Appendix X

Financial Promotions and Investment Recommendations

(see rule 10.17 in the proposed Code)

Financial Promotions

1. Section 21 of the Financial Services and Markets Act 2000 prohibits anyone, in the course of business, from communicating an invitation or inducement to engage in investment activity. This is commonly referred to as "the financial promotion restriction". There are a number of exemptions to the financial promotion restriction and these are set out in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001[1]. Two of these exemptions are of particular relevance to broadcasters - article 20 of that Order contains an exemption in respect of communications by journalists, and article 20A of that Order contains an exemption in respect of promotions broadcast by a company director or employee of a company. This note sets out guidance on how broadcasters can take advantage of the exemptions to the financial promotion restriction.

Meaning of “financial promotion”:
A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion)).

Exemption in respect of communications by journalists (article 20 exemption)

2. The exemption for communications by journalists applies to any non-real time financial promotion they prepare while acting as journalists. For the exemption to apply to broadcast journalists the financial promotion must be in either:

1. a regularly updated news or information service (such as a website or teletext service); or
2. a television or radio broadcast or transmission,

and the main purpose of the broadcast must not be to advise on, or lead, or enable, people to buy or sell securities or contractually based investments.

3. Where the subject matter of the financial promotion is shares and the financial promotion identifies directly a person who issues or provides the shares, journalists must also fulfil a disclosure requirement to benefit from the exemption.

Meaning of “share”:
Share means any share in a company and includes a derivative on such a share (including traded options).

Disclosure requirement: A financial interest would be subject to disclosure where the journalist (or a close family member) would be likely to get a financial benefit or avoid a financial loss if people acted in line with the financial promotion. Where that is the case, the journalist or editor responsible for the financial promotion must declare the nature of any financial interest they (or their close family member) hold.
Note: The disclosure requirement is subject to certain exceptions, set out in paragraphs 4-6 below.

[1] S.I. 2001/1335

Meaning of “close family member”:
Close family member means a spouse and children under eighteen years of age.

4. The exceptions to the disclosure requirement are where the financial promotion is in either:

1. a service or broadcast which has proper systems and procedures which prevent the publication of communications without disclosure of financial interests; or
2. a service or broadcast which falls within the remit of:
    1. the Code of Practice Issued by the Press Complaints Commission;
    2. the Ofcom Broadcasting Code
    3. the Producer's Guidelines Issued by the BBC.

5. If a broadcaster wishes to take advantage of the article 20 exemption for journalists, it has a choice. The broadcaster can either:

1. comply with the disclosure requirement; or
2. put in place proper systems and procedures which prevent the broadcast of financial promotions without disclosure of financial interests.

6. The Financial Services Authority (FSA) suggests that option in 5.2. above could be achieved by, for example, the broadcaster requiring people working on financial programmes to declare and register their share ownership. This register would be available to the most senior editorial staff that can ensure that self-interested promotions are not broadcast by the person concerned. The FSA would also expect relevant staff to be required to be made aware of the existence of this register and of their obligations to disclose financial interests, and to confirm their acceptance of these obligations in writing.

Promotion broadcast by company director etc (article 20A exemption)

7. The main purpose of the exemption for promotions broadcast by company directors is to guard against the possibility that, during the course of a broadcast interview or a live website presentation, a financial promotion is made inadvertently by a director or employee of a company or other business undertaking when that person is not acting as a journalist.

8. Provided that the financial promotion made is not made as part of an organised marketing campaign, the exemption applies where the financial promotion:

1. comprises words which are spoken by the director or employee and not broadcast, transmitted or displayed in writing; or
2. is displayed in writing only because it is part of an interactive dialogue to which the director or employee is a party and in the course of which that person is expected to respond immediately to questions put by a recipient of the communication.

The exemption also requires that the director or employee is identified as such in the financial promotion before it is communicated.

Investment Recommendations

9. The Investment Recommendation (Media) Regulations came into force on 1July 2005. They impose standards on those who are, through the media, producing investment recommendations or disseminating investment recommendations produced by a third party. The standards require that the information is fairly presented, and there is disclosure of significant interests in an investment someone is recommending or of any conflicts of interest. If someone is regulated by the Financial Services Authority because of their activity in producing investment recommendations or disseminating investment recommendations produced by a third party, they will be subject instead to rules of the Financial Services Authority.

Meaning of "investment recommendation":
An investment recommendation occurs when someone directly recommends a particular investment decision e.g. buying or selling a particular share or underwriting a particular share offer.

10. There are exemptions from the Regulations for those producing or disseminating regulations in the media where self-regulation is in place, including where the Ofcom Broadcasting Code applies.

11. The Regulations are interpreted by Ofcom to apply to its licensees and S4C as follows. Where people working on programmes make an investment recommendation themselves, the broadcaster must ensure that:
(i) the identity of the person making the recommendation is clear;
(ii) the investment recommendation is presented fairly; and
(iiI) any financial interest that may reasonably be expected to impair the objectivity of that recommendation is disclosed.

12. Where people working on programmes disseminate an investment recommendation made by a third party the broadcaster must ensure:
(i) the identity of the company making the programme is clear; and
(ii) where a summary of a recommendation is produced, it is clear and not misleading and a reference is made to the producer of the recommendation.

13. In addition, where a person working on a programme either recommends an investment recommendation or disseminates a recommendation made by a third party, the broadcaster must ensure that a clear reference is made during the programme to the fact that it is regulated by the Ofcom Broadcasting Code. This requirement would be fulfilled, for example, by including such a reference in the credits at the end of the programme.

Meaning of "presented fairly":
This means that reasonable care should be taken that: facts are distinguished from non-factual information (e.g. opinions and estimates); where there is doubt whether a source is reliable this is indicated; and all projections, forecasts and price targets are described as such.

NOTE
Where a TV or radio programme features someone regulated by FSA who makes an investment recommendation, that person's compliance with the FSA rules is the responsibility of that person and not the broadcaster. If a person working on a programme interviews someone who is not regulated by the FSA who makes an investment recommendation, responsibility again lies with the interviewee not the broadcaster to ensure his compliance with the Regulations.