

Financial Supervision Commission Advertising Regulatory Code

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FINANCIAL SUPERVISION COMMISSION

ADVERTISING

REGULATORY CODE

The following Code is issued by the Financial Supervision Commission in exercise of the powers conferred on it by Section 6 of the Investment Business Act 1991, and all other powers enabling it in that behalf. All correspondence relating to this Code should be addressed initially to the Financial Supervision Commission.

Adopted by Financial Supervision Commission on 14 November 1991, with amendments adopted on 13 February 1992 and 27 March 1996

Approved by Tynwald on 10 December 1991, 17 March 1992 and 21 May 1996

Price 60p

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1. CITATION, COMMENCEMENT, INTERPRETATION AND APPLICATION

1.1 Citation and Commencement

This Code may be cited as the "Financial Supervision Commission (Advertising) Regulatory Code" and shall come into operation on 1st December 1991.

1.2 Interpretation

A Guidance Note appended to a paragraph gives guidance as to how the Commission considers it would operate in particular circumstances. It is not part of the Code.

The Interpretation Act 1976 applies to the interpretation of this Code and, unless the context otherwise requires, expressions defined therein have the same meanings when used in this Code.

The glossary contained in the Financial Supervision Commission (General Requirements) Regulatory Code applies to the interpretation of this Code.

The objectives of this Code are to ensure that a person authorised to carry on investment business:-

- (a) acts with high standards of integrity and fair dealing in the conduct of investment business and complies with best market practice; and
- (b) acts with due skill, care and diligence in providing any service which he provides or holds himself out as willing to provide; and
- (c) deals fairly with his clients in any transaction entered into or arranges to be entered into with them on their behalf;

and, accordingly, the Code shall be interpreted in the light of these objectives so as best to give effect thereto.

1.3 Application

This Code applies to all holders of investment business licences issued under Section 3 of the Investment Business Act 1991, [with the exception of holders of Category 5 investment business licences.]

2. GENERAL REQUIREMENTS

2.1 An advertisement shall **not** contain -

- (a) a statement, promise or forecast which is untrue or misleading;

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- (b) a statement of fact which the licenceholder does not at the time the advertisement is issued have reasonable grounds supported by documentary evidence for believing to be true;
- (c) a statement of opinion held by any person (whether the licenceholder or any other person) which the licenceholder does not at the time the advertisement is issued have reasonable grounds supported by documentary evidence for believing to be the honestly held opinion of that person at that time;
- (d) a statement of fact which the licenceholder does not at the time the advertisement is issued have reasonable grounds for believing will continue to be true for so long as it remains relevant to the subject-matter of the advertisement;
- (e) a misleading statement about the scale of activities of, or any of the activities of, or the resources of or available to, the licenceholder or the licenceholder's group;
- (f) a statement relating to past performance unless:-
 - (i) the basis on which such performance is measured is clearly stated and the presentation is not exaggerated;
 - (ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance; **or**
 - (iii) the past performance is relevant to the investment or the services offered by the licenceholder;
- (g) a statement relating to taxation benefits unless it is properly qualified to show what it means in practice and to whom such benefits apply; **or**

[] added by SD 155/96

- (h) a comparison with other forms of investment unless the basis of comparison is clearly stated and the comparison is fair.

2.2 The content and format of any advertisement shall not: -

- (a) be so designed as to be likely to be misunderstood;
- (b) be so designed as to disguise the significance of any warning statement or information which is required to be included under this Code;
- (c) be presented in such a way that it is not clearly identifiable as an advertisement; **or**
- (d) signify in any way that the advertisement is approved or has been approved by the Commission.

2.3 Any advertisement shall: -

- (a) Identify the person who issued it or caused it to be issued;

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- (b) contain the address of the licenceholder who issued it or caused it to be issued; **and**
 - (c) state the nature and category of any licence or authorisation under the Investment Business Act 1991 held by that person.
- 2.4 Any advertisement issued by a licenceholder which refers to statutory compensation arrangements shall contain sufficient information to make it clear to the investor or potential investor whether such arrangements apply to him.
- 2.5 Any advertisement issued by a licenceholder in another jurisdiction should comply with any advertising regulations or law in that other jurisdiction.
- 2.6 In assessing whether an advertisement complies in its opinion with the spirit of the Code, the Commission will take into account matters of fact or opinion or forecasts which have been omitted (or might properly have been included) in the advertisement as well as the content and form of the advertisement itself, the context in which it is issued, the general impression that it creates, and the likelihood of any person being misled by it.

3. REQUIREMENTS RELATING TO SPECIFIC INVESTMENTS

- 3.1. An advertisement shall not specify some but not all of the terms and conditions which attach to an investment **unless**:-
- (a) those which are specified give a fair indication of the nature of the investment and the risks involved; **and**
 - (b) the advertisement contains information as to how a written statement of all the terms and conditions can be obtained.
- 3.2 Any advertisement shall disclose any special areas of risk relating to the investment, such as limited marketability.
- 3.3 In the case of an investment the value of which may fluctuate or is not guaranteed (or both) the advertisement shall state that fact prominently.
- 3.4 In the case of an investment the value of which is guaranteed the advertisement shall state clearly the nature of the guarantee and to what it relates and whether there are any matters which may affect the investor's ability to benefit from it.
- 3.5 Any reference to income tax or other tax benefits shall include information about the tax situation of the investment/fund as well as that of the investor.
- 3.6 An advertisement shall not specify a rate of return without specifying how it is calculated, including any element which involves any reduction of the investor's capital.

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- 3.7 Any advertisement issued by a licenceholder for an investment which is governed by advertising regulations or other regulations in its country of origin/domicile shall comply with those regulations and shall contain a statement to that effect.
- 3.8 Any advertisement issued by a licenceholder for an investment which is subject to regulation outside the Isle of Man shall contain a statement of the country or territory under whose law it is regulated and the name of the regulatory authority.
- 3.9 Any advertisement inviting direct investment in futures, options, and contracts for differences shall contain a risk warning as follows: **"The risks of loss from investing in commodity and financial futures, foreign exchange contracts, securities and index contracts and options can be substantial"**.
- 3.10 A licenceholder should keep a record of all advertisements issued by it including the date of issue, the publications in which it has been included, and evidence to support any statement made in the advertisement which purports to be a statement of fact or opinion, or how access to such evidence may be obtained.

Guidance Note

The Commission will generally decline to vet or approve advertisements before issue, but if, exceptionally, it does review any such advertisements, such review and the views expressed by the Commission shall not prejudice any disciplinary action or proceedings thereafter.

However, the Commission expects licenceholders to comply with the Code. The Commission will take into account in its assessment of the fitness and properness of licenceholders and their employees and representatives actions and behaviour in relation to advertising which it considers deceitful or improper but which may not amount to a breach of this Regulatory Code. Before reaching any conclusions in the matter the Commission will raise it with representatives of the licenceholder and take account of any representations they may wish to make as well as their response to a request from the Commission to withdraw or amend the advertisement.