MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

21 June 2024

Marketing Campaigns and Selling Practices in relation to Financial Products and the Use of Cold-Calling

The Authority notes the emergence of marketing campaigns, and certain selling practices being embarked upon by regulated persons ('firms') in the context of the distribution of financial products, in particular pension plans, and would like to communicate its expectations in this regard as further indicated in this circular:

Marketing Campaigns

It has come to the Authority's attention that some regulated persons have launched marketing campaigns on Personal Retirement Pension Plans in which the tax incentive provided by the government on these products is being indicated as the principal feature of these products. The Authority considers that marketing communications issued by regulated persons, must at all times comply with the requirements of Rule R.1.2.6 and R.1.2.7 of the Conduct of Business Rulebook ('COBR') which requires marketing communications to be fair, clear, and not misleading. The practice of focussing more on the tax benefit rather than the nature of the product being promoted may lead customers to be enticed to purchase the product merely to benefit from a tax rebate and may thus be considered to be misleading.

Communications through social media, electronic mail and cold calling can reach a wide audience very rapidly. When designing financial promotions for Pension Plans on online media, regulated persons should carefully consider the manner in which material on such media is distributed in order to provide a balanced view of the product being promoted. This means that regulated persons are expected to ensure that the appropriate level of detail is included in a marketing communication in order to support consumer understanding that the advert is promoting a Pension Plan and not a tax benefit. Information that is required to be prominent should be presented in a way that is easily identified and understood by consumers, equipping them to make effective, timely and properly informed decisions. Social media promotions should make use of headings clearly displaying the Pension Plan being promoted and not overemphasise the tax benefit associated therewith.

Cold Calling

In principle, the Authority does not look favourably on the practice of making unsolicited or unarranged calls to clients or prospective clients, with a view to selling a product or a service ("cold calling"). The Authority however, notes that a number of regulated persons are resorting to cold calling as a means of selling financial products, in particular Pension Plans. The Authority understands that the industry considers cold calling to be a convenient, effective method to generate new leads and improve the sales performance. Nevertheless, the Authority expects that regulated persons should exercise a very high degree of care and diligence when effecting cold calls with respect to certain long term products such as pension products insurance-based investment products ('IBIP') in order to ensure that such products are not mis sold.

Experience of such calls has shown that, more often than not, the first thing consumers are asked in a cold call is whether they have heard about the tax rebate attached to pension products and if they are interested in getting the tax rebate. While the Authority understands that the features of the product would be described to the customer in call/meeting following the cold call, the Authority considers that at that stage, given the importance given to the tax rebate in the initial call, the customer would already be biased in favour of the purchase of the product. This could result in a situation where clients, eager to benefit from a tax advantage would not give due consideration to the explanations provided. In any case, the focus of the initial call should be the promotion of the financial product (e.g. the Retirement Plan) and how this product may assist them in their financial (retirement) needs rather than on the tax incentives which may be ancillary to the purchase of such products. On other words, the tax incentives should not be used as a "hook" to attract the attention of potential consumers.

In addition, the Authority has observed that during the cold calls, sometimes comparisons were being made with similar products issued by other regulated persons in order to persuade the consumer that the products promoted in the call are better than the competitors. Regulated Persons are reminded that in accordance with Rule R.4.1.12 of the COBR, firms should not compare, make inaccurate or unfair criticism of any other firm or product offered by such firm.

During cold calls care should be taken to ensure that no confusion is made in the mind of consumers with respect to savings products offered by Banks given that some of the products being promoted are being referred to as "savings plans". This is to avoid situations where clients may be misled in thinking that they are being offered a banking product or service.

Regulated persons should ensure that their staff or call centres who deal with consumers only engage in cold calling on condition that they strictly abide by the relevant rules of the COBR (R.4.1.16 & R.4.1.17).

Explanation of Features of Plan to Consumers

The Authority expects Regulated Persons to offer financial products which are be fit for purpose and designed to meet the needs, characteristics and objectives of the consumer and to act in the best interest of consumers also when distributing such products. Therefore, distributors of such products should have a clear understanding of the target market which was established by the manufacturer for that particular product. In particular, regulated persons distributing financial products, including pension plans, should assess whether any features of such products will fit the demands and needs of the consumer, including those with characteristics of vulnerability.

Regulated Persons are expected to provide timely and clear information which customers can understand so they can make informed financial decisions. This is because consumers are making complex choices on long term products, and it is therefore fundamental that they understand the features of the products they are buying before they sign the relative contract. Accordingly, it is expected that regulated persons ensure that they, or their representatives, spend adequate time with their prospective clients and ensure that these have clearly understood the features of the product in question. The practice where the information about the product is scribbled on a sheet of paper and presented to the client, which the Authority has also come across, is not acceptable and regulated persons should ensure that they, or their representatives do not engage in such practices.

Moreover, it is important that regulated persons clearly explain the nature of relationships and the services they provide. They should immediately disclose to the consumer whether they will be providing advice on the product to the consumer or otherwise. Regulated Persons which are distributing the product, and which are not authorised to provide advice should be very careful not to give the impression to their clients, that they are actually providing them with a personal recommendation in respect of the product. For example, answering questions such as *'what do you think*?', or *'which one is best for me*?' could involve the making a personal recommendation and therefore the provision of investment advice. In this context, regulated persons making non-advised sales should avoid answering questions in a way that could inadvertently result in the provision of advice.

Monitoring by Principals

In fact, in terms of R.1.2.10 and R.1.2.11 of the Conduct of Business Rulebook, compliance officers of regulated persons are required to formally approve all marketing communications issued by the regulated person for which it acts as compliance officer, and by its tied insurance intermediaries. For this purpose, compliance officers are expected to review promotional material prior to its issue in order to ensure that the information is communicated in a way that the design, presentation, and content of the advertisement is clear, fair, and not misleading.

Furthermore, regulated persons which appoint tied intermediaries are expected to also monitor the activities of the latter, including any cold calling, to ensure that these are acting honestly, professionally and in accordance with the best interests of the client. In this context, regulated persons are expected to ensure that they take steps to ensure that:

- Prominence in the adverts is given to the features of the product rather than any rewards or grants.
- Scripts for cold calls are developed. These should include pre-written responses and workflows instructions that guide the persons making the cold call in their interactions with potential customers. As stated above, the content of these scripts should avoid taking any improper advantage of the use of tax rebates to secure a sale or the client's interest in the product. These scripts are to be approved by the compliance officer of the regulated person or, in the case of tied agents, by the compliance officer of the entity appointing the tied agents.
- Accurate records of sales processes are kept in order to ensure compliance with applicable laws and regulations.
- Internal processes and procedures are developed to minimise unsolicited or unarranged calls for customers who have opted out of marketing communications or have already been solicited multiple times by different distributors acting on behalf of the same insurer.

Conclusion

The Authority is currently undertaking supervisory interaction with regulated persons distributing financial products, in particular pension plans and will, in due course, be issuing more detailed expectations in this regard. In the meantime, persons distributing such products are expected to ensure that they abide by the relevant rules and regulations and with the above expectations with immediate effect and on an ongoing basis.