FSMA FINANCIAL SERVICES AND MARKETS AUTHORITY

Communication

FSMA_2021_09 of 01/04/2021

FAQs about advertisements for investment instruments when they are offered to the public, admitted to trading and distributed to retail clients

updated version of 29/4/2025

Summary/Objective:

Advertisements for investment instruments that are offered to the public must meet the requirements laid down at European level. These require that the information provided in an advertisement must not be inaccurate or misleading. Furthermore, it must not present an imbalanced image of the information in the prospectus.

These frequently asked questions (FAQs) put forward good practices that can contribute to a correct implementation of these requirements as to the contents of advertisements. By issuing these FAQs, the FSMA wishes to make its actions more predictable and to contribute to a level playing-field.

Following these good practices can speed up the prior approval of advertisements by the FSMA. It will, in any case, prevent disputes about compliance with the requirements as to the contents of advertisements. Compliance also strengthens the position of the person responsible for advertisements in cases where investors may complain about or dispute an advertisement.

Failure to follow these good practices does not automatically mean a breach of the legislation or regulations.

In other words, the FSMA may approve advertisements in which certain good practices have not been implemented. Advertisements can, in other words, be balanced and not misleading even if these good practices have not been applied.

This document is subdivided into three parts

- *the first part provides explanations regarding the general prospectus and advertising framework, and goes into detail about:*
  - *the scope of the European prospectus rules as implemented in Belgium,*
  - *the European prospectus rules governing the contents of advertisements,*
  - *the prior approval by the FSMA of advertisements and other documents and announcements,*
  - *the purpose of these FAQs,*
  - *The relevance of these FAQs to certain transactions where advertisements are not subject to ex ante approval by the FSMA;*
- *the second part contains a few general FAQs that are addressed to anyone who issues advertisements for investment instruments offered to the public, admitted to trading or distributed to retail clients;*
- *the third part sets out good practices addressed to credit institutions and investment firms that offer non-equity securities to the public or distribute them to retail clients.*

Scope:

These frequently asked questions apply to advertisements and other documents and announcements relating to an offer of investment instruments to the public within Belgium;

- an admission of investment instruments to trading on a Belgian regulated market;
- an admission of investment instruments to trading on Euronext Growth of Euronext Access or a certain segment thereof.

These frequently asked questions are also relevant to offers for which no prospectus or information note is required, but where distribution of investment instruments to retail clients is involved.

Structure:

Part A. Explanations of the general framework for prospectuses and advertisements

1. How are the European prospectus rules implemented in Belgium?[1]

1.1. What European legislation governs prospectuses?

The Prospectus Regulation[2] has, for the most part, been in force since 21 July 2019. Most of the provisions of this European Regulation have direct effect in the domestic legal order. The member states merely carry out a few provisions.

The Prospectus Regulation mandates the publication of a prospectus when offering securities to the public in the EU with a total consideration of at least EUR 1 million in one year. A prospectus is also required if securities are admitted to trading on a regulated market[3].

An offer of securities[4] to the public is understood to mean a communication addressed to individuals in any form and by any means whatsoever, in which there is sufficient information about the conditions of the offer and about the securities being offered to enable an investor to decide to purchase or subscribe to the said securities[5].

The European prospectus rules exempt certain types of offers of securities to the public from the prospectus obligation altogether, such as:

- an offer of securities addressed solely to qualified investors;
- an offer of securities addressed to fewer than 150 people per member state, other than qualified investors;
- an offer of securities whose denomination per unit amounts to at least EUR 100,000; and
- An offer of securities with a value of at least 100,000 euros per investor per purchase or registration[6].

Certain types of securities, such as shares in central banks of member states, non-equity securities issued by member states or by other authorities in a member state, and securities issued by non-profit associations with a view to raising funds for non-profit-making objectives are also exempted in Europe from the obligation to publish a prospectus[7].

Member states can also choose to exempt public offerings from the prospectus obligation if the total consideration in the EU over 12 months is less than 8 million euros and if no passport is required for the prospectus[8]. Below the threshold of one million euros, the member states can lay down other reasonable disclosure obligations, but they may not require a prospectus. A prospectus can always be drawn up on a voluntary basis.

Admission of securities to trading on a regulated market located in the EU in principle always requires a prospectus, regardless of the total consideration[9].

A new European Regulation 2024/2809[10], which is part of the “Listing Act”, makes important changes to the current Prospectus Regulation. A number of provisions, such as those concerning the new prospectus exemptions, have been in force since 4 December 2024. New exemptions make it possible, under certain circumstances, not to have to publish a prospectus upon the offering and admission to trading of securities by companies whose securities are admitted to a regulated market or on an SME growth market.

Given that those transactions are exempt from the prospectus obligation, advertisements disseminated for such transactions are no longer subject to prior approval by the FSMA but are subject only to ex post supervision by the FSMA (see FAQ 8 and 9).

Other changes introduced by the new Regulation enter into force according to a phased-in schedule until June 2026, including those concerning the thresholds for the prospectus obligation. The changes to the thresholds will only enter into force on 5 June 2026, and require implementation at national level. The changes to the thresholds are therefore not incorporated into these FAQs.

1.2. How does Belgium implement the European prospectus rules?

Belgium implements the European prospectus rules by way of the Prospectus Law[11] and an implementing decree[12]. Belgian lawmakers have adjusted the scope of the European prospectus rules as follows:

- Whereas the European rules apply only to securities, the Belgian rules apply to investment instruments[13].
- The threshold for the prospectus obligation has been raised from one million euros to five million euros for offers to the public. For offers to the public of investment instruments that are or will be admitted to the Euronext Growth or Euronext Access MTFs, the threshold is now 8 million euros. The thresholds are calculated over a period of one year for the entire EU;
- Below those thresholds, Belgian law requires the issuer or offeror to publish an information note. That is a shorter document than a prospectus. The publication of an information note is also required for direct admissions to the Euronext Growth and the Euronext Access MTFs without prior offer to the public. As regards the publication of an information note, the same exceptions apply as regards the types of investment instruments and offers to the public as those provided for the publication of a prospectus[14];
- There is a '*de minimis*' provision for offers to the public where the total consideration is less than 500,000 euros, provided the offer limits the investment amount to a maximum of 5000 euros per investor. For such offers to the public, no information note and of course no prospectus is required. Under this '*de minimis*' provision, there is also no obligation to report to the FSMA.

Prospectuses require the prior approval of the FSMA or of another competent supervisory authority. This is not the case for the information note.

The scope of the European rules in Belgium can be summed up as follows:

<table>
<tr><th>TYPE OF TRANSACTION
TRANSACTION AMOUNT</th><th>Admission to a regulated market (with or without offer to the public)</th><th>Offer to the public without admission to the Euronext Growth or Euronext Access MTFs or to a regulated market</th><th>Offer to the public of instruments admitted to the Euronext Growth or Euronext Access MTFs</th><th>Direct admission to the Euronext Growth or Euronext Access MTFs</th></tr>
<tr><td>To €500,000 (de minimis)</td><td rowspan="4">Prospectus</td><td>No information required, provided max. amount per investor ≤ €5,000</td><td rowspan="3">Information note</td><td rowspan="4">Information note</td></tr>
<tr><td>To €5,000,000</td><td>Information note</td></tr>
<tr><td>To €8,000,000</td><td rowspan="2">Prospectus</td></tr>
<tr><td>More than €8,000,000</td><td>Prospectus</td></tr>
</table>

2. Which transactions are subject in Belgium to the rules governing the contents of advertisements laid down in the European prospectus legislation?

The European prospectus rules include the framework governing advertisements for a public offer or an admission to trading[15]. An overview of these provisions is available in FAQ 6.

This framework applies, on the basis of the European prospectus rules, to every advertisement relating to an offer of securities to the public or an admission of securities to trading on a regulated market. The substantive framework applies provided the issuer, offeror or the person asking for admission is required to publish up a prospectus[16].

Belgian lawmakers have expanded the application of the EU requirements regarding the contents of advertisements to:

- offers of investment instruments to the public that are made within Belgium;
- the admission of investment instruments to trading on a Belgian regulated market;
- the admission of investment instruments to Euronext Growth or Euronext Access.

The said requirements apply provided the advertisement is disseminated by the issuer, offeror or the person asking for admission to trading or the intermediaries[17] those persons appoint. They apply provided the issuer, offeror or the person asking for admission to trading is required to draw up a prospectus or an information note or voluntarily draws one up[18].

Moreover, these requirements apply not only to "advertisements" but also to "other documents and announcements". For explanations of these concepts, see FAQs 4, 5 and 6.

The prospectus rules also provide that the provisions governing the contents of advertisements do not apply to certain types of investment instruments or offers to the public or admissions to trading that are exempted from the obligation to draw up a prospectus or an information note. For example, this applies to investment instruments issued by non-profit associations with a view to financing their non-profit-making objectives, by member states and by the central banks of member states. This also applies to offers of investment instruments directed solely to professional investors, offers to fewer than 150 retail investors or offers with a consideration of at least 100,000 euros[19] per investor, and to the '*de minimis*' provision[20].

The European rules governing the contents of advertisements nevertheless apply to the transactions or investment instruments exempted from the obligation to publish a prospectus or information note in the event of professional distribution of investment instruments to retail clients (see FAQ 3).

3. What advertising rules apply to distributing investment instruments to retail clients without publishing a prospectus or information note?

The rules governing the contents of advertisements apply both to public offers and admissions to trading of an instrument for which a prospectus is required *and* to professional distribution[21] to retail clients of an instrument that is exempted from the obligation to publish a prospectus or an information note. For an overview of the rules governing the contents of advertisements, see FAQ 7.

The Belgian legislation provides, in a Transversal Decree[22], that the rules governing the contents of advertisements laid down in the Prospectus Regulation and the Prospectus Law[23], the rules on liability[24], the provisions on supervision by the FSMA[25], and the penal sanctions[26] apply to:

- The distribution to retail clients of the types of investment instruments that are exempted from the obligation to publish a prospectus or information note[27]. These include, in particular,

instruments issued by non-profit associations[28] for their non-profit-making objectives, by central banks of member states or by member states themselves;

- The distribution of investment instruments to non-professional clients in the context of a type of offer of investment instruments that is exempt from the obligation to publish a prospectus or information note[29]. This applies, specifically, to offers to fewer than 150 people and to the *de minimis* provision.

You must always determine whether professional distribution to retail clients is involved, within the meaning of the Transversal Decree, where advertisements for a transaction are not subject to the advertising framework governing the contents of advertisements based on the prospectus rules. Where professional distribution to retail clients is involved, the European prospectus rules governing the contents of advertisements do apply, albeit on the basis of the 'bridge' provided for in the Transversal Decree. This 'bridge' is applicable only when the Transversal Decree applies. This is not the case for distribution of investment instruments to retail clients for an initial investment amount of at least EUR 100,000.

The said rules governing the contents of advertisements do not apply either, in the legislation currently in force, to distribution addressed solely to qualified investors[30].

The Transversal Decree's rules governing the contents of advertisements have been declared not to apply to advertisements disseminated within Belgium to retail clients in connection with the professional distribution of investment instruments[31]. The European rules are a maximum harmonization of the advertising provisions that apply to an offer to the public or an admission to trading on a regulated market.

This means that since 21 July 2019, the circular[32] accompanying the Transversal Decree, in so far as it provides explanations of the provisions governing the contents of advertisements contained in that Decree, can no longer be applied to the professional distribution of investment instruments to retail clients within Belgium. The circular in question does remain useful for the explanations it provides of certain aspects of the scope of the Transversal Decree, namely, the concept of professional distribution.

4. What is an "advertisement"?

An "advertisement" is defined, for the purposes of the prospectus rules, as a communication that is intended specifically to promote the purchase of or subscription to a financial product. Such a communication concerns a specific offer of investment instruments to the public, an admission to trading on a regulated market or an MTF designated by the King (Euronext Growth or Euronext Access)[33].

The following, among others, are advertisements: adverts in the press, flyers, brochures, posters on billboards in bank branches, signs on public roads and in public buildings, letters to investors, product factsheets, television spots, radio spots, internet banking messages, emails, e-magazines, publications on websites, banners, webpages that compare different financial products, advertisements shared through social media (Facebook, X, Instagram, etc.), Google ads or other preformatted search results and phone calls for the purpose of selling investment instruments.

5. Do branding campaigns come under the prospectus rules?

"Branding campaigns" promoting the brand recognition of a company that are not specifically addressed to the public for the purpose of offering investment instruments are not considered advertisements for an offer of an investment instrument within the meaning of the prospectus rules.

Such campaigns can be identified by means of several criteria: the message of such advertisements is in principle focused on the company itself, and not on a particular investment instrument. Such campaigns may mention various types of financial products offered by the company in question. This may be done exclusively by providing an overview of the company's activities, in other words, without describing the financial products in detail or giving their names.

Advertisements for the provision of investment advice or for any other investment service that do not give the name or other essential features of a particular investment instrument are also considered to constitute a branding campaign, and are therefore not considered "advertisements" within the meaning of the prospectus rules.

The dissemination of a branding campaign via a company's website is best done, where appropriate, on a part of the website that does not deal with the offer of investment instruments to the public.

6. What are "other documents and announcements"?

Belgian lawmakers have extended the scope of the rules laid down in the Prospectus Regulation governing the contents of advertisements to "other documents and announcements", in addition to advertisements concerning the transaction in question. The FSMA will ensure in particular that such other documents and announcements are not inaccurate and not misleading.

Periodic publications about products that are marketed continually are included. These include, for example, products offered for sale continuously on a primary or secondary market.

According to the FSMA, this category does not include documents whose contents are regulated by law and whose publication is legally required, such as the prospectus, the information note, the key information document, the factsheet for EuGB[34] or the publications prescribed by the Code on Companies and Associations.

If a supplement to the prospectus is published, the financial intermediary must in certain cases contact the investors who have already accepted the offer.[35] Communications disseminated by the financial intermediary in implementation of the said legal requirement likewise do not constitute "other documents or announcements" in so far as such communications are limited to providing information about the supplement to the prospectus and the right of withdrawal, and contain only objective information.

Alternative information that you are required to provide pursuant to the prospectus rules or in order to obtain an exemption from the prospectus or information note is likewise legally required information and does not constitute an "other document or announcement". An example of this is an exemption from the obligation to publish a prospectus for securities that an employer offers its employees and directors. The exemption also applies for example, to an optional dividend, provided that a document is available containing information on the number and nature of the securities, and the reasons for and details of the offer[36].

Nor do the rules apply to "other documents and announcements" that are disseminated after the offer. These include reports that the client receives after the transaction has been completed, such as personalized account statements and portfolio overviews.

Announcements that inform holders of a securities account of objective information about a "corporate action" involving securities in their portfolio are similarly not covered by the rules in question. Such announcements do not concern a specific offer of investment instruments. They are not intended to promote the acquisition of securities. Such announcements may, for example, concern an optional dividend or a right of pre-emption for shares. Moreover, it is not always the issuer,

the offeror or the person asking for admission to trading or the intermediaries those persons appoint who disseminate such announcements.

7. What substantive rules apply to advertisements for an offer to the public, admission to trading or distribution to retail clients?

Advertisements must meet the following requirements[37]:

1° The information may not be inaccurate or misleading.

2° Advertisements must identify the prospectus. An advertisement must mention that a prospectus has been or will be published and indicate where investors can obtain the prospectus.

3° Advertisements must be clearly recognizable as such.

4° The information must be consistent with the information contained in the prospectus.

5° All information provided in oral or written form concerning the offer of securities to the public or the admission of securities to trading on a regulated market must be consistent with the information in the prospectus. This requirement also applies where the information is not provided for advertising purposes.

6° In the event that important information is disclosed by an issuer or offeror and addressed to one or more selected investors in oral or written form, such information must either:

a) be disclosed to all other investors to whom the offer is addressed, in the event that a prospectus is not required;

b) be included in a prospectus or in a supplement to the prospectus in the event that a prospectus is required.

The prospectus must be identified as follows in advertisements[38]:

a) where the advertisement is disseminated in written form and by means other than an electronic medium: identify clearly the website where the prospectus is or will be published;

b) where the advertisement is disseminated in written form by electronic means:

i. If the prospectus has already been published: include a hyperlink to the prospectus and to the relevant final terms of the base prospectus;

ii. If the prospectus has not yet been published: include a hyperlink to the page of the website where the prospectus will be published;

c) where the advertisement is disseminated in oral form: the advertisement must include accurate information on where the prospectus may be obtained and on the offer of securities or the admission to trading on a regulated market.

The following additional requirements as regards the contents of advertisements also apply[39]:

a) The word “advertisement” must be displayed prominently in the advertisement. Where an advertisement is disseminated in oral form, the purpose of the communication must be clearly identified at the beginning of the message.

b) Where the advertisement states that the prospectus has been approved by a competent authority[40], the advertisement must contain a statement that the approval of the prospectus should not be understood as an endorsement of the securities.

c) In cases where the advertisements mention that the prospectus has been approved by a competent authority, the advertisements must contain a recommendation that investors

should read the prospectus before taking an investment decision, in order to understand fully the potential risks and benefits in relation to the decision to invest in securities.

d) Where the advertisement is for an investment instrument for which a key information document has been drawn up containing the warning about comprehensibility "You are about to buy a product that is not simple and may be difficult to understand", the advertisement must also include that warning.

e) The form and size of the written advertisement must differ sufficiently from the prospectus so that there can be no confusion between the advertisement and the prospectus.

Oral or written information concerning an offer of securities to the public or an admission to trading on a regulated market, whether as an advertisement or for other purposes, must not[41]:

a) contradict the information in the prospectus;

b) refer to information which contradicts the prospectus;

c) present the information in the prospectus in a materially unbalanced way, including by way of presentation of negative aspects of such information with less prominence than the positive aspects, or by omission or selective presentation of certain information;

d) contain alternative performance measures unless they are contained in the prospectus.

These FAQs set out good practices that may contribute to proper compliance with these requirements regarding the contents of advertisements.

8. What advertisements and other documents and announcements must the FSMA approve beforehand?

Advertisements and other documents and announcements about certain transactions must be submitted to the FSMA for approval before they can be published. This obligation applies to advertisements and documents and announcements that are disseminated at the initiative of the issuer, the offeror, the person asking for admission to trading, or the intermediaries designated by them.

This obligation applies to the transactions referred to in FAQ 2. This is one of the obligations for which Belgian lawmakers have expanded the applicable advertising rules and for which the publication of a prospectus is required or is published on a voluntary basis;

- an offer of investment instruments to the public within Belgium;
- an admission of investment instruments to trading on a Belgian regulated market, except where the investment instrument has a consideration of at least 100,000 euros[42].

The law does not require prior approval by the FSMA of advertisements for transactions for which an information note has been drawn up on an obligatory or voluntary basis[43].

The FSMA must take a decision within a maximum of five working days of receipt of the advertisements, other documents and announcements. To do so, it will examine whether the information in the advertisements and other documents and announcements are consistent with the information in the prospectus. If the FSMA can only conduct this verification once it has the approved version of the prospectus, then the period of five working days begins to run, where applicable, at the point when it approves or receives the prospectus. The FSMA takes the view that in the context of premarketing[44], it can approve only general communications with limited information about the future offer. More detailed information could, of course, be contradicted by the prospectus that will

subsequently be approved, namely, if the subject of the prospectus submitted to the FSMA for approval is not yet final.

If the advertisements and other documents are not made public, these documents fall outside the scope of the mandatory prior approval. That is the case, for example, where the documents are given on a confidential basis to a limited number of institutional investors. It should be remembered that in the event that an issuer or offeror provides important information in oral or written form to one or more selected investors, this information must be included in a prospectus or in a supplement to the prospectus where a prospectus is required.

9. Are these FAQs useful for transactions where the advertisements and other documents and announcements are not subject to prior approval by the FSMA?

These FAQs are also useful in cases where the FSMA does not approve the advertisements in advance but retains supervisory competence afterwards. This applies, in particular to:

- transactions for which an information note is drawn up (see FAQ 1);
- admissions to trading on a regulated market or an MTF of investment instruments with a total consideration of at least 100,000 euros, regardless of whether the offer is made to retail or professional investors;
- professional distribution to retail clients of a type of investment instrument or a type of offer to the public that is exempt from the requirement to publish a prospectus or an information note. That means distribution to fewer than 150 retail clients, except where the distribution requires an initial investment amount of at least 100,000 euros. Distribution under the terms of the *de minimis* provision also falls within this category (see FAQ 3).

Schematic overview of the transactions that in Belgium are subject to the advertising rules of the Prospectus Regulation

The first column indicates the various types of transactions.

The second column identifies the legal basis on which the advertising rules of the Prospectus Regulation apply. It refers to the Prospectus Regulation (PR), the Prospectus Law (PL) or the Transversal Royal Decree (Advertising RD).

The third column describes the type of supervision conducted by the FSMA.

Advertisements for investment instruments as part of an	PR advertising rules apply on the basis of	Types of supervision by the FSMA
Offer to the public with prospectus	Art. 22 PR/PL	Ex ante
Offer to the public with information note	Art. 22 PL	Ex post
Admission to RM with prospectus	Art. 22 PR/PL	Ex ante (< €100,000) Ex post (> €100,000)
Direct admission to MTF with information note	Art. 22 PL	Ex post
Distribution to retail clients < €100,000 ***regardless of the number of people!***	Art. 9, § 3 Advertising RD and Art. 22 PL	Ex post

Part B. General FAQs about advertisements for investment instruments in connection with offers to the public, admission to trading, and distribution to retail clients

1. In written advertisements, the word "advertisement" must be prominently displayed. How can you comply with this obligation in practice?

Put the word "advertisement" in a font that is larger than the font used for the core of the text. Place the word "advertisement" at the top of the advertising communication.

This good practice does not exclude other methods. You can, for example, print the word "advertisement" in a different colour than the core text and place it against a contrasting background. What is important is that the word "advertisement" is sufficiently eye-catching.

2. How do you refer in an advertisement to the prospectus and to any supplements and final terms?

Advertisements can be disseminated in three different ways: (i) in written form by electronic means, (ii) in written form by a means other than an electronic medium, and (iii) only verbally[45].

If you use both forms of dissemination mentioned under (i) and (ii) simultaneously, then the applicable requirements and good practices apply simultaneously.

2.1. Advertisements disseminated in written form by electronic means

Such advertisements must include a hyperlink to the prospectus and any final terms, if these documents have already been published. If not, then the advertisements must contain a hyperlink to the page where it will be available.

If a supplement is published, then it is good practice for the advertisement to provide a hyperlink to it. If several supplements are being published, then it is good practice to include all supplements in one document and to provide a hyperlink to that document. Doing so enhances readability.

It is good practice for electronic advertisements to include sufficient information about the instrument being offered to enable investors to find the right documents. The information in question includes the name, title, date, the authority approving the prospectus and the ISIN code of the instrument.

If it is impossible technically to include hyperlinks to the prospectus, any supplements and final terms, then you can include a hyperlink to the specific webpage of the product concerned where the product information is available. An alternative is that you refer with a hyperlink to the specific webpage where the product documentation for each product issued can easily be found grouped together via one link. In other cases, a hyperlink to the prospectus is always required.

For purposes of readability, it is preferable to insert a hidden or implicit hyperlink rather than one written out in full.

2.2. Advertisements disseminated in written form by means other than electronic ones

The advertisements must clearly indicate the website on which the prospectus is available. It is advisable to provide this information for any supplements and final terms as well. In so doing, one may provide the specific product webpage where the product documentation is available, or the specific webpage where the product information for each product issued can easily be found via a single link.

It is also good practice for written advertisements to provide sufficient information about the instrument offered (such as the name, title, date, the authority approving the prospectus and the ISIN code of the instrument) so that the right documents can be found.

2.3. Advertisements disseminated orally

Provide accurate information about where the prospectus is available and about the offer of securities or the admission to trading on a regulated market to which the prospectus refers.

3. What information should you include in a brief advertising medium?

The FSMA is aware that advertising can take various forms depending on the medium being used. The medium used will in part determine what information the advertisement contains.

Some advertising media such as posters can include only brief information. If you use these types of advertising media, the legally required items of information are applicable[46]. It is also good practice to identify the specific offer using the name and type of product.

Sometimes electronic advertisements are made up of various steps linked to each other and that constitute a logical process of cumulative information. Examples include a banner, a text message or a tweet, for example, in which you draw the investor's attention to a product and in which there is a link to a product page with more extensive information about the product[47]. It can also be a webpage that offers a comparison among various financial products.

It is good practice to apply the requirements governing the contents of advertisements at each step of the process as follows:

- each step of the process should include the word "advertisement" prominently;
- each step of the process should be balanced, accurate and not misleading;
- you should mention at each step that information on the risks and on the prospectus are included in the core document;
- the core document, to which a link should be included at this step, should contain the other legally required information.
- you should use the same communication channel throughout the various phases of the process;
- You should structure the process in such a way that users must unavoidably pass via the core document in order to acquire the product or to make an appointment.

If a step contains sufficient information in its own right to make it possible to make an investment decision, you must include all the mandatory information in that step.

4. When do you have to update your advertisements and how should you go about it?

If, during the offer period, a new supplement is published, then be sure to update the advertisements that have already been disseminated if they are materially inaccurate or misleading in light of the information in the supplement[48].

The updated advertisement should contain a clear reference to the incorrect or misleading version of the advertisement, a statement that the advertisement has been updated because it contained materially inaccurate or misleading information, and a clear description of the differences between the two versions of the advertisement[49]. Other than advertisements disseminated in oral form, the updated advertisement should be disseminated at least in the same manner as the previous version[50].

In general, advertisements must also be updated if during the offer period they have become materially inaccurate or misleading for a reason other than the publication of a supplement during the said period. Advertisements may not be materially inaccurate or misleading[51]. Therefore, it is best to follow the aforementioned way of working[52].

If the FSMA has approved the original advertisement, then the updated one must also be given prior approval before it is disseminated.

5. May advertisements include subjective judgements?

It is best for advertisements not to include any subjective judgements intended to create a positive feeling about the investment instrument being offered. If subjective judgements rely on a source and that source is mentioned along with its publication date, then they may be included. But in principle it is better to limit the contents of advertisements to objective and verifiable elements.

For example, if an advertisement for an investment instrument gives a forward-looking view of the economic context, then it is best to support that view by providing a source. If the advertisement is for an investment instrument with a limited duration, it is best to present a view that covers the entire lifetime of the product. If that is not the case, then it is useful to make this explicit in the advertisement, so that it is sufficiently clear to the investor that the offeror does not wish to or cannot speak for the entire period of the product.

6. What kind of terminology should you use in advertisements? What should you do if you cannot avoid technical terms?

Advertising for investment instruments sometimes contain technical terms. The average investor cannot be expected to understand these terms.

The advertisements, along with the prospectus and the summary of the prospectus, must contribute to a good understanding of the investment instrument being offered.

It is important to present and design advertisements in such a way that they are easy to read. Use sufficiently large characters. Write in a language and style that facilitate understanding of the information. Be clear, non-technical and concise.

It is best to avoid technical terms. If you cannot avoid using technical terms in an advertisement, then you can explain the meaning of the terms in a way that is comprehensible to investors. It is preferable to do so where the technical terms are used for the first time and not only at the end of the advertisement or in its technical sheet.

7. What elements are important when describing risks in the advertisement?

Both the contents of the advertisements and their presentation must offer balanced information on the return of the investment instrument being offered and the associated risks. Avoid emphasizing the potential advantages of an investment instrument without at the same time correctly and visibly noting any risks.

It is recommended that the principal risk factors specific to the investment instrument, the issuing institution and any guarantor be included in the advertisement in non-technical wording. These include those risks which are most likely to occur or that may be expected to have the greatest impact on the investment. This information must be presented in a way that is consistent with the risk factors included in the prospectus or the information note. It is advisable to ensure that this presentation is consistent with the risk factors included in the summary of the prospectus. If the cover page of the prospectus contains a warning about certain specific risks, it is good practice to place the warning clearly in the foreground of the advertisement.

Provide a clear and comprehensible explanation of the risks of the investment instrument being offered. Doing so will ensure that the implications of the risks are not concealed or minimized. Avoid giving a legal or technical description.

8. What elements are important when describing the return, the costs and the tax treatment contained in advertisements?

It is important for the return to be presented as clearly as possible, as regards the amount both before and after costs and taxes, where possible. Give the interest rate on an annualized basis. Provide the internal rate of return (IRR) as well. The latter figure takes into account the known costs that apply to all investors[53] and, where applicable, the withholding tax. This will enable the investor to compare the return with that of other investment instruments without having to make complex calculations.

Intermediaries who are not members of a placement syndicate may charge the investor for costs that are not mentioned in the advertisement. If that happens, it is useful to draw investors' attention to this and advise them to seek additional information about these costs.

If only the gross return is given, then it is best to identify any entry costs that may apply over and above the capital, as well as the taxes. Specify that these costs and taxes are not included in the calculation of the return. The difference between gross and net returns should be clearly stated in the core of the brochure and in any illustrations (see FAQ 9 of part C).

As regards taxes, it is best to take as the starting point the tax treatment of the investors to whom one is addressing the offer. Generally, this is an average retail client, natural person and resident of Belgium[54]. If you refer to a specific tax treatment, you should make it clear that the tax treatment depends on the individual situation of each investor and may change in the future. It is advisable to draw investors' attention to each specific tax regime that applies to the investment instrument in question.

The good practices relating to the description of the return in this FAQ apply mainly to debt instruments that offer a coupon or capital gain.

9. What elements are important when describing the instrument's negotiability in the advertisement?

State whether an investment instrument is or will be admitted to trading on a multilateral market. This would be a regulated market, an MTF or an OTF. Point out to investors, where applicable, that admission to trading on a multilateral market is no guarantee of the liquidity of investment instruments, and thus does not mean that the instruments can easily be traded.

If mention is made of a mechanism whereby the issuer wishes to enhance the liquidity of the investment instruments on or outside a multilateral market, the main modalities of that mechanism should be indicated. State whether there is an obligation of result or an obligation of means that depends on market conditions. Describe the price-setting and any costs such as commissions for the distributor and the margin that the vendor deducts from the real value of the investment instrument when it is sold. Provide information about taxes as well. Where applicable, indicate the following elements:

- If there is no unconditional obligation of result for providing liquidity but only an obligation of means that depends on market conditions, it is good practice to mention clearly the risk of non-negotiability.
- Moreover, it is also good practice to avoid making reference to the existence of a "market" where it is solely the issuer that plans to enhance the liquidity of the instruments, without multilateral trading. It must be made clear to investors that their investment instruments cannot be traded, before their maturity date, on an active market of buyers and sellers that are independent of the issuer. This means that the counterparty is the issuer itself, and thus it is the one that will set the price. Investors must be able to deduce from this that there is a latent conflict of interest.

It may be useful also to point out that there is a risk that the price on the secondary market may be lower than the issue price of the investment instrument. In that case, explain in comprehensible language what the most important causes may be. For example: a significant deterioration in the issuer's credit, a rise in the market interest rate, a fall in profit or lower profit forecasts.

10. What should you look out for when mentioning liability in advertisements?

Statements that might suggest that the issuer, offeror or person asking for admission to trading, or their designated intermediaries, may be exonerated from all liability for the contents of advertisements may not be included and are in any case null and void[55].

11. What should you look out for when mentioning the name of the competent authority in advertisements?

Advertisements and other documents and announcements about an offer to the public or an admission to trading may not make any mention of action by the FSMA or by the competent authority of any other EEA member state. Mention of the approval of the prospectus is an exception to this rule[56].

The FSMA considers it good practice to mention in advertisements which authority has approved the prospectus.

If the advertisement indicates the approving authority, then it should also state that the approval of the prospectus should not be understood as an endorsement of the investment instruments being offered or admitted to trading on a regulated market[57]. In such a case, recommend that investors read the prospectus before they make an investment decision. This way, they will have a complete picture of the potential risks and benefits of a decision to invest in the securities on offer[58].

12. What should you look out for when advertising transactions for which the applicable law or the issuer is not Belgian?

If a law other than Belgian law applies to an investment instrument, it is good practice to mention the applicable law. In addition, you can mention the home state of the issuer and/or of the guarantor if this is not Belgium.

Part C. Additional FAQs for financial institutions that offer non-equity securities to the public or distribute them to retail clients

These FAQs are specifically addressed to financial institutions that offer non-equity securities to the public or distribute them to retail clients, either in their own name and for their own account, or as an intermediary. They are in a separate section because they cover situations with particular characteristics and are therefore less relevant to ordinary commercial companies that offer their own investment instruments. They supplement the FAQs in part B.

The European prospectus rules[59] define the concept of "non-equity securities". These include structured debt securities with or without the right to reimbursement of the initial investment, bonds with fixed or variable interest rates in euros or in a foreign currency, and leveraged securities such as turbos and financial warrants.

These FAQs also apply, of course, to cases where financial products with equivalent rights and obligations but in a legal form that does not qualify as a non-equity security - for example, in a derivative contract such as a swap agreement - are offered to the public or distributed to retail clients.

1. Do the prospectus rules also apply to generic advertisements for a specific type of investment instrument?

Financial institutions sometimes disseminate advertisements about various investment instruments of the same type, without the investment instruments being mentioned individually in those advertisements. Generally, these are investment instruments of the same product range and that work the same way, for which the investor can choose among certain parameters such as the underlying or the leverage. These types of advertisements are often found in the market for leveraged securities, such as turbos and financial warrants. Financial institutions work with a single generic promotional document such as a brochure or a webpage for a series of different investment instruments. They do so because it is not very efficient to draw up a separate promotional document for each individual investment instrument being offered.

These generic documents are also subject to the prospectus rules. The conditions are that they refer, along with the prospectus, any final terms and the key information document for each investment instrument being offered, to a specific offer of investment instruments to the public, and that the generic documentation is aimed specifically at promoting the acquisition of those investment instruments.

Generic promotional documents do not have to be approved anew for each specific offer. The FSMA may, when granting its ex ante approval, take into account the standardized and recurrent nature of the documents[60]. The approval of the FSFMA is required, however, when updating a generic promotional document, for instance to replace a reference to an outdated prospectus with a reference to a new one.

Information brochures that explain the general workings of different types of investment instruments are in principle not subject to the FSMA's supervision on the basis of the prospectus rules. This is the case on condition that the brochures do not refer to a specific investment instrument or a specific type of investment instrument that can be offered to the public or are linked to such instruments. When offering a specific investment instrument to the public or a specific type of investment instrument, you may refer to such brochures.

Assess the difference between generic promotional documents and general information brochures on a case by case basis, bearing in mind all relevant circumstances. These documents are thus not examined in their own right, but are assessed in light of the context in which they are used. A generic promotional document that can be linked to a prospectus and to final terms for specific offers is an advertisement, since it clearly indicates the offeror's intention to sell a specific type of investment instrument. A general information brochure, by contrast, is not linked to one or more specific offers but is purely informational in nature without any intention to promote sales. Such a general information brochure contains no advertising.

2. What is important when choosing the name of an investment instrument?

Financial institutions often give a name to structured products or bonds in a foreign currency with the intention of emphasizing certain features of the product. We wish to mention the following elements as regards the choice of name. It is good practice to take all these elements into consideration during the product governance process[61] and when preparing legal documentation.

- It is advisable to choose a name that does not risk misleading the public as to the nature, objective, risks or characteristics of the investment instrument.
  In particular, the name should not give the impression that the issuer undertakes to reimburse the capital at maturity where this is not – or not always – the case. More specifically, it is best to avoid using the term "(structured) bond" where the terms of issue do not provide for the full reimbursement of the capital at maturity. It is also best to avoid focusing the name of a product on the interest rate of the coupon, if that rate does not apply for the entire term of the investment or if the issuer does not undertake to reimburse the capital in full at maturity. Along the same lines, it is advisable not to use the terms "coupon" or "bonus" in the name if the product does not entail a commitment to reimbursement, at maturity, of the amount invested. Nor is it a good idea to use terms in the product name that an investor might misinterpret and that do not match the features of the product. For example, the term "booster" should not be used if no multiplier or leverage is involved.

- Avoid using subjective terms such as "best", "top" or "smart" in the name of the investment instrument. Use of such terms runs the risk of giving the investor a largely positive feeling and is generally not based on objective facts.

- For (auto)callables or (auto)switchables, it is good practice to make reference, in the name of the investment instrument, to its (auto)callable or (auto)switchable character.

- It is also good practice to refer in the name of the investment instrument to the name of the issuer and its nationality, or to feature prominently the name of the issuer and the nationality in addition to the name of the investment instrument. This should make it clear to the public who bears responsibility for payment under the investment instrument. Such prominent mention of the name of the issuer and its nationality, in addition to the name of the investment instrument, is in any case advisable the first time the advertisement mentions the name of the investment instrument. The name of the issuer can be a customary abbreviation whose meaning should ideally be clearly stated elsewhere in the advertisement in question. The nationality may also be given in abbreviated form. It is best to avoid including the distributor's name in the name of the investment instrument, so as not to give the impression that it is the issuer.

- It is useful to add the currency to the name of the product in the advertisement, so that investors are immediately aware of the exchange rate risk.

3. How can you identify the type or nature of a structured investment instrument in the advertisement?

Structured products are complex investment instruments. For the average investor, it is not always easy to know what exactly the products consist of and what rights and obligations they entail. The use of different names to indicate the different product types does not help investors understand the products and compare them with others. It is best therefore to identify product types in the advertisement using the same wording. We wish to point to the following good practices:

- For debt instruments whose return depends on the changes in the price of an underlying, use the terminology "debt instrument with a right to (partial)[62] reimbursement of the investment" or "debt instrument without a right to reimbursement of the investment". Choose the formulation in accordance with whether or not there is a commitment to (partial) reimbursement at maturity of the capital invested. Avoid the use of terms such as "capital protection", "capital guarantee" or other terms that play on the investor's sense of security.

- Ensure that advertisements contain a qualitative explanation of the product being offered, in order to enable potential investors to understand the nature of the investment being offered them. Thus, it is not enough to speak of "notes" in advertisements, given that the meaning of this term may be ambiguous to the public. Point out the following information to the investor when issuing debt instruments:

    - As regards debt instruments with a right to reimbursement of the sum invested: by subscribing to these debt instruments, the investor lends money to an issuer. The latter undertakes to reimburse, at maturity, at least the initial capital invested, excluding the entry costs representing a certain percentage over and above the capital. The issuer may also undertake to pay an annual coupon and a sum at maturity, depending on the price of the underlying asset.

    - As regards debt instruments without a right to reimbursement of the sum invested: such investment instruments do not entail a commitment by the issuer to reimburse, at maturity, the capital invested.

- When identifying the type of product, point out that investors run the risk that if the issuer or the guarantor is declared bankrupt, they may not be able to recover (in full) the sums to which they are entitled, and they may lose all or part of the capital invested and any coupons or capital gains. Where applicable, indicate that there is an additional risk of partial or complete loss if the competent supervisory authority compels the issuer or the guarantor to restructure, precisely in order to avoid bankruptcy[63].

- Identify clearly the choice of the underlying asset:

    - Where the underlying asset has a code, such as an ISIN or Bloomberg code, that code may be included in the advertisement. The same applies to the currency of the underlying asset where it is available in various currencies and, where applicable, to the type of underlying, such as price return or excess return indexes;

- It is also useful to explain that only the potential yield is linked to the performance of the underlying asset, without the capital actually being invested in it.

- Where the advertisement for an investment instrument in a foreign currency includes a graph showing the historical exchange rate, it is important to ensure that the graph is comprehensible. For a good understanding of the graph, make sure that:
  - the benchmarks for the graph do not downplay the fluctuations in price;
  - a quantitative example of the impact of the exchange rate is available;
  - an explanation is provided of whether a rise or fall in the curve may have a negative or positive impact on the outcome of the product after conversion to euro. That can be done, for example, by explaining that the investor stands to make a profit due to fluctuations in the exchange rate when exchanging the amount received in foreign currency for euros at the end of the investment if the exchange rate curve in the graph has fallen or risen by the time of maturity as compared to the value on the issue date, and to sustain a loss if the curve has risen or fallen by the time of maturity as compared to the value on the issue date.

- Make sure that in the description of the investment instrument, you avoid any possible confusion with economically comparable products, such as units in UCIs or insurance products.

4. What elements are important when identifying the target group or the investor profile in advertisements?

Financial institutions sometimes mention the target group in advertisements for investment instruments or the profile of the investor to whom the offer is addressed. We wish to highlight the following elements in this regard:

- If the advertisement describes the target group or the investor profile, the description must be consistent with the target group as delineated in the product governance requirements based on MiFID. The description must also be consistent with any statements made in the prospectus in this regard and with the description of the target market in a key information document[64];

- If the issuer or distributor decides to include a target group or investor profile in the advertisement, then this passage should be supplemented with the obligation on the part of the distributor to determine whether the instrument is in fact appropriate or suitable for the investor. Doing so will avoid giving the impression that the investors themselves must determine whether they belong to the target group or have the right profile. That could be misleading. In other words, specifying the target group or investor profile in the advertisement may not be prejudicial to any obligations on the part of the distributor to determine whether the financial instrument in question is in fact appropriate or suitable for the investor.

5. What elements are important when describing risks in the advertisement?

In addition to the elements already summed up in FAQ 7 of part B, we wish to point to the following specific good practices as regards non-equity securities:

- As regards the counterparty risk or the credit risk: make it clear that investors run the risk that if the issuer or the guarantor is declared bankrupt, they may not be able to recover (in full) the

sums to which they are entitled, and may lose the capital invested and any coupons or added value in full or in part.

Where applicable, mention the additional risk of the loss of all or part of the capital and of the coupons or added value or of the conversion thereof into shares, if the competent supervisory authority compels the issuer or guarantor to restructure, subject to the provisions of the BRRD, precisely in order to avoid bankruptcy. It is important that investors understand that the situation can arise that in the course of restructuring, they may incur losses even if the issuer or guarantor are not declared bankrupt and if other creditors in a higher class than them, such as deposit-holders, do not incur losses[65].

Make this risk clear in the core of the brochure and in the description of the type of product (see FAQ 4 of part C).

- Inform the investors regarding the higher counterparty or credit risk, where debt instruments are involved, in cases where the rights of the creditors are subordinated in comparison to the rights of unsecured creditors. Include in the advertisement the relative ranking of the investment instruments within the capital structure of the issuer, should the issuer prove insolvent. In so doing, include, where appropriate, information on the investment instrument's level of subordination and the potential consequences for the investment instruments in cases where the BRRD applies.

- Mention prominently the identity and solvency of the entities with which the investor directly or indirectly runs a significant counterparty or credit risk.

- The use of a risk indicator may be useful. In the event that a legally defined methodology and presentation is set out for a risk indicator for the same type of investment instrument, then include the legally mandated risk indicator both as regards the method and as regards the presentation into the advertisement. This may be, for example, a risk indicator that applies to the key information document pursuant to the PRIIP Regulation. If the advertisement also refers to its own risk indicator, then place it after the legally mandated risk indicator. Mention who has developed the in-house risk indicator and explain the difference between its own and the legally mandated risk indicator. For example, this may be done using a summary of the risks that may or may not be taken into consideration in its own risk indicator, as compared to the legally mandated risk indicator. For further description of the methodology used for its own risk indicator, reference may be made to the website of the designer of the risk classification system.

- If an advertisement mentions a credit rating for the issuer, the guarantor or the debt instruments being offered, explain the rating scale and the significance of the rating in question. Where appropriate, you can refer to a website with those data. You can also mention the rating outlook. If neither no rating is assigned to the issuer, the guarantor or the debt instruments being offered, you can make this clear in the advertisement.

6. What elements are important when presenting the return on the debt instruments being advertised?

In addition to the elements set out in FAQ 8 in section B, we also wish to point to the following good practices for structured debt instruments and debt instruments in foreign currencies that are offered by financial institutions:

- Stating the interest rate on an annualized basis and the internal rate of return (IRR) (see FAQ 7 in section B) is a good practice that applies equally to historical, simulated and future returns.

- In the case of fixed-rate coupons, mention the period in which the fixed interest rate applies, for example a fixed interest rate of 1 per cent over three years. In so doing, avoid exaggerating the emphasis on the fixed interest rate as compared to the duration of the period in which that percentage applies.

- In the case of variable-rate coupons, clearly point out the variable nature of the interest rate and describe how the coupon will be calculated. If the coupon has a fixed cap, it is good to mention the maximum percentage of the cap. Avoid overemphasizing the cap, for example by using a different font than that of the variable interest rate. Mention the minimum coupon as well, such as a variable interest rate of minimum 0 per cent and maximum 7 per cent gross. It is best to make a clear distinction between the cap and the target rate of return.

- Where several factors are involved in determining the yield of the investment instrument being offered, it is recommended that a balanced presentation be made. In cases where the period in which a fixed-rate coupon is offered is followed by a period in which the rate becomes variable, the fixed rate should not be emphasized over the variable rate.

- State the maximum return if the capital gains for investment instruments without coupon payments are capped at a certain level at maturity. Don't overstate the cap. For this type of investment instrument, it is certainly useful to mention the minimum and maximum internal rate of return (IRR), which takes into account the costs that are known and that apply to all investors[66].

- Indicate explicitly, for investment instruments issued in a foreign currency, that the coupon amount or capital gains are paid in a foreign currency and that the return in euro may be higher or lower, depending on the exchange rate at the time of the conversion and on the exchange costs. You can indicate in this regard that this risk is all the greater if the investor does not have an account in the currency in question.

7. What elements are important when providing information on the capital reimbursement of debt instruments in the advertisement?

Structured debt instruments, whether or not issued in a foreign currency, can include specific modalities as regards reimbursement of the amount invested. It is important to provide the investor with accurate information on this matter. In particular, we wish to point to the following good practice:

- Formulate statements about capital reimbursement in clear and unambiguous language: "Right to the full reimbursement of the capital invested at maturity, excluding entry costs that are charged over and above the capital". Avoid wording that focuses on a sense of security, such as capital protection.

- Indicate clearly who is undertaking to reimburse the capital at maturity and what percentage of the capital will be reimbursed at that time.

- In the case of investment instruments that do not confer the right to a full capital reimbursement at maturity, a prominent warning to this effect should be added in order to draw the attention of investors to this feature.

- Where investment instruments confer the right to a full capital reimbursement at maturity, draw the attention of investors to the fact that reselling the instrument on a market before maturity may achieve a price below the initial value.

- Where the issuer has the right to reimburse the capital in advance "at its discretion", as is the case in what is known as "callable" debt instruments[67], the specific circumstances in which this right may be used should be mentioned, indicating the impact this will have on the investors.

- Distinguish between the full capital reimbursement at maturity made by the issuer itself and a guarantee given by a third party in order to cover default by the issuer. In the latter case, use only the term "guaranteed" and explain clearly what exactly the guarantee entails. If the capital reimbursement or the guarantee provided by a third party is subject to certain conditions being fulfilled, describe these conditions.

- Mention clearly if the guarantor and the issuer belong to the same group. If that is the case, use the guarantee not as a promotional argument but simply as information.

- In advertisements for products in foreign currency with a commitment to reimburse the investment (in part) at maturity, state explicitly that this commitment is made in the foreign currency and not in euro. Indicate as well that after conversion to euro, and in spite of the commitment to reimburse the investment, the investor still stands to incur a loss in respect of the original investment due to fluctuations in the exchange rate and to exchange costs. This should be addressed clearly in the core of the brochure.

- In the case of savings certificates, it is important to inform investors correctly about the ranking of the certificates in the credit institution's capital structure in the event of insolvency. Holders of savings certificates who are entitled to the protection referred to in Article 389 of the Banking Law[68] and who thus have preferential rights to all movable property of the credit institution, have priority over the holders of preferential and non-preferential, unsecured debt claims, subordinated claims and own funds instruments (Article 389/1 of the Banking Law). The target group for savings certificates should normally be entitled to the protection referred to in Article 389 of the Banking Law[69].

8. What elements are important if an advertisement uses examples to illustrate how the investment instrument works?

Provide a simple and easy to understand explanation of the formula of a structured investment instrument so that the investor can understand how the instrument works and be aware of any limits there may be on his or her returns. What's more, advertisements frequently include examples aimed at illustrating how the product works. In that case, we would like to draw your attention to the following good practices:

- Indicate clearly that these are examples that serve solely as illustrations and thus do not offer any guarantee as to actual returns. Avoid examples that give an excessively positive presentation that could raise client expectations of overly high returns when it comes to

decision-making and that could impede the provision of correct information. Moreover, give due consideration to the following elements:

- The examples are based on realistic hypotheses. Work with three different illustrations. Begin with the most negative illustration and end with the most positive one.
- State the hypotheses on which the examples are based.
- Take into account the known costs that apply to all investors[70] by stating the net return.
- Indicate the internal rate of return (IRR), taking into account all known charges.
- Set out the taxes that apply to an average investor, or the impact thereof.

- Make it clear that there is a difference between the examples provided to illustrate how the investment instrument works and the performance scenarios included in the key information document and that are calculated in accordance with the methodology that is prescribed by the PRIIP Regulation. Where applicable, it can be useful to point out that the performance scenarios in the key information document only reflect performance based on the methodology prescribed by the PRIIP Regulation and that actual returns may be lower[71].

- These FAQs are without prejudice to various provisions on how to present results. The latter concern the results obtained in the past, a simulation of past results and future performance. These provisions are laid down at European level to regulate the investment services that credit institutions and investment firms provide to investors[72].

9. What elements are important when describing costs in advertisements?

The costs associated with a structured investment instrument are usually highly complex. These are costs over and above the issue price, versus the costs included in the issue price and one-time versus recurring costs. These costs are an integral part of the structured product, together with the return and the risk. It is important that the advertisements contain sufficiently balanced information on these costs. That is, the totality of costs borne by the investor if he or she holds the product to maturity and the costs that the investor must pay if exiting early. In addition to what is stated in FAQ 8 of Part B, we wish to point to the following good practices:

- Where the PRIIP Regulation or MiFID applies, advertisements should make clear not only the costs charged over and above the face value or issue price, but also the costs included in the face value or issue price.

- In particular when it comes to advertisements of some length, such as commercial brochures, it is important not to give the costs only at the end of the advertisement, for instance as part of the technical sheet. Provide relevant cost information earlier on, preferably in a separate section, so that the brochure is balanced.

- If the essential characteristics of the investment instrument are summarized at the beginning of the advertisement, indicate there the total costs associated with the product during ownership until maturity. Investors who subscribe to a structured investment instrument generally do so with the intention of holding the product until maturity. For (auto)callable

products, one may assume the maximum maturity. It is important that investors have an overview of the maximum costs they will have to bear.

- State the total product costs associated with ownership, until maturity, as a single overall maximum amount. These product costs may be included in the face value or issue price, or they may be added to the face value or issue price and may be presented as either one-off or recurrent costs. State the amount, noting its maturity, both in the form of a maximum percentage in relation to the face value or issue price, and in the form of an absolute maximum amount. Use the minimum entry fee as the starting point.

- Always indicate the cost that will be charged if the investor sells the (structured) investment instrument before maturity. In so doing, you can distinguish between any costs that the investor must pay to the person acting as intermediary for a sale or repurchase by the issuer and who charges a commission for this, and any costs that the investor pays to the issuer-vendor. The latter cost should be explained in simple wording. For example, you can explain this as the difference between the sale price paid to the client and the real value of the investment instrument or as the margin that the issuer-vendor charges the client and that is deducted from the real value of the product. Avoid technical terms such as “bid-mid spread”. Indicate the basis for calculating any commissions, and the margin for the vendor. The basis for calculation can, for instance, be the face value or the real value.

- You may wish to indicate whether, and if so, during which period, a mechanism is used in which part of the original cost included in the face value or issue price will be reimbursed if the instrument is sold before maturity. You may also indicate how the part of the cost included in the face value or subscription price and that is to be reimbursed is determined, and whether reimbursement during the period in question is unconditional or granted on a discretionary basis. This applies, notably, to the potential reimbursement of the part of the costs that are sometimes designated as a recurring cost.

If an investment instrument is issued in a foreign currency, identify the cost associated with the sale of the currency in order to be able to invest in the product as a separate cost. State the amount of the (basic) cost and refer, if applicable, to the specific webpage where the investor can consult information about the costs that may be incurred. The same applies to the cost of selling the foreign currency that the investor has acquired in connection with the payment of the coupons or the reimbursement of the amount invested. Also indicate these currency exchange costs when you mention the production costs.

10. What elements are important in advertisements for non-equity securities in a foreign currency?

In part C we have addressed, in several FAQs, good practices that specifically relate to financial institutions’ non-equity securities in a foreign currency. For a good understanding, we reiterate these good practices:

- Add the currency to the name of the product in the advertisement, so that investors are immediately aware of the exchange rate risk (part C, FAQ 3).

- Should the advertisement for an investment instrument in a foreign currency include a graph showing the changes in the historical exchange rate, make sure that the graph is comprehensible. For a good understanding of the graph, ensure that:
    - the benchmarks for the graph do not downplay the fluctuations in price;
    - a quantitative example of the impact of the exchange rate is available;
    - an explanation is provided of whether a rise or fall in the curve may have a negative or positive impact on the outcome of the product after conversion to euro. That can be done, for example, by explaining that the investor stands to make a profit due to fluctuations in the exchange rate when exchanging the amount received in foreign currency for euros at the end of the investment, if the exchange rate curve in the graph has risen or fallen at the time of maturity as compared to the value on the issue date, and to sustain a loss if the curve has fallen or risen at the time of maturity as compared to the value on the issue date (part C, FAQ 4).

- Regarding the return: clearly indicate that the return in euro may be influenced positively or negatively by fluctuations in the exchange rate and costs of conversion from euro to foreign currency and from foreign currency to euro. It is also good practice to indicate in this regard that this risk is all the greater if the investor does not have an account in the currency in question (part C, FAQ 7).

- In advertisements for products in foreign currency with a commitment to reimburse the investment (in part) at maturity, state explicitly that this commitment is in the foreign currency and not in euro. Indicate as well that after conversion to euro, and in spite of the commitment to reimburse the investment, the investor still stands to incur a loss in respect of the original investment due to fluctuations in the exchange rate and to exchange costs (part C, FAQ 8).

- It is good practice to identify the (basic) cost associated with the sale of the currency in order to be able to invest in the product as a separate cost. It is also recommended to state the amount of this cost and to refer to a specific webpage where the investor can consult information about that cost. The same applies to the cost of selling foreign currency, if the investor decides to exchange for euro any coupons paid in foreign currency or the reimbursement, at the end of the investement, of the amount invested. This is even more important if the exchange follows automatically from the subscription to the product. This applies to the subscription and the distribution of coupons, as well as to reimbursement for those clients who do not have an account in the relevant foreign currency (part C, FAQ 10).

11. How do the advertising rules based on the prospectus rules and this FAQ relate to the advertising rules contained in the rules of conduct?

The advertising rules based on the prospectus rules and this FAQ are without prejudice to the regulatory obligations in respect of the provision of investment services relating to financial instruments.

Indeed, the legislation provides a series of rules that apply when regulated undertakings advertise the investment services they provide[73]. These rules are provided in annex.

It should nevertheless be taken into account that the scope of the advertising rules in the prospectus legislation differs from the scope of the rules of conduct for providing investment services to investors[74].

Annex

Article 44 of the Regulation 2017/565[75] stipulates the following:

1. Investment firms shall ensure that all information they address to, or disseminate in such a way that it is likely to be received by, retail or professional clients or potential retail or professional clients, including marketing communications, satisfies the conditions laid down in paragraphs 2 to 8.

2. Investment firm shall ensure that the information referred to in paragraph 1 complies with the following conditions:
   a) the information includes the name of the investment firm,
   b) the information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument,
   c) the information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent
   d) the information is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received,
   e) the information does not disguise, diminish or obscure important items, statements or warnings,
   f) the information is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each client, unless the client has accepted to receive information in more than one language,
   g) the information is up-to-date and relevant to the means of communication used.

3. Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, investment firms shall ensure that the following conditions are satisfied:
   a) the comparison is meaningful and presented in a fair and balanced way;
   b) the sources of the information used for the comparison are specified;
   c) the key facts and assumptions used to make the comparison are included.

4. Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied:
   a) that indication is not the most prominent feature of the communication;
   b) the information must include appropriate performance information which covers the preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the firm may decide, and in every case that performance information is based on complete 12-month periods;

c) the reference period and the source of information is clearly stated;

d) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

e) where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

f) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed.

5. Where the information includes or refers to simulated past performance, investment firms shall ensure that the information relates to a financial instrument or a financial index, and the following conditions are satisfied:

a) the simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the financial instrument concerned;

b) in respect of the actual past performance referred to in point (a), the conditions set out in points (a) to (c), (e) and (f) of paragraph 4 are satisfied;

c) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

6. Where the information contains information on future performance, investment firms shall ensure that the following conditions are satisfied:

a) the information is not based on or refer to simulated past performance;

b) the information is based on reasonable assumptions supported by objective data;

c) where the information is based on gross performance, the effect of commissions, fees or other charges is disclosed;

d) the information is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis;

e) the information contains a prominent warning that such forecasts are not a reliable indicator of future performance.

7. Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

8. The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment firm.

[1] For more details, see: FSMA Annual Report 2018, p. 162-163 and Communication FSMA_2018_09 dated 22/06/2018 on the "implementation of the Prospectus Regulation: draft law" (available in Dutch (https://www.fsma.be/sites/default/files/public/content/NL/circ/2018/fsma_2018_09_nl.pdf) or French (https://www.fsma.be/sites/default/files/legacy/content/FR/circ/2018/fsma_2018_09_fr.pdf) only).

[2] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (hereafter "Prospectus Regulation").

[3] Article 3, paragraph 1 and Article 1, paragraph 3 of the Prospectus Regulation.

[4] Securities mean transferable securities as defined in point 44 of Article 4, paragraph 1 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (hereafter "MiFID") (Art. 2, a) of the Prospectus Regulation).

[5] Article 2, d) of the Prospectus Regulation.

[6] Art. 1, paragraph 4 of the Prospectus Regulation.

[7] Art. 1, paragraph 2 of the Prospectus Regulation.

[8] Article 3, paragraphs 1 and 2 of the Prospectus Regulation.

[9] Article 3, paragraph 3 of the Prospectus Regulation. A few exceptions are set out in Article 1, paragraph 5 of the Prospectus Regulation.

[10] Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises.

[11] Law of 11 July 2018 on public offers of investment instruments and the admission of investment instruments to trading on a regulated market (hereafter "Prospectus Law").

[12] Royal Decree of 23 September 2018 on the publication of an information note for a public offer or an admission to trading on an MTF and containing various financial provisions (hereafter the "Implementing Decree").

[13] The term "investment instruments", defined in Article 3, § 1 of the Prospectus Law, is broader than the term "securities", defined in Article 2, a) of the Prospectus Regulation. For example, derivative contracts such as options, futures and CFDs are investment instruments but not securities.

[14] Article 10, § 2 and § 3, 1° of the Prospectus Law.

[15] Article 22 of the Prospectus Regulation. This framework is further delineated in Articles 13 through 16 of Delegated Regulation 2019/979 implementing the Prospectus Regulation (Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301 (hereafter "Implementing Regulation 2019/979").

[16] Article 22, paragraph 1 of the Prospectus Regulation.

[17] Article 22, § 1 of the Prospectus Law.

[18] Article 22, § 2 of the Prospectus Law.

[19] For an overview of these types of securities or investment instruments, see Article 1, paragraph 2 of the Prospectus Regulation and Article 10, § 2 of the Prospectus Law; for an overview of the types of offers that are exempted, see Article 1, paragraph 4 of the Prospectus Regulation and Article 10, § 3 of the Prospectus Law; for an overview of the types of admission to trading that are exempted, see Article 1, paragraph 5 of the Prospectus Regulation and Article 7 of the Prospectus Law.

[20] Article 22, § 2, 3° of the Prospectus Regulation. The '*de minimis*' provision is included in Article 10, § 3, 2° of the Prospectus Law.

[21] Defined as "presenting a financial product, in any way whatsoever, with a view to encouraging an existing or potential retail client to purchase, subscribe to, enter into, accept, sign up for open the financial product (Article 2, 1° of the Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients, hereafter the "Transversal Decree").

[22] Article 9, § 3 of the Transversal Decree.

[23] Set out in Title V of Book II, with the exception of the ex ante approval by the FSMA that is included in Article 24 of the Prospectus Law.

[24] Set out in Title VI of Book II of the Prospectus Law.

[25] Set out in Book IV of the Prospectus Law.

[26] Set out in Articles 33 and 34 of the Prospectus Law.

[27] Article 1, § 2 of the Prospectus Regulation and Article 10, § 2 of the Prospectus Law.

[28] In particular, the FSMA will ensure that the advertisement is accurate and not misleading.

[29] Article 10, § 3 of the Prospectus Law.

[30] Defined in Article 2, e) of the Prospectus Regulation.

[31] Article 9, § 1/1 of the Transversal Decree.

[32] Circular FSMA_2015_16 of 27 June 2015 on the rules that apply to advertisements when distributing financial products to retail clients.

[33] Article 2, k) of the Prospectus Regulation and Article 4, 3° of the Prospectus Law.

[34] Article 10 of the Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds.

[35] Article 23, paragraph 3 of the Prospectus Regulation.

[36] Article 1 (4) (i) of the Prospectus Regulation. The same exemption applies to investment instruments in the Prospectus Law (Articles 8 and 10, § 3, 1°).

[37] Article 22.2 to 22.5 of the Prospectus Regulation.

[38] Article 13 of Implementing Regulation 2019/979.

[39] Article 14 of Implementing Regulation 2019/979.

[40] It is good practice to mention the authority that approves the prospectus (see Part B, FAQ 11, "What should be attended to where the name of the competent authority is mentioned in the advertisement?").

[41] Article 16.1 of Implementing Regulation 2019/979.

[42] Article 22, § 3, 1° of the Prospectus Law.

[43] Article 22, § 3, 2° of the Prospectus Law.

[44] "Premarketing" refers to the advertisements made up prior to the approval and publication of the prospectus.

[45] Article 13 of Implementing Regulation 2019/979.

[46] Included in Article 22.2 of the Prospectus Regulation, Articles 13 and 14 of implementing Regulation 2019/979 (see FAQ 6) or in other provisions (cf. Article 9 Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail investment products and insurance-based investment products (PRIIPs) (hereafter the "PRIIP Regulation"): "Marketing communications must mention that a key information document is available and indicate how and where it can be obtained, and must also be mentioned on the website of the PRIIP manufacturer.").

[47] Cf. ESMA Consultation Paper, Draft regulatory technical standards under the new Prospectus Regulation, 15 December 2017, § 135.

[48] Article 15.1 of Implementing Regulation 2019/979.

[49] Article 15.2 of Implementing Regulation 2019/979.

[50] Article 15.3 of Implementing Regulation 2019/979.

[51] Article 22.3 of the Prospectus Regulation provides that advertisements may not be inaccurate or misleading.

[52] This way, investors can see the nature of the change in the advertisement and can determine whether or not a claim on the basis of Article 26, § 5 of the Prospectus Law is appropriate.

[53] Where investment instruments are traded by intermediaries who are not members of a placement syndicate, the issuer and/or the lead manager may not always be aware of the costs that the intermediaries may add on.

[54] Certain products are offered exclusively to legal persons That is the case, for example, with what are known as "tax shelter" products, which refer to audiovisual works, given that the favourable tax arrangements associated with them are available only to companies. It would thus not be relevant, and even misleading, to set out this type of tax regime for such products when addressing retail clients who are natural persons and residents of Belgium. In such a case, it is good practice to adjust the reference to the tax regime, bearing in mind the concrete situation.

[55] Article 26, § 5 of the Prospectus Law. In the relationship to consumers within the meaning of the Code of Economic Law, such a provision may, moreover, be regarded as an unfair term. Article VI.83, 22° of the Code of Economic Law states, namely, that "In contracts entered into between a company and a consumer, terms and conditions or combinations of terms and conditions, are unlawful if they are intended to: 22° deprive the consumer, in the event of a dispute, of any means or recourse against the company;".

[56] See Article 24, § 5 of the Prospectus Law.

[57] Article 14.1, b) of Implementing Regulation 2019/979.

[58] Article 14.1, c) of Implementing Regulation 2019/979.

[59] "Non-equity securities" are any securities other than equity securities. "Equity securities" are shares and other transferable securities equivalent to shares, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer (Article 2, b) of the Prospectus Regulation).

[60] Article 24, § 1, second subparagraph of the Prospectus Law.

[61] The process referred to in Articles 9, paragraph 3, and 16, paragraph 3, of MiFID and implemented in Articles 9 and 10 of Commission Delegated Directive 2017/593/EU of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits. In Belgium, these provisions are implemented in Article 27 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services and in the Royal Decree of 19 December 2017 laying down detailed rules on transposing the Markets in Financial Instruments Directive.

[62] For debt instruments with a right to reimbursement of at least 90% of the capital. For debt instruments with a right to full reimbursement of the capital, the term "structured bond" may also be used.

[63] Based on a measure (e.g. bail-in) as part of the recovery and resolution of a credit institution in accordance with Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (hereafter the "BRRD").

[64] Unless the distributor, in accordance with the applicable provisions, deviates from the target market as defined by the manufacturer.

[65] Notwithstanding the obligations that apply to the provision of investment services with respect to such instruments on the basis of MiFID. In this regard, it is useful to consult the statement made by ESMA on 2 June 2016, bearing reference number ESMA/2016/902 on "MiFID practices for firms selling financial instruments subject to the BRRD resolution regime", points 12 to 23, as well as the statement of EBA and ESMA of 30 May 2018 with reference number EBA/Op/2018/03 "on the treatment of retail holdings of debt financial instruments subject to the Bank Recovery and Resolution Directive", point 29.

[66] Where the investment instruments are sold by intermediaries who are not members of the placement syndicate, the issuer and/or the lead manager is not always aware of the fees that may be charged by these intermediaries.

[67] It should be noted in particular here that the Prospectus Regulation, Implementing Regulation 2019/979 and these FAQs do not in any way exempt the issuer's obligation to comply with the ban on unfair terms in contracts with consumers, as set out in Article VI.82 and following of the Code of Economic Law. As regards "callable notes", please see also the FSMA Annual Report 2014, p. 138-139 and the Position of the FSMA published on 30 January 2017 on the application of the Belgian rules on unfair contract terms to some clauses as part of the offer of investment instruments.

[68] Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms.

[69] For more details see FSMA, Congress Columns 2024, Recent trends in the supervision of banking products, p. 21.

[70] Where the investment instruments are traded by intermediaries who are not members of the placement syndicate, the issuer and/or the lead manager is not always aware of the fees that may be charged by these intermediaries.

[71] Cf. Joint ESA supervisory statement concerning the performance scenarios in the PRIIPs KID, 8 February 2019.

[72] Article 44.4, 44.5 and 44.6 of Regulation 2017/565. These provisions are included in the Annex to these FAQs.

[73] Article 27bis of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, supplemented by Article 44 of the Delegated Regulation (EU) 2017/565 of the Commission of 25 April 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

74 The advertising rules of the Prospectus Regulation apply to advertisements and other documents and announcements that refer to an offer of investment instruments to the public, while the rules of conduct govern the information that an investment firm or credit institution uses when providing investment services to an investor.

75 Delegated Regulation (EU) 2017/565 of the Commission of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.