

UK Financial Promotion Rules: OFR & Section 21 FSMA

Why Financial Promotion Approval Is Required – Including for OFR-Recognised Funds

1. The Financial Promotion Restriction (FSMA s21)

Under Section 21 of the Financial Services and Markets Act 2000 (FSMA), a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity unless:

- The person is authorised by the Financial Conduct Authority (FCA); or
- The content of the communication has been approved by an authorised person with the relevant permission to approve financial promotions.

This is known as the “financial promotion restriction”, and it applies regardless of whether the fund is authorised, recognised under the OFR, or unregulated.

2. Scope: Prospectuses, Factsheets, Websites, Social Media, Etc.

The restriction applies to any communication that meets the broad FCA definition of a financial promotion:

“An invitation or inducement to engage in investment activity that is communicated in the course of business.”

(FSMA s21 and COBS 4.2.1R)

This includes, but is not limited to:

- Fund factsheets
- Prospectuses and supplements
- Pitch decks and sales presentations
- Websites and social media posts
- Videos, podcasts, and emails

There is no exemption for the prospectus or supplement as they highlight the benefits or features of investing in the fund. However, the Key Investor Information Document (KIID) under the current regime, does have specific carve-out from the financial promotion rules, and does not therefore require our approval.

3. Who Does It Apply To?

Even though the fund itself may be domiciled overseas (e.g. Ireland or Luxembourg), the restriction applies to any communication that has effect in the UK, including if:

- It is directed at, or likely to be received by, UK investors; and
- It is capable of having effect in the UK, such as via a UK-accessible website, or where UK investors are in the distribution chain (e.g. a UK adviser recommending the fund).

There is no exemption under the OFR (Overseas Funds Regime) from s21 FSMA. The FCA made this explicit in CP22/14 and reaffirmed it in PS24/7.

CP22/14, paragraph 3.15:

“Recognition under the OFR does not remove the need for financial promotions to comply with section 21 FSMA. Therefore, the financial promotion regime continues to apply.”

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4. COBS 4 and the Retail Distribution Chain

Under COBS 4.5.2R, where a communication is directed at or likely to be received by a retail client, it must be treated as a retail financial promotion, and the higher standards in COBS 4.5.3R – 4.5.12R must be met.

This applies if:

- Retail investors may see the material directly (e.g. via a website, fund platform, or adviser),
- Or if a professional adviser or intermediary might share it with a retail investor (common in the UK).

Therefore, even “professional” materials such as factsheets or fund supplements may fall within the retail scope because of the UK’s distribution chain, which frequently includes retail clients.

COBS 4.15 provides further requirements specifically relating to funds registered under the OFR.

Our guidance therefore is to ensure that for any funds registered under the OFR, with retail investors in the chain (e.g. direct or intermediated) and that are not aimed at / held purely by institutional or eligible counterparty investors, prospectuses and sufficient communications to assist investors with their support and understanding of the products be approved and available.

5. Approval by an Authorised Person – What Is Required?

The firm approving a financial promotion under s21 FSMA must be:

1. Authorised by the FCA, and
2. Have the specific permission: approve its own financial promotions as well as those of members of its wider group and, in certain circumstances, those of its appointed representatives, or
3. Have the specific permission: approve financial promotions for other unauthorised persons

Point (2) above refers to UK firms authorised by the FCA preparing their own financial promotions and causing them to be communicated. Point (3) refers to firms that are not UK authorised or in the same group as a UK authorised firm with appropriate permissions.

Practically speaking, this means that UK Authorised firms cannot generally approve the prospectus and supplements, as they are documents of the Management Company. They may, however, approve fact sheets that they prepare and communicate themselves. Firms without UK authorisation, or without a group company with suitable UK authorisation, require all financial promotions to be approved by a firm like Zeyro, which has the permissions in point (3) above.

They must also:

- Comply with COBS 4 and other Handbook provisions (e.g. PRIN, Consumer Duty),
- Conduct appropriate due diligence on the content and claims,
- Maintain records of the approval and rationale (COBS 4.11.1R), and
- Take steps to monitor compliance post-approval.

A firm that can only approve its own promotions (per FCA register restrictions) cannot approve promotions for another firm, including fund ManCos or portfolio managers.

This is why we work with ManCos and their fund clients to:

- Approve the prospectus and supplements (as financial promotions),
- Review and approve retail marketing materials, (and can review professional materials for general COBS compliance and appropriate distribution control to ensure professional only status is suitable), and
- Help construct compliant distribution and disclosure frameworks for the UK.

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In summary

Item	Approval Required?	Reason
Fund Factsheet	✓ Yes	Highlights investment merits, aimed at UK investors
Supplement/Prospectus	✓ Yes	Highlights investment merits, aimed at UK investors. Referenced or distributed in marketing chain
UK Retail accessible Website/pages	✓ Yes	Publicly available in the UK
Social Media Post	✓ Yes	Inducement to invest; accessible to UK audience