

Appendix 1: Financial promotions and investment recommendations

(Television broadcasters should refer to Rule 9.35 in [Section Nine](#) of the Broadcasting Code. Radio broadcasters should refer to Rule 10.13 in [Section Ten](#) of the Broadcasting Code.)

1. This appendix sets out the relevant provisions referred to in Rules 9.35 and 10.13 of the Broadcasting Code, Ofcom’s guidance (where applicable) on how compliance with these provisions may be achieved, and the legislation underpinning broadcasters’ obligations in respect of financial promotions and investment recommendations.
2. Broadcasters wishing to communicate financial promotions and investment recommendations are strongly encouraged to seek independent legal advice to ensure their understanding of, and compliance with, the Broadcasting Code, these provisions, and the underlying legislation. Broadcasters may also wish to consider the [Financial Conduct Authority \(“FCA”\) perimeter guidance](#) on financial promotions and investment recommendations.
3. If a person is regulated by the FCA because of their activity in financial promotions, producing investment recommendations or disseminating investment recommendations produced by a third party, they will be subject instead to rules of the FCA.

Financial promotions

Financial Promotion Restriction

Statutory Framework

4. The following are key aspects of the legislation underpinning broadcaster’s obligations in respect of financial promotions. As noted at paragraph 2 above, Broadcasters are strongly encouraged to seek independent legal advice to ensure their understanding of, and compliance with, the Broadcasting Code, these provisions, and the underlying legislation. Broadcasters may also wish to consider the FCA perimeter guidance on financial promotions.
5. Section 21 of the Financial Services and Markets Act 2000 (“FSMA 2000”) provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity, or to engage in claims management activity. (“the financial promotion restriction”).
6. Article 17 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (“the 2005 Order”) provides that the financial promotion restriction does not apply to any communication which:
 - does not identify (directly or indirectly) a person who provides the controlled investment to which the communication relates; and
 - does not identify (directly or indirectly) any person as a person who carries on a controlled activity in relation to that investment; and
 - does not identify (directly or indirectly) and person as a person who carries on a controlled claims management activity.
7. Article 20 provides a further exception to the financial promotion restriction in respect of communications by journalists (“Article 20 exception”).
8. Article 20A of the 2005 Order provides a further exception in respect of promotions broadcast by a company director or employee of a company (“Article 20A exception”).

Exception in respect of communications by journalists (Article 20 exception)

Statutory Framework

9. Article 20 of the 2005 Order provides that the financial promotion restriction does not apply to any non-real time communication if:
- a) the content of the communication is devised by a person acting in the capacity of a journalist;
 - b) the communication is contained in a qualifying publication as defined by paragraphs 1 and 2 of Article 54 of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the 2001 Order”); and
 - c) in the case of a communication requiring disclosure, one of the following conditions is met:
 - i. the communication is accompanied by an indication explaining the nature of the author’s financial interest or that of a member of his family; or
 - ii. the authors are subject to proper systems and procedures which prevent the publication of communications requiring disclosure without the explanation referred to in i. above; or
 - iii. the qualifying publication in which the communication appears falls within the remit of the Code of Practice issued by the Press Complaints Commission, the Ofcom Broadcasting Code, or the Producers’ Guidelines issued by the British Broadcasting Corporation.
10. Article 54 of the 2001 Order provides that a qualifying publication is:
- a newspaper, journal, magazine or other periodical publication; or
 - a regularly updated news or information service; or
 - a television or radio broadcast or transmission

As long as the principal purpose of the publication is not to advise a person on the merits of, or lead or enable a person to buy, sell, subscribe for or underwrite a particular investment which is a security or a contractually based investment.

Disclosure Requirement

11. Article 20(3) of the 2005 Order provides that a disclosure requirement applies where:
- the author of the communication or a member of their family is likely to obtain a financial benefit or avoid a financial loss if people act in accordance with the invitation or inducement contained in the communication; and
 - the communication relates to a controlled investment i.e., shares or options, futures, or contracts for differences relating to shares, within the meaning of Article 20(4) of the Order or to a controlled claims management activity; and
 - the communication identifies directly a person who issues or provides the controlled investment or who carries on or engages in the controlled claims management activity to which the communication relates.
12. Article 20 of the 2005 Order provides that where a disclosure requirement applies, the communication must be accompanied by an indication explaining the nature of the author’s financial interest or that of a member of his family.
13. Article 20 also provides that the disclosure requirement under the legislation does not apply where:

- the authors are subject to proper systems and procedures which prevent the publication of communications requiring disclosure without the indication referred to above; or
- the qualifying publication in which the communication appears falls within the remit of the Code of Practice issued by the Press Complaints Commission, the Ofcom Broadcasting Code, or the Producers' Guidelines issued by the British Broadcasting Corporation.

Relevant Provisions

14. These are relevant provisions as referred to in Rules 9.35 and 10.13 of the Broadcasting Code.
15. If a broadcast falls within the remit of the Ofcom Broadcasting Code as set out above, the broadcaster must either:
 - disclose any financial interest held by the journalist, their spouse/civil partner, or their child(ren) under 18; or
 - put in place proper systems and procedures which prevent the broadcast of financial promotions without disclosure of financial interests.
16. Where occasional contributors are concerned, broadcasters must ensure that:
 - the need for disclosure (or the avoidance of financial interests) is drawn to the contributor's attention before the communication is made; and
 - the contributor confirms that they understand and accept the position on disclosure in whatever way is most appropriate in the circumstances.
17. Any financial promotions communicated by persons who are not subject to proper systems and procedures, for whatever reason, are subject to the financial promotions restriction and would need to be approved by an authorised person or otherwise exempt. This may occur, for example, where persons are asked to stand in at the last moment and it is not practicable for the broadcaster to apply proper systems and procedures.

Guidance

18. Article 20 of the 2005 Order does not specify the way in which a financial interest should be disclosed, however Ofcom notes that the FCA considers that a financial interest should be disclosed in a way that will enable recipients to understand readily its nature. For example, "*the writer has a substantial holding of traded call options in these shares*". Accordingly, Ofcom considers that a financial interest should be disclosed in a clear, transparent, and easily understood way.
19. The effect of the Article 20 exception, and the provision set out at paragraph 13 above, is that a journalist will not breach the financial promotion restriction by not disclosing a financial interest, providing that the publication, service, or broadcast concerned operates proper systems and procedures. What constitutes proper systems and procedures will depend on all the circumstances of a particular case. However, Ofcom notes that the FCA indicates in its guidance that proper systems and procedures may achieve the objective of preventing the publication of communications without the required disclosure in one of two ways:
 - They may require that disclosure may be made; or
 - They may seek to prevent broadcasters from acting in a way which would enable them to profit if persons followed their published recommendation e.g., by banning their

dealing in the shares or related investments for a reasonable period following the promotion, thereby ensuring that the journalist will not have a financial interest to disclose.

20. Ofcom adopts the FCA's guidance that a service or broadcast may be likely to satisfy the requirement for proper systems and procedures if it has set up procedures:
- for persons responsible for devising the content of financial promotions, or for deciding that they should be included in the service or broadcast, to register their financial interests in a central log which is properly maintained and regularly reviewed;
 - for all financial promotions to be subject to review before broadcast by an appropriately qualified and senior person; and
 - for the persons referred to in point 1 to be made aware in writing of the procedures and of their obligations to disclose their financial interests or to refrain from taking any course of action which may be likely to give them a financial interest requiring disclosure and, preferably, to have confirmed their acceptance of these procedures and obligations in writing.

Promotion broadcast by company director etc. (Article 20A exception) Statutory Framework

21. Article 20A of the 2005 Order provides that the financial promotion restriction does not apply to a communication which is communicated as part of a qualifying service, by a person who is a director or employee of an undertaking, where the communication:
- invites or induces the recipient to acquire a controlled investment of the kind falling within article 20(4) of the 2005 Order which is issued by the undertaking or another undertaking in the same group or an authorised person in the same group; and
 - comprises words which are spoken by the director or employee and not broadcast, transmitted or displayed in writing or is displayed in writing only because it forms part of an interactive dialogue to which the director or employee is a party and in the course of which the director or employee is expected to respond immediately to questions put by a recipient of the communication; and
 - is not part of an organised marketing campaign; and
 - is accompanied by an indication that the director or employee is a director of employee of the undertaking.
22. Article 20A(2) provides that a qualifying service is a service which is:
- broadcast or transmitted in the form of television or radio programmes; or
 - displayed on a website (or similar system for the electronic display of information) comprising regularly updated information

As long as the principal purpose of the service taken as a whole (including any advertisements and other promotions contained within it) not to advise a person on the merits of, or lead or enable a person to buy, sell, subscribe for or underwrite a particular investment which is a security or a contractually based investment.

Guidance

23. As per FCA perimeter guidance, the main purpose of the exception for promotions broadcast by company directors appears to be to guard against the possibility that, during the course of a

broadcast interview or a live website presentation, a financial promotion is made inadvertently by a director or employee of a company or other business undertaking when that person is not acting as a journalist.

24. The Article 20A exception specifically precludes any form of written communication. However, the FCA states in its perimeter guidance that it understands that the Treasury did not intend to prohibit the use of written words in the form of subtitling, which may be an aid to those with hearing difficulties or to interpret a foreign language, or the use of captions which supplement a spoken communication by highlighting aspects of it without introducing anything new.
25. The FCA also indicate in their guidance that whilst they cannot fetter their discretion and must consider all potential breaches on their merits, where the only potential breach is in relation to the use of subtitling or captioning in the above way, the FCA would not expect to take further action.

Investment recommendations

Statutory Framework

26. The following are key aspects of the legislation underpinning broadcasters' obligations in respect of investment recommendations. As noted at paragraph 2 above, Broadcasters are strongly encouraged to seek independent legal advice to ensure their understanding of, and compliance with, the Broadcasting Code, these provisions, and the underlying legislation. Broadcasters may also wish to consider the FCA perimeter guidance on investment recommendations.
27. The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016/680 ("Regulations 2016/680") came into force on 3 July 2016. They gave effect to EU Regulation 596/2014 on market abuse ("Regulation 596/2014"), which is supplemented by Commission Delegated Regulation (EU) 2016/958 ("Regulation 2016/958"). Regulations 596/2014 and 2016/958 are retained legislation which continue to apply following the UK's exit from the European Union, and which impose requirements and standards on those who produce investment recommendations, or disseminate investment recommendations produced by a third party, through the media.
28. Article 20(1) of Regulation 596/2014 provides that persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.
29. Regulation 2016/958 lays down regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest. However, articles 20 and 21 of Regulation 596/2014 provide that journalists who are subject to equivalent regulation in the UK or appropriate self-regulation, including where the Ofcom Broadcasting Code applies, are exempt from these standards provided that:
 - such regulation achieves similar effects to those achieved by the standards;
 - no advantage or profit from the disclosure or the dissemination of the information in question is derived, directly or indirectly, by the persons concerned or persons closely associated with them; and
 - the disclosure or the dissemination is not made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.

30. The following provisions are intended to achieve similar effects to the standards laid down in Regulation 2016/958.

Relevant Provisions

31. These are relevant provisions as referred to in Rules 9.35 and 10.13 of the Broadcasting Code.

Production of Recommendations

Identity of producers of recommendations

32. Where people working on programmes, i.e., people employed by the broadcaster or working for or as an independent producer who makes a programme for the broadcaster, produce investment recommendations or other information recommending or suggesting an investment strategy, they must:

- disclose their identity, and the name and job title of any other person(s) involved in the production of the recommendation, clearly and prominently in all the recommendations they produce. Where a natural or legal person involved in the production of the recommendation is acting under a contract or otherwise for a legal person, that legal person's name must also be disclosed; and
- state a clear reference during the programme to the fact that it is regulated by the Ofcom Broadcasting Code.

33. Where a television or radio programme features someone regulated by the FCA who makes an investment recommendation, that person's compliance with the FCA rules is the responsibility of that person and not the broadcaster. If a person working on a programme interviews someone who is not regulated by the FCA who makes an investment recommendation, responsibility again lies with the interviewee not the broadcaster to ensure their compliance with the Regulations.

General obligations in relation to objective presentation of recommendations

34. People working on programmes who produce recommendations must ensure that:

- facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;
- all substantially material sources of information are clearly and prominently indicated;
- all sources of information are reliable, or where there is any doubt as to whether a source is reliable this is clearly indicated;
- all projections, forecasts and price targets are clearly and prominently labelled as such, and the material assumptions made in producing or using them are indicated; and
- the time and date when the production of the recommendation was completed is clearly and prominently indicated.

35. Where the disclosure of the information in points two to five above is disproportionate in relation to the length or form of the recommendation, including in the case of a non-written recommendation that is made using radio, television or website interviews, the person who produces the recommendations shall state in the recommendation where the required information can be accessed directly, easily, and free of charge by the persons receiving the recommendation.

36. People working on programmes who produce recommendations shall substantiate any recommendation they have produced to the FCA upon its request.

General obligations in relation to disclosure of interests or of conflicts of interest

37. People working on programmes who produce recommendations shall disclose in their recommendations all relationships and circumstances that may reasonably be expected to impair the objectivity of recommendation including interest or conflicts of interest:
- on their part or on the part of any natural or legal person working for them under a contract;
 - on the part of any natural or legal person involved in producing the recommendation; and/or
 - concerning any financial instrument or the issuer to which the recommendation directly or indirectly relates.
38. Where the person who produces recommendations is a legal person, the information to be disclosed shall also include any interest or conflicts of interest of any person belonging to the same group that are:
- known, or reasonably expected to be known, to the persons involved in the production of the recommendation; or
 - known to persons who, although not involved in the production of the recommendation, have or could reasonably be expected to have, access to the recommendation prior to its completion.
39. Where a person who produces recommendations is a natural person, the information to be disclosed also includes any interests or conflicts of interest of any person closely associated with them.

Dissemination of recommendations made by a third party

Arrangements for dissemination of recommendations

40. Where people working on programmes disseminate an investment recommendation made by a third party the broadcaster must ensure that the following information is communicated in a clear manner to the persons receiving the recommendations:
- the identity of the person disseminating the recommendation;
 - all relationships and circumstances that may reasonably be expected to impair the objective presentation of the recommendation including interests or conflicts of interest concerning any financial instrument or the issuer to which the recommendation directly or indirectly relates; and
 - the date and time when the recommendation is first disseminated.
41. Where people working on programmes disseminate a summary or extract of an investment recommendation made by a third party the broadcaster must ensure that the summary or extract is:
- clear and not misleading;
 - is identified as a summary or extract; and
 - includes a clear identification of the original recommendation.
42. The broadcaster must also ensure that the following information regarding the producer of the recommendation is made available either directly, in the summary or in the extract itself, or through reference to the place where that information can be accessed, free of charge, by the persons receiving the summary or extract of the recommendation:

- the name and job title of all the natural persons involved in the production of the recommendation; and
- where a natural or a legal person involved in the production of the recommendation is acting under contract, including a contract of employment, or otherwise for a legal person, the name of such legal person.

43. Where the producer is an investment firm, a credit institution, or a natural person working for an investment firm or a credit institution under contract of employment or otherwise, the identity of the relevant regulator must be stated in the recommendation.
44. Where the producer is not an investment firm, a credit institution, or a natural person working for an investment firm or a credit institution under contract of employment or otherwise, but is subject to self-regulatory standards or codes of conduct for the production of recommendations, a reference to those standards or codes must be made in the recommendation.
45. People working on programmes who disseminate a recommendation produced by a third party that is substantially altered must ensure that the recommendation clearly indicates the substantial alteration in detail, and include in the substantially altered recommendation a reference to the place where the information regarding the producer of the original recommendation set out in paragraphs 37 to 39 above can be accessed, free of charge, by the persons receiving the substantially altered recommendation.
46. In addition, where people working on programmes either recommend an investment recommendation or disseminate a recommendation made by a third party, the broadcaster must ensure that a clear reference is made during the programme to the fact that it is regulated by the Ofcom Broadcasting Code.