

DRAFT FOR CONSULTATION

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Primary Market Technical Note

~~Prospectus Regulation~~ PRM advertisement regime

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules (UKLR), Prospectus Regulation Rules: Admission to Trading on a Regulated Market (PRM), Disclosure Guidance and Transparency Rules (DTR), and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

Rules

Prospectus Rules: Admission to Trading on a Regulated Market (PRM)
PRM 12 Regulation Art. 2(k), Art. 17, Art. 22, Prospectus-RTS
Regulation, Art. 14(1), Art. 15(1) and (3), PRR 3.3

Types of communication caught

An advertisement is defined in Article 2(k) of the Prospectus Regulation the FCA Handbook Glossary as: '[having] the meaning in regulation 3 of the Public Offers and Admissions to Trading Regulations – in summary, a communication which: (a) relates to: (i) a specific offer of relevant securities to the public; or (ii) an admission to trading, or proposed admission to trading, of transferable securities on a regulated market or primary MTF; (b)

aims specifically to promote the potential subscription for, or acquisition of, relevant securities; and (c) is not a prospectus or an MTF admission prospectus ~~'a communication with both of the following characteristics: (1) relating to a specific offer of securities to the public or to an admission to trading on a regulation market; and (2) aiming to specifically promote the potential subscription or acquisition of securities'.~~

The rules in PRM 12 apply to the communication and content of an advertisement and the disclosure of information otherwise than in an advertisement, that relates to the admission to trading or proposed admission to trading of transferable securities where the issuer is subject to an obligation to draw up a prospectus or is permitted and elects to draw one up pursuant to PRM 1.4.15R.

The scope of the advertisement regime in PRM 12 is wide and likely to include the following types of oral and written communication, as long as they aim to specifically promote the potential subscription or acquisition of securities:

- investor or analyst roadshows, briefings and presentations,
- television interviews
- 'pathfinders';
- key features brochures;
- discussions or comments made at a general meeting;
- discussions with potential placees or subscribers for securities;
- discussions with existing or potential shareholders;
- discussions with underwriters or potential underwriters of securities; and
- discussions between brokers/sales staff in an investment bank.

Requirements relating to advertisements

An advertisement (whether it is an oral or written communication) must not be issued unless it complies with- PRM 12 ~~Article 22 of the~~

~~Prospectus Regulation (see also PRR 3.3.1) and the provisions of Chapter IV of the Prospectus RTS Regulation (see also PRR 3.3.2).~~

~~Under PRM 12.1.8Article 14(1) of the Prospectus RTS Regulation, a written advertisement disseminated to potential retail investors should also contain the word "advertisement" in a prominent manner and the other statements specified in PRM 12.1.8Article 14(1). In practice, a prominent manner would mean a heading inserted on the front page of the document entitled 'Advertisement' followed closely by any other statement that is stipulated by PRM 12.1.8Article 14(1).~~

Multiple communications

We would like to remind issuers and their advisers to ensure that any advertisements issued concerning an ~~offer or~~ admission to trading for which a prospectus is required must ~~not be inaccurate and not or~~ misleading. Information in the advertisement must be consistent with the information contained in the prospectus or in a supplementary prospectus, if already published, or with the information to be in the prospectus, if the prospectus or in a supplementary prospectus is published afterwards.

It is likely that when issuing securities, an issuer may release several communications falling within the advertisement regime. We believe that each separate communication is capable of constituting a separate advertisement, in which case each must comply independently with the applicable requirements. It would not be sufficient for the advertisements only to comply with the requirements when taken together as a group.

For example, an issuer holds an investor meeting where a slide pack is presented to the audience, and an oral commentary on the slides is provided by members of the issuer's management team. Investors not physically attending the presentation are invited to listen to the oral commentary by telephone dial-in, and the slide pack is subsequently reproduced on the issuer's website.

Our view is that where the audiocast and the slides can be accessed independently both the written material and the oral commentary must comply independently with ~~PRR 3.3~~PRM 12 provisions, and it

would not be sufficient for them to be deemed compliant only when taken together. So we would recommend that issuers and their advisers bear this in mind when undertaking due diligence on their advertising materials.

Roadshows and dissemination of amended advertisements

~~Under Article 15(1) of the Prospectus RTS Regulation (see PRR 3.3.2) PRM 12.1.11R, advertisements disseminated to potential investors must be amended where a supplementary to the prospectus is subsequently published and the information in the supplementary prospectus renders the advertisement materially inaccurate or misleading. Such amended advertisement must be disseminated through at least the same means as the original advertisement, except where the original was disseminated orally (PRM 12.1.12R Article 15(3) of the Prospectus RTS Regulation)~~

It is not necessary to organise a new roadshow in order to deliver an amended version of the information provided in the original roadshow. This also applies to roadshows in which visual or printed elements (e.g. slides, handouts) are used, as the overall nature of the advertisement is that it is delivered in an oral context.

However, the general requirement to amend the roadshow advertisement still applies. Therefore, the issuer, offeror or person asking for admission to trading on a regulated market should disseminate an amended version of the information provided in the roadshow through the means which it considers most suitable to reach the participants of the roadshow. Depending on the type of roadshow conducted and the nature of the participants, this might for example be by way of a press release, publication on the website of the issuer, offeror or person asking for admission to trading or by direct correspondence with the roadshow participants.

Pathfinders

Issuers sometimes prepare marketing documents known as 'pathfinders'. These typically precede a prospectus being published and aim to establish investor interest in a securities offer. While pathfinders often do not activate the actual offer of securities, the

content closely resembles the final format of the prospectus. As a pathfinder is prepared and distributed for marketing purposes, it appears to fall within the advertisement regime.

~~Where an offer (no admission to trading) is proposed to be made to the public, and before making such an offer, a pathfinder is sent to institutional places only, we are likely to regard this as an advertisement relating to a public offer. This is despite the fact that the institutional placing itself does not trigger the requirement for a prospectus. It should be noted that a price range prospectus prepared in accordance with PRM 2.4.1 ~~Article 17 of the Prospectus Regulation~~ (see also PRR 2.3.2) constitutes a valid prospectus and is not an advertisement.~~

When considering the use of a pathfinder, market participants are reminded to consider all their obligations under our Conduct of Business (COBS) rules, including those relating to the availability of information in the UK equity IPOs process. In particular, COBS 11A.1.4FR requires that, for IPOs where the securities are to be admitted to a regulated market and a firm's research analysts are in communication with the issuer team, an approved prospectus or registration document is published before a firm disseminates connected research. ~~The timing of the publication of connected research must also comply with COBS 11A.1.4FR.~~ The connected research must be published in accordance with the timing set out in COBS 11A.1.4FR(2).

Investment research and the PRM Prospectus Regulation advertisement regime

~~Market participants have also enquired whether an investment analyst research report published in the context of a new issue would trigger the advertisement regime in the Prospectus Regulation.~~

~~Whether~~ Where an investment analyst research report is published issued in the context of a new issue, whether it triggers the Prospectus Regulation PRMs advertisement regime depends on the facts and circumstances of the particular case.

Firms should consider the circumstances of the production of their investment research (such as the presence of information barriers,

the use of blackout periods, or other factors) in judging whether a particular piece of research falls within the definition of an advertisement. However, firms will need to make the ultimate judgement on this matter in light of the definition and the particular facts and circumstances. Market participants are reminded to consider all their obligations under our Conduct of Business rules including those relating to communications between the issuer and research analysts in equity IPOs, financial promotions and investment research.