**Advertisements**

This element outlines the regulation of advertisements.

**Introduction**

In addition to considering whether or not a communication may be a financial promotion for the purposes of s 21 FSMA, a company which is producing a prospectus may also have to consider the effect of the advertisement regime set out in PRR 3.3.

**Key word or definition:** An “**advertisement**” is defined in PRR Appendix 1/UK Prospectus Regulation as a communication with both of the following characteristics: (i) “relating to a specific offer of securities to the public or to an admission to trading on a regulated market”; and (ii) “aiming to specifically promote the potential subscription or acquisition of securities”. This definition is wide enough to catch non-written communications, as well as written communications that might not normally be viewed as an “advertisement”.

The main rules relating to advertisements are set out in PRR 3.3.1/Art 22 UK Prospectus Regulation, with additional regulations set out in PRR 3.3.2/Chap. IV UK Prospectus RTS Regulation.

**Requirements in relation to advertisements**

Advertisements must contain a number of disclaimers and warnings. They must:

• state that a prospectus has been or will be published and indicate where investors are, or will be, able to obtain it (PRR 3.3.1/Art 22(2) UK Prospectus Regulation) – for example, by clearly identifying the website including a hyperlink to the prospectus (PRR 3.3.2/Art 13 UK Prospectus RTS Regulation);

• be clearly recognisable as an advertisement (PRR 3.3.1/Art 22(3) UK Prospectus Regulation), and include the word “advertisement” in a prominent manner (PRR 3.3.2/Art 14(1)(a) UK Prospectus RTS Regulation);

• recommend that potential investors read the prospectus before making an investment decision in order to fully understand the potential risks and rewards of investment, but also include a statement that approval of the prospectus (by the FCA) should not be understood as an endorsement of the relevant securities (PRR 3.3.2/Arts 14(1)(b) and (c) UK Prospectus RTS Regulation); and

• if it is in written form, be sufficiently different in format and length from the prospectus that no confusion with the prospectus is possible (PRR 3.3.2/Art 14(2) UK Prospectus RTS Regulation).

In addition, the information that is disclosed in an advertisement must not be inaccurate or misleading and must be **consistent** with the information contained in the prospectus (if already published), or with the information required to be in the prospectus (if not yet published) (PRR 3.3.1/Art. 22(3) UK Prospectus Regulation). All information disclosed in an oral or written form concerning an offer or admission must also be consistent (PRR 3.3.1/Art. 22(4) UK Prospectus Regulation), and any such information (whether in an advertisement or not) must not:

• contradict the information contained in the prospectus;

• refer to information that contradicts the information in the prospectus;

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

• contain ‘alternative performance measures’ (ie financial measures of financial performance etc., other than those defined in the applicable financial reporting framework), unless they are also contained in the prospectus (see PRR 3.3.2/Art. 16 UK Prospectus RTS Regulation).

In addition, where material information is disclosed by an issuer to selected investors before a prospectus is published, then that information must itself be included in the final prospectus OR disclosed to all other investors if there is no need to publish a prospectus (PRR 3.3.1/Art. 22(5) UK Prospectus Regulation)

**Amended advertisements**

Where a supplementary prospectus is published after an advertisement has been issued, and the advertisement is itself materially inaccurate or misleading as a result of the significant new factor, material mistake or inaccuracy concerned, PRR 3.3.2/Art. 15 UK Prospectus RTS Regulation require an amended advertisement to be disseminated to potential investors without undue delay following the publication of the supplementary prospectus. The amended advertisement must contain a clear reference to the inaccurate or misleading version of the advertisement, an explanation that the advertisement has been amended because it contained materially inaccurate or misleading information, and a clear description of the differences between the two versions. It must be disseminated, at a minimum, through the same means as the original advertisement. The obligation to amend advertisements in this way ceases after the later of the final closing of the offer or the time at which trading in the securities begins.

**Sanctions**

A breach of the above provisions relating to advertisements would allow the FCA to impose sanctions under s. 91 FSMA or to take action under ss. 87K or 87L FSMA to suspend or prohibit the relevant offer to the public or admission to listing.

**Advertisements summary**

• In addition to considering whether or not a communication may be a financial promotion for the purposes of s 21 FSMA, a company which is producing a prospectus may also have to consider the effect of the advertisement regime set out in PRR 3.3.

• Advertisements must contain a number of disclaimers and warnings, in particular directing investors to the prospectus and avoiding confusion with the prospectus.

• Advertisements must not be inaccurate or misleading and must be consistent with the prospectus.

• A supplementary prospectus may need to be mirrored via amended advertisements.

• Contravention of these rules can lead to a penalty and/or suspension / prohibition of offer / admission to listing.