**Standalone registration documents: liability issues**

This element outlines potential liability issues in relation to standalone registration documents.

**Introduction**

In the past, it was rare for a registration document to be published during an equity issue as a standalone document, rather than as part of a tripartite prospectus. The change in practice caused by the COBS rules on release of research means that it is important to understand how various liability issues relate to a standalone registration document. In this context, it should be noted that, as the registration document is not a full prospectus, it will not technically be required to comply with the general disclosure requirements but only the specific disclosure requirements for a registration document.

**Responsibility statement**

A registration document is required by Item 1.2 of Annex 1 UK PR Regulation to include a responsibility statement made by those responsible for the registration document. This must state that, to the best of their knowledge, the information contained in the registration document is in accordance with the facts and contains no omission likely to affect its import. The FCA requires those persons who would be responsible for a prospectus under PRR 5.3.2 to take responsibility for the registration document and to be included in the responsibility statement. This will of course require the issuer and its directors to take responsibility for the registration document and would also require the reporting accountants to take responsibility for any accountants' report included in the document.

However, as the registration document is not a prospectus for the purposes of s 90 FSMA, the persons named as taking responsibility will not have any statutory s 90 liability for any untrue or misleading statement in, or any omission from, the registration document.

**Other civil and criminal liabilities**

They may, however, potentially be at risk of the other civil and criminal liabilities discussed in the context of a prospectus. However, as long as a complete and accurate prospectus is published before any shares are offered or issued to investors, the likelihood of the responsible persons incurring liability arising from the registration document under any of the heads of liability referred to above should be limited.

In particular, practice has developed that a standalone registration document published at the start of an IPO should include a paragraph in terms similar to the following, in order to make the position clear:

*‘This Registration Document may be combined with a securities note and summary to form a prospectus in accordance with the Prospectus Regulation Rules, under which a securities offering may in the future be made. However, this Registration Document, where not combined with the securities note and summary to form a prospectus, does not constitute an offer or invitation to sell or issue, or a solicitation of an offer or invitation to purchase or subscribe for, any securities in the Company in any jurisdiction, nor shall it (or any part of it), or the fact of its distribution, form the basis of, or be relied up on in connection with, or act as any inducement to enter into, any contract or commitment whatsoever with respect to any offer or otherwise’.*

**Financial promotions / advertisements**

The FCA has published Policy Statement, PS17/23 which states that “[p]rovided the registration document contains only the minimum disclosure requirements of Annex I of the Prospectus Regulation [(now Annex 1 UK PR Regulation)] and does not communicate an invitation or inducement to engage in investment activity (as envisaged under section 21 of FSMA) …… it will not constitute a financial promotion under that section”. On this basis, a standalone registration document should not constitute a financial promotion, and therefore there will be no need for it to be approved by an authorised person or for it to come within any of the exemptions in the FPO.

In the same Policy Statement, the FCA also expressed the view that, provided the registration document contains only the minimum disclosure requirements in the relevant Annex and does not (i) relate to a specific offer to the public of securities or to an admission to trading on a regulated market; or (ii) aim specifically to promote the potential subscription or acquisition of securities, it will not constitute an advertisement. A standalone registration document should also not constitute an advertisement for the purposes of PRR 3.3.

**Supplementary prospectuses**

As a standalone registration document is not a prospectus, there will be no requirement to publish a supplementary prospectus as a result of new factors etc., so no triggering of withdrawal rights. However, under PRR 2.2.2/Art. 10(1) UK Prospectus Regulation, if an issuer has a standalone registration document to which it is now intending to add a securities note and summary in order to create a tripartite prospectus, then it would also have to publish a supplementary registration document if a significant new factor, material mistake or material inaccuracy capable of affecting the assessment of the relevant securities has arisen or is noted after the publication of the registration document.

**Verification and “comfort letters”**

It is important that a registration document is verified as thoroughly as a full prospectus. This is because of the responsibility statement and the potential liability issues but also because of the commercial issue that an issuer will not want to make corrections to the information published in the registration document when it issues its prospectus.

**Standalone registration documents: liability issues summary**

• Liability issues can relate to a standalone registration document.

• Information contained in the registration document must be in accordance with the facts and contain no omission likely to affect its import.

• As long as a complete and accurate prospectus is published before any shares are offered or issued to investors, the likelihood of the responsible persons incurring liability arising from the registration document should be limited.

• A standalone registration document will not usually constitute a financial promotion.