Thistle Initiatives

Guiding you through compliance

Debentures Financial Promotions

Intense scrutiny of financial promotions for unlisted and retail bonds in the wake of the London Capital & Finance scandal

When mini-bond issuer London Capital & Finance (LCF) put itself into administration in January 2019, 11,500 investors faced losing around £236m. The immediate trigger was the FCA's belated decision to respond to longstanding concerns around LCF's misleading promotions by freezing its assets and bank accounts.

Misleading investors

High-profile negative coverage around the firm's collapse raised serious questions about how LCF had been able to get away with financial promotions that were demonstrably neither clear nor fair - and were actively misleading in falsely claiming that its mini-bonds were ISA-eligible.

The LCF debacle put the FCA itself on the back foot. The Serious Fraud Office has since launched an investigation into LCF, while the FCA has announced an independent investigation into the mini-bond industry and how it is regulated.

More where this came from?

Nor was LCF an isolated incident. Millions were lost or put in jeopardy in the cases of Secured Energy Bonds, 'Providence' bonds, and, most recently, Kevin McCloud's HAB mini-bonds. The result has been to focus significant regulatory attention on financial promotions around debentures.

In this fact sheet, we look at what this means for your business.

Unregulated?

Issuing mini-bonds is not normally a regulated activity, and bond issuers do not typically require FCA authorisation. But when an authorised firm approves promotions for mini-bonds, it must ensure they are fair, clear and not misleading - and that risks are appropriately communicated.

Promotions in the spotlight

Now that the FCA's attention has been forcibly directed toward the risks inherent in mini-bonds and their suitability or otherwise for retail investors, the regulator has been making up for lost time. Our blog from April 2021 noted some of the key issues arising from the FCA's updated approach to financial promotions of retail investments for unauthorised issuers. A notice to investors published by the FCA in May 2021 shone further light on its current thinking and concerns.

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Crackdown

The outcry over LCF seems certain to result in a much tighter regulatory regime for mini-bond promotions. An early indication is the tougher approach the FCA is taking to applications from firms intending to promote corporate bonds, both listed and unlisted. The precise timing of a future crack-down has yet to be confirmed, but it may not be far off. Any firm with an involvement in the unlisted bond or listed retail bond sector should waste no time in preparing itself.

What should you do?

It's essential you review what financial promotions your firm approves and/or is responsible for - and whether you're taking all appropriate steps to ensure they meet the relevant criteria.

Particular concerns would be any financial promotions you have signed off under Section 21 of FSMA and any relationships you have with Appointed Representatives (ARs) that issue financial promotions.

In our experience, systems and controls for reviewing promotions are often at their weakest where ARs are involved - and this is an area that is likely to come under close scrutiny from the FCA's dedicated financial promotions team.

What to consider

As a minimum, we recommend you look at the following aspects of your systems and controls for the review and ongoing monitoring of financial promotions:

- Compliance frameworks and governance
- Monitoring of ARs
- Sign-off of financial promotions, including Section 21 sign-offs
- Review of websites and platforms
- Individual responsibility under SM&CR

Get in touch

If you're concerned about your potential exposure to FCA enforcement action, our specialist team will be happy to have an initial chat to look at how we can help you handle financial promotions compliantly.

For example, we can review your current governance and due diligence systems, advise on how to disclose financial projections correctly, or examine the risk disclosures you'll need to make in future promotions.

020 7436 0630 | info@thistleinitiatives.co.uk

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