

ICMA response to FCA Quarterly Consultation No 38 (CP22/26)

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Consumer Duty

This response relates to Chapter 8 of [Consultation CP22/26](#) – *Clarificatory amendments to the Consumer Duty*.

Q8.1: Do you have any comments on our proposed changes to confirm the application of the Consumer Duty in relation to firms approving or communicating financial promotions?

FCA's wish (at pages 34-35 of the Consultation), to clarify the Consumer Duty's application provisions where a firm is "only approving or communicating a financial promotion", is noted.

However, the Guidance and proposed formal Rule amendments as underlined below (and set out at actual pages 223 and 225 respectively of the Consultation) might be construed to undermine the existing clear exclusion from the scope of the Consumer Duty of:

- listed retail bonds, pursuant to (3) of the *retail market business* definition (at actual pages 97-98 of [Policy Statement PS22/9](#)); and
- institutional bond activity, pursuant to (2) notably of the the *non-retail financial instrument* definition (at actual pages 95-96 of the above Policy Statement).

This also bearing in mind the relatively wide nature of what constitutes a 'financial promotion'.

[QUOTE]

2A.1.3 G The application of *Principle 12* is set out in *PRIN 3*, including *PRIN 3.2.6R* to *PRIN 3.2.12G*. *Principle 12* only applies in relation to a *firm's retail market business* or to the extent that the *firm communicates or approves financial promotions* which are addressed to, or disseminated in such a way that they are likely to be received by, a *retail customer*. To the extent that *Principle 12* applies, *Principles 6* and *7* do not apply."

[...]

3.2.6 R (1) *Principle 12* and *PRIN 2A* apply to a *firm's retail market business* ~~only~~, including in respect of *existing products* and *closed products*.

(2) The sections in (3) apply to a *firm* with respect to the *communication and approval of financial promotions* which:

(a) are addressed to, or disseminated in such a way that they are likely to be received by, a *retail customer*;

(b) if communicated by an unauthorised person without approval would contravene section 21(1) of the Act (Restrictions on financial promotion); and

(c) may be communicated by a firm without contravening section 238(1) of the Act (Restrictions on promotion of collective investment schemes).

(3) Activities relating to *PRIN 3.2.6(2)* are set out in the following table:

Section	Description
<u>Principle 12</u>	<u>The Consumer Duty</u>
<u>PRIN 2A.1</u>	<u>Application</u>
<u>PRIN 2A.2</u>	<u>Cross-cutting obligations</u>
<u>PRIN 2A.5</u>	<u>Retail customer outcome on consumer understanding</u>
<u>PRIN 2A.7</u>	<u>General provisions</u>
<u>PRIN 2A.8</u>	<u>Governance and culture</u>
<u>PRIN 2A.9</u>	<u>Monitoring of consumer outcomes</u>
<u>PRIN 2A.10</u>	<u>Redress or other appropriate action</u>

[UNQUOTE]

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