Proskauer

# Protecting retail investors: new FCA risk warning requirements from December 2022

**November 21, 2022**

**Background**

The United Kingdom Financial Conduct Authority ("**FCA**") has become concerned that too many consumers are investing in high-risk products without fully understanding them. To combat this, in August 2022, the FCA published a policy statement titled "*[s]trengthening our financial promotion rules for high-risk investments and firms approving financial promotions*" (PS22/10) (the "**Policy Statement**").

The Policy Statement includes new rules in relation to financial promotions ("**Rules**") which can be broadly split into two categories: (i) those relevant to firms that promote high-risk investments and (ii) those relevant to any firm approving financial promotions.

**Applicability / timing**

The Rules are applicable only where financial promotions are made to **retail clients**.

The risk warnings for high-risk investments (outlined below) will be required from **1 December 2022**. The remaining Rules will take effect from **1 February 2023**.

**Rules relevant to firms who promote high-risk investments**

- **Investment categories**

The FCA has "rationalised" the way it categorises high-risk investments into three categories, with varying restrictions on how they can be marketed to retail investors:

1. Readily Realisable Securities ("**RRS**"): including listed or exchange traded securities – there are no marketing restrictions;
2. Restricted Mass Market Investments ("**RMMI**"): including shares / bonds not listed on an exchange – mass-marketing to retail investors is permitted, subject to restrictions; and

a. Non-Mass Market Investments (“**NMMI**”): including pooled investments in an unauthorised fund – mass-marketing is not permitted to retail investors.

- **Risk warnings**

Firms promoting RMMI and NMMI products to retail investors must include the following risk warning:

“*Don’t invest unless you’re prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong. Take 2 mins to learn more.”*

This must then be accompanied by a short "2 minute read" risk summary, the form and content of which the FCA has prescribed.

- **Ban on incentives to invest**

Monetary and non-monetary benefits which incentivise investment in RMMIs and NMMIs will be banned.

- **The consumer journey**

From 1 February 2023, the changes above will be largely subsumed into the FCA’s “consumer journey” rules. As well as the requirements already outlined, this will involve a preliminary assessment of suitability, “cooling off” periods and other rules to protect retail investors.

**Rules relevant to any firm approving financial promotions**

- **Competence and expertise**

A firm must not communicate / approve a financial promotion, unless the individual responsible for compliance with the financial promotion rules has appropriate competence / expertise, or another FCA authorised firm with relevant expertise has confirmed compliance on its behalf.

- **Ongoing monitoring**

A firm approving financial promotions must monitor their compliance on an ongoing basis. Where promotions are issued by an unauthorised entity, the firm is required to obtain a written attestation of compliance from that entity at least every three months, confirming there has been no material change to both the promotion and circumstances which might affect its ongoing compliance with the financial promotion rules.

- **Conflicts of interest**

A firm is required to take all appropriate steps to identify, prevent and manage conflicts of interest between the firm (and related persons) and any person for whom the firm approves, or confirms the compliance of, a financial promotion.

- **Approval disclosures**

Each financial promotion approved or communicated by a firm must include the firm's name and the date on which the financial promotion was approved and, where relevant, the name of the firm which has confirmed the compliance of the financial promotion.

Please contact the Proskauer team if you have any questions or would like to find out more.

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