- (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
- (6) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- (7) Information is to be published under this section in such manner as the Authority considers appropriate."

RELEVANT REGULATORY PROVISIONS

Conduct of Business Sourcebook (COBS), Chapter 4 Rules

15. COBS 4.2.1R provides that any financial promotion or communication issued or approved by a firm must be "fair, clear and not misleading".
16. COBS 4.5.2R(2) provides that information provided to retail clients must be accurate and always give a fair and prominent indication of any relevant risks when referencing the potential benefits of relevant business or retail investment. This is also reflected in COBS 4.5A.3(2B).

17. The rules at COBS 4.5 relate to communication with retail clients. COBS 4.5.2R(2) states that a firm must ensure that information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of relevant business or a relevant investment. COBS 4.5.7R provides that if any information refers to a particular tax treatment, a firm must ensure that it prominently states that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

General Provisions (GEN)

18. GEN 1.2.2AR provides that a firm must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the Authority or another competent authority.

ANNEX 1: SUMMARY OF THE KEY REPRESENTATIONS NOT ACCEPTED BY THE AUTHORITY AND RESPONSES BY THE AUTHORITY

1. The Firm stated that it did not approve the TikTok influencer's financial promotion but should reinforce its systems and approach to monitoring financial promotions, in order to reasonably identify and request remediation or removal of such posts in the future.
2. The Authority has been provided with no evidence to support the Firm's contention that it did not approve the promotion, but notes that even if it did not, the Firm should have had appropriate oversight of the influencer's promotion.