

19 August 2022

Dear CEO

**Action: Review your financial promotions for Buy Now Pay Later (BNPL) agreements**

I am writing to you to ask that if your firm enters into unregulated/exempt BNPL agreements that you review your financial promotions used to sell them to ensure they meet our regulatory requirements. This letter applies to:

- **All Firms** (whether FCA-authorized or not) carrying out the activity of entering into BNPL agreements with consumers
- **Merchants** (whether FCA-authorized or not) that introduce customers to firms for the purpose of entering into a BNPL agreement in order to fund a purchase of goods or services from them
- **Authorised firms** approving financial promotions of BNPL agreements, including social media influencers.

**Regulation of BNPL financial promotions**

In this letter, BNPL agreements refer to 'unregulated' BNPL agreements which are borrower-lender-supplier agreements for fixed sum credit with repayments to be made within 12 months, where the credit is supplied without interest or other charges. These agreements fall within the exemption under Article 60F(2) of the Regulated Activities Order (SI 2001/544). This means that they are sometimes referred to as 'exempt BNPL agreements' as firms offering this product can be exempt from needing to be FCA-authorized.

At the moment, lenders and merchants do not need to be authorised by the FCA to enter into BNPL agreements, however the **financial promotions of those unregulated/exempt agreements must still comply with certain regulatory requirements depending on who is communicating or approving the promotion**, section 3 of the Consumer Credit sourcebook in the FCA Handbook ('CONC') sets out the regulatory requirements that apply.

Section 21 of the Financial Services and Markets Act 2001 ('FSMA') defines a financial promotion as an invitation or inducement to enter into an agreement. A financial promotion for BNPL is any form of communication made across any media in the course of business, that invites a consumer to purchase a good or service by entering into a BNPL agreement. This includes, but is not limited to, posters in shop windows, paid for Google ads, and posts made by influencers on social media.

It is a criminal offence (Section 25, FSMA) for a person in the course of business to communicate a financial promotion unless:

- i. That person is an authorised person,
- ii. The content of the communication is approved by an authorised person, or
- iii. A relevant exemption applies.

This offence carries a maximum sentence of two years imprisonment, a fine, or both.

### **Our concerns**

We have seen financial promotions on websites and social media, including posts by social media influencers, which may breach the requirements set out in CONC 3 by failing to be balanced. The benefits of BNPL products have been emphasised without fair and prominent indications of any relevant risks to customers, which may include:

- the risk of taking on debt that customers cannot afford to repay
- the consequences of missed payments
- information about when charges become payable

Taking advantage of behavioural biases also hinders effective consumer decision making, and we are concerned BNPL promotions may be encouraging impulse buying.

### **Authorised Firms (including authorised merchants) issuing, or approving for communication, financial promotions for exempt BNPL agreements**

When an authorised Firm, issues or approves a financial promotion of a BNPL agreement, it must comply with the relevant rules in CONC 3 unless an exemption applies. This includes a requirement that the financial promotion must be clear, fair and not misleading. CONC 3 sets out what this entails, including that the financial promotion:

- must be balanced, and, in particular, does not emphasise any potential benefits of entering into an exempt BNPL agreement without also giving a fair and prominent indication of any relevant risks;
- must be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which it is directed, or by which it is likely to be received; and
- must not disguise, omit, diminish or obscure important information, statements or warnings.

### **Unauthorised lenders promoting exempt BNPL agreements**

An unauthorised lender promoting BNPL agreements must obtain approval of the promotion from an authorised firm in order to avoid committing a criminal offence, unless a relevant exemption applies ([PERG 8.12.11](#)).

### **Unauthorised merchants promoting exempt BNPL agreements to their customers as a means of payment**

Unauthorised merchants communicating invitations to their customers to use BNPL agreements as a means of payment for goods or services should consider whether they need to obtain approval of the communication from an authorised firm in order to avoid the risk of committing a criminal offence (taking legal advice if appropriate). It is noted merchants that meet the requirements of Article 15(2) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ('FPO') would not be in breach where the communication is made to introduce customers to an authorised firm offering BNPL agreements to cover the purchase cost.

### **What you need to do**

BNPL is instant, no-cost finance that has become increasingly popular and, as millions struggle to cope with the biggest cost of living crisis in a generation, consumers are having to make difficult decisions about their finances and how they pay for goods and services. Firms need to ensure consumers are equipped with the right information at the right time so they can make effective, timely and properly informed decisions about the financial choices they make.

Authorised firms and merchants must ensure that they comply with the requirements in CONC 3 regarding financial promotions. We will be communicating separately with unauthorised lenders and merchants to explain their regulatory obligations.

Please draw this letter to the attention of your Board. We expect the Board to consider the issues it raises and approve the action taken in response.

### **Next Steps**

We will proactively monitor the market to assess compliance. If we identify non-compliant financial promotions or become aware financial promotions have been issued that have not been approved by an authorised firm, we will consider what further action may be appropriate. For example, we use a wide range of enforcement powers, criminal, civil and regulatory, such as withdrawing permissions and issuing fines and under section 137S of FSMA 2000 can direct a firm to withdraw an advert (or its approval of an advert), or to prevent it from being used in the first place.

In addition, we recently confirmed final rules in relation to the new Consumer Duty. Our new rules require authorised firms to avoid foreseeable harm to retail customers with outcomes that include monitoring consumer understanding. This is applicable to all firms involved in the production, approval or distribution of retail customer communications, regardless of whether the firm has a direct relationship with a retail customer, and including where a firm produces, approves or distributes financial promotions or other advertisements.

As consumers are affected by the rising cost of living, firms will see a wider group of consumers in financial difficulty, some of whom will be in vulnerable circumstances. Firms approving or communicating financial marketing need to ensure they have relevant expertise and understanding of our expectations and the consumers they are reaching with their financial promotions. While we implement the Duty, we will use existing powers against firms where consumer outcomes need to improve.

Yours faithfully

Sheldon Mills  
**Executive Director, Consumers and Competition**  
**Financial Conduct Authority**