Proskauer

Protecting Retail Investors: Remaining Financial Promotion Rules Effective as of 1 February 2023

February 3, 2023

Background

In August 2022, the United Kingdom Financial Conduct Authority ("**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**").

As noted in our previous update, the Policy Statement introduced new rules applicable only where financial promotions are made to **retail clients**.

The Rules introduced risk warnings for high-risk investments, which have been required since **1 December 2022**. The remaining changes are effective as of **1 February 2022**, as part of the FCA's "consumer journey".

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

New Rules

The rules that came into force on 1 February 2023 include:

- **Ban on incentives to invest**

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

- **Cooling off periods**

Firm's "directly" offering RMMIs (i.e. where a consumer can respond to invest their money) and promoting NMMIs to retail investors must wait for a 24-hour "cooling off" period, starting from when the consumer requests to view the financial promotion.

Firms are not able to show consumers the relevant financial promotion until at least 24 hours have elapsed.

- **Suitability assessments**

Firms must make a preliminary assessment of the investor's suitability, prior to the financial promotion being made to them.

- **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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