



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

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Guidance Note on Advertising, Distribution and Promotion of Financial Products or Services

**(applicable to licenceholders under
Financial Services Act 2008)**

November 2012 (updated October 2017)

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Introduction

One of the Isle of Man Financial Services Authority's (the Authority's) regulatory objectives is: *"to secure an appropriate degree of protection for the customers of persons carrying on a regulated activity."*

To enable it to meet this objective, the Authority has a Rule Book¹ containing specific rules applicable to entities that it regulates under the Financial Services Act 2008 ('licenceholders') as well as a number of statutory powers it can use to enforce these rules.

In common with many other regulators, the Authority's rules are a mixture of detailed rules for some circumstances, and also high level general rules. Licenceholders must always consider the high level general rules in relation to any situation as well as any specific detailed rules.

The rationale for high level rules is to permit conduct and culture as a whole to be considered. They also allow for regulatory judgment to be applied according to the circumstances of a particular firm or segment of the industry, and they avoid the creation of loopholes which specific rules tend to inadvertently cause.

This guidance is intended to remind licenceholders how particular rules can apply to the advertising, distribution and promotion of financial products and services, and also to illustrate the tools available to the Authority which it will use to enforce the rules.

The guidance is illustrative. It is not exhaustive, and does not limit or restrict the Authority in exercising its discretion regarding which action it may feel is the most appropriate in any particular circumstance. It is not a substitute for reference to the applicable primary and secondary legislation.

The guidance is relevant to all licenceholders involved either directly or indirectly with the supply or advertising of financial products and services, or the provision of advice or information thereon. The rule numbers relate to all licenceholders apart from professional officers, who have a specific rule relating to their advertising (rule 9.6).

¹ Financial Services Rule Book 2016

General Rules

In relation to the topic of advertising, distribution and promotion of financial products or services, the following general rules are of particular importance:

- **6.1 Skill, care and diligence**
The requirement to use skill, care and diligence extends to the adequacy and accuracy of advertising and other promotional materials, and to care in relation to whom products and services are promoted.
- **6.3 Ensuring fair and reasonable behaviour**
The requirement to obtain business in a way which is clear, fair and not misleading includes clear advertising or promotional material, free from jargon and small print and without misleading 'teaser' rates of return etc.
- **6.5 Action likely to bring Island into disrepute**
The promotion of local products and services into jurisdictions where this is not permitted, or in a manner outside of permitted parameters could bring the reputation of the Isle of Man into question.
- **6.6 Integrity and fair dealing**
This rule applies in relation to the carrying on of all regulated activities, and includes dealing fairly with clients in an open way.
- **6.7 Informed decisions**
This rule includes a requirement to avoid misleading or deceptive representations or practices and is particularly important in relation to the information provided to clients about the nature of products provided by / or advised upon by the licenceholder, and the adequacy of the promotional material.
- **8.3 Management controls**
This rule includes the requirement to ensure systems and controls are in place to ensure fair treatment of clients and effective communication with them which would include controls over the suitability of advertising and promotional materials.
- **8.6 Risk management**
This rule includes the requirement to manage the risks applicable to the licenceholder. In relation to product design or choice, the advertising of products and their distribution to target customers, these matters should be included within risk reviews and risk frameworks – where consideration should be given to the risks to the business caused by the product, its inappropriate description

or sale, or inappropriate remuneration structures relating to it.

- **8.23 Functions of compliance officer**

This rule includes the requirement to have robust and documented arrangements for compliance and to monitor the operational arrangements – which should include operational arrangements for product design, distribution, advertising etc.

Specific Rules

In addition to the general rules, the following specific rules apply to this topic:

- **6.12** Advertisements – general (which includes the requirements for fair and accurate information) (*Applicable to all licenceholders under the Financial Service Act*)
- **6.15** Reference to compensation scheme (and other protection arrangements) in advertisements (*Applicable to class 1(1) licenceholders under the Financial Service Act*)
- **6.29** Knowledge of client (which includes investment clients attitude to risk and time horizons) (*Applicable to all class 2 licenceholders under the Financial Service Act other than class 2(3) and/or 2(7) except for those acting on an execution basis in compliance with rule 6.17*)
- **6.29** Knowledge of client – Financial advisers (which includes investment clients attitude to risk and time horizons) (*Applicable to all class 2(3) and/or 2(6) and/or 2(7) except for those acting on an execution basis in compliance with rule 6.17*)
- **6.32** Suitability (*Applicable to all class 2 licenceholders under the Financial Service Act except for those acting on an execution basis in compliance with rule 6.17*)
- **6.33** Life policies (*Applicable to all class 2 licenceholders under the Financial Service Act*)
- **6.34** – Collective investment schemes (*Applicable to all class 2 licenceholders under the Financial Service Act*)
- **6.37** Disclosure and information (*Applicable to all class 2 licenceholders under the Financial Service Act except for those acting on an execution basis in compliance with rule 6.17*)
- **6.38** Understanding of risk (*Applicable to all class 2 licenceholders under the Financial Service Act except for those acting on an execution basis in compliance with rule 6.17*)
- **6.39** Disclosure of product particulars (*Applicable to all class 2 licenceholders under the Financial Service Act except for those acting on an execution basis in compliance with rule 6.17 or those acting under a discretionary mandate*)

In addition, the Collective Investment Schemes Act 2008 contains specific provisions in relation to restrictions on promotion, and secondary legislation made under that Act contains specific requirements in relation to each type of scheme, and all relevant functionaries including managers, administrators, promoters and the governing bodies of schemes must adhere to these requirements.

Other Guidance

In addition to this guidance, the Authority has also issued other pertinent guidance documents and material to assist licenceholders and consumers as follows:

- General guidance on the Rule Book – this contains in particular a sizeable section of guidance on the Conduct of Business section of the Rule Book
- Guidance note for Deposit Takers on Deposit Advertising
- Conduct of Business - Step by step guidance to financial advisers
- Training & Competence Framework
- FAQ – Deposit takers
- FAQ – Financial advice
- FAQ – Funds & pooled investments
- Press release – 3/8/12 Financial Advice & Suitability

Powers of Enforcement

The Authority has a range of powers that it may consider using when it is faced with issues such as inaccurate or misleading advertising, poor client advice and similar matters.

The choice of power will depend upon the particular circumstances of each case, and the severity of the breach. The powers most applicable to this topic are set out below:

Section 19 & 43 FSA ² 08	The taking of any ‘action for breach’ against a licenceholder if the Rule Book has been contravened.
Section 7 FSA 08	Imposing conditions on a licence – for example, this could be used to specify product types which are prohibited.
Section 14 FSA 08	Imposing a direction to require action in relation to regulated activity – for example, the Authority may require something to be done (or not done), or it may require something to be rectified, and can use this power to suspend or discontinue a particular regulated activity.

² Financial Services Act 2008

Section 13 FSA 08	The issuance of a public statement if the Authority considers that this is desirable for public protection or in the event of a contravention.
CISA ³ 08 - Schedules	The Authority has the ability to withdraw the recognition or authorisation of a scheme.
Section 16 FSA 08	The issuance of a civil penalty.
Section 20 FSA 08	An application to the court for restitution for wronged parties.
Section 17 CISA 08	An application to the Attorney General regarding offences of false and misleading statements in respect of a collective investment scheme.
Sections 37-40 FSA 08	An application to the Attorney General regarding offences of fraudulent inducement to make a deposit / misleading inducements to invest etc.

³ Collective Investment Schemes Act 2008