



Financial Services Commission
Mauritius

GUIDELINES FOR ADVERTISING AND MARKETING OF FINANCIAL PRODUCTS

Issued under section 7(1)(a) of the Financial Services Act

October 2014

CHAPTER 1 - INTRODUCTION	2
1.1 Background and Scope.....	2
1.2 Authority	3
1.3 Application of the Guidelines	3
1.4 Effective Date.....	3
CHAPTER 2 – GENERAL PRINCIPLES	4
2.1 Contents.....	4
2.2 Words and Layout.....	4
2.3 Performance Information	4
2.4 Internet Advertisement	5
2.5 Non-Written and Direct Marketing (includes Cold Calls)	5
CHAPTER 3 – BUSINESS CONDUCT STANDARDS.....	6
3.1 Duties of the Promoter	6
CHAPTER 4 - SANCTIONS FOR NON-COMPLIANCE WITH THE GUIDELINES	7
<u>RELATED INFORMATION</u>	<u>APPENDIX 1</u>
<u>KEY TERMS.....</u>	<u>APPENDIX 2</u>

CHAPTER 1 - INTRODUCTION

1.1 Background and Scope

To ensure the protection of consumers of non-banking financial services, section 31 of the Financial Services Act regulates advertisements in connection with the conduct of an activity or the provision of a service which requires a licence, approval, authorisation or registration under a relevant Act.

In line with the provisions of section 31 of the Financial Services Act, the Guidelines for Advertising and Marketing of Financial Products (the “Guidelines”) aim at promoting responsible, ethical and professional conduct among persons who are involved in the chain of advertising and marketing of financial products, which are directed at consumers of financial services in Mauritius. The Guidelines further aim at ensuring that Promoters give clear, accurate and balanced information when advertising and marketing non-banking financial products and services which are licensed or ought to have been licensed under the relevant Acts.

The Financial Services Commission (the “Commission”) has developed the Guidelines to help Promoters comply with the requirements of section 31 of the Financial Services Act and to ensure that Promoters do not engage in misleading or deceptive conduct which may damage the good repute of Mauritius as an international financial centre.

The Guidelines apply to any communication intended to advertise and market financial products in Mauritius. The Commission encourages the industry to develop its own internal guidelines, standards or codes that will build on the Guidelines and respond to the specific needs of the non-banking financial sector.

The Commission reserves the right to alter, modify or amend the Guidelines and to take such necessary remedial or regulatory action against persons who fail to comply with the provisions herein.

Promoters are advised to seek professional advice regarding their advertising and marketing materials. Examples in the Guidelines are provided for illustration and are not exhaustive. The Guidelines provide the minimum standard and should be read in conjunction with the provisions of the relevant Acts.

1.2 Authority

The Guidelines are issued pursuant to the powers of the Commission under sections 6(c) and 7(1) (a) of the Financial Services Act.

1.3 Application of the Guidelines

- (a) The Guidelines shall apply to:
 - i. Promoters of financial products offered in Mauritius;
 - ii. Advertisements by Management Companies; and
 - iii. All forms of advertisements, as defined in Appendix 2.
- (b) Responsibility for the content and monitoring of an advertisement shall rest upon its Promoters. Under no circumstances, a Promoter may disclaim its liabilities in respect of the accuracy of the advertisement. Where the information is sourced externally and is disclosed as such, the Promoter shall ensure that the information is accurate, complete and up-to-date.
- (c) Unless otherwise required under the relevant Acts and any Regulations or Rules issued thereunder, Promoters shall submit a copy of their advertising and marketing materials to the Commission for assessment, at least 7 business days before dissemination to targeted consumers or to the public.
- (d) When assessing whether an advertisement conforms to the principles of the Guidelines, the Commission shall consider both the spirit and the specific letter of the Guidelines.
- (e) Some financial products, due to their risk or nature, may require further and specific guidance. In this context, the Commission may issue additional guidelines.

1.4 Effective Date

The Guidelines shall come into effect on 01 January 2015.

CHAPTER 2 – GENERAL PRINCIPLES¹

2.1 Contents

Advertisements for financial products shall be fair, clear, complete, concise and unambiguous, and shall be created bearing in mind the interest of the public in general and to the audience they are aimed at in particular.

Advertisements shall contain information that is timely and consistent with any relevant prospectus, offer and/or contractual document. Advertisements shall convey an equitable message in respect of the returns, benefits and risks associated with financial products. Benefits shall not be given undue prominence compared to risks. The tone of the advertisement shall not undermine the importance of the risks.

2.2 Words and Layout

Promoters must avoid extensive use of technical, legal terminology or complex language and the inclusion of excessive details in an advertisement which may not convey a clear message to the consumers and potential consumers, if the likely audience is unfamiliar with the concepts.

Promoters shall ensure, where applicable, that any reference to the involvement of the Commission in the advertisement shall not be construed or imply that the Commission has approved the advertisement or taken the responsibility for the soundness of the financial products, or that it has recommended the financial products, or that statements and opinions expressed in the advertisement are true and accurate.

The logo of the Commission shall not appear or be reproduced in an advertisement without the express authorisation of the Commission.

2.3 Performance Information

Performance information, if presented in an advertisement, shall include track record of at least 6 months and must, at a minimum, include details of the returns (such as net asset value or price returns, where applicable).

¹ Chapter 2 should be read in conjunction with Appendix 1.

2.4 Internet Advertisement

As regard the approval of advertisements on the internet, a hard copy of the relevant web pages shall, where so required under any applicable laws, be submitted to the Commission in advance of it being displayed.

The principles and standards as set out hereunder must be followed.

- (i) Promoters must take all reasonable steps to ensure that copy of any electronic advertisements or constitutive documents of the financial products are identical to the most up-to-date paper versions, submitted to the Commission, where appropriate;
- (ii) There shall be a prominent statement on the relevant web pages, which is capable of being seen or read with reasonable ease by the consumer accessing the electronic copies of such advertisements or constitutive documents, to the effect that printed copies of the same are also available, as well as where and how they can be obtained; and
- (iii) Any advertisements or other documents on the relevant web pages shall remain available for as long as it is necessary for the consumers of the financial products to have a reasonable opportunity to read or access them. Consumers must also be given the opportunity to retain the information through printing or downloading.

2.5 Non-Written and Direct Marketing (includes Cold Calls)

If any non-written marketing communication is initiated with consumers, the Promoter shall ensure that the person making the communication:-

- (i) only does so at a mutually convenient time of the day;
- (ii) clearly identifies himself in accordance with paragraph 3.1(b)(i) of the Guidelines and makes clear the purpose of the communication;
- (iii) clarifies if the consumers wish to continue with or to end the communication, and terminate the said communication at any time that the consumers so request; and
- (iv) provides a place of contact to the consumers with whom the communication is made.

CHAPTER 3 – BUSINESS CONDUCT STANDARDS

3.1 Duties of the Promoter

(a) A Promoter shall at all times -

- (i) act responsibly, with honesty, fairness, integrity and professionalism;
- (ii) avoid aggressive or offensive sale practices;
- (iii) deal respectfully with the consumers and potential consumers and ensure sufficient disclosure is made for them to make informed decisions; and
- (iv) preserve confidentiality of the consumer's and potential consumer's information, and not take advantage of such information for personal or another person's gain in conformity with the Data Protection law in Mauritius.

(b) A Promoter shall, where appropriate –

- (i) always disclose his full and accurate identity, at the time of introduction with consumers and potential consumers;
- (ii) always disclose to consumers and potential consumers before entering into any contract for the purchase of a financial product, all benefits that will be paid to him, whether by way of fees, commissions, dividends (directly or indirectly) or otherwise under such contract, based on his relationship and interest that he may share with other parties which are associated with the financial product; and
- (iii) only provide information in which he is competent and if necessary, recommend additional specialist advice to the consumers and potential consumers, as appropriate.

CHAPTER 4 - SANCTIONS FOR NON-COMPLIANCE WITH THE GUIDELINES

- (a) Non-compliance with the Guidelines will expose the Promoter to regulatory action, which may include a direction under sections 7(1) (b) and 46 of the Financial Services Act, under section 145(3) of the Securities Act, under section 93 of the Insurance Act and under section 6 of the Private Pension Schemes Act.
- (b) Failure to comply with a direction shall amount to an offence under sections 47 and 90 of the Financial Services Act and may further lead to sanctions provided under section 7(1)(c) of the Financial Services Act.
- (c) The regulatory actions, as specified above, will apply to the Promoter who is licensed or ought to have been licensed by the Commission, under the relevant Acts. Depending on the materiality and severity of the non-compliance or offence committed by a Promoter, the Commission may refer the matter to the Director of Public Prosecutions for further action.
- (d) The Promoter shall continue to have the same right to make representation against a decision of the Commission as provided in law.

Appendix 1: Related Information

General Principles (Chapter 2 of the Guidelines)

Appendix 1 hereunder list out specific guidelines to be followed by Promoters with respect to the advertising and marketing of financial products.

Contents (Paragraph 2.1 of the Guidelines)

(i) Presentation, legibility and prominence

- (a) Advertisements shall not be false, biased, misleading or deceptive.
- (b) Assumptions on which statements are based in an advertisement shall be stipulated.
- (c) The design and presentation of any advertisement shall be easily and clearly understood.
- (d) The warning statement shall be printed in type of at least the same size as the rest of the text in the advertisement or in smaller text where it is prominently outlined.
- (e) The full name, licence, authorisation or registration (as applicable) details of the Promoter shall be disclosed in the advertisement.

(ii) Target Audience

- (a) The advertisement shall be in plain language as to be capable of being clearly understood by the audience that might reasonably be expected to see it. The advertisement shall not state or imply that a financial product is suitable for a particular class of consumers unless the Promoter has assessed that the financial product is suitable for that class of consumers. Advertisement for complex financial products that is only appropriate for a targeted group of persons shall not be marketed or promoted to a wider audience.

Words and Layout (Paragraph 2.2 of the Guidelines)

(i) Use of certain terms and phrases

- (a) A statement of opinion regarding a financial product by the Promoter must be reasonable and verifiable. Phrases such as “best performing” or “first” may only be quoted if it is appropriately supported by an independent source available to the consumers for

verification.

- (b) An advertisement must not include wordings (such as “safe”, “secure”, “risk-free”, “protected”, “warranty”, “guarantee” or “promise”) that may lead the consumers and potential consumers to believe that they cannot lose money or that capital is guaranteed. Save and except, where an advertisement guarantees or assures any minimum rate of return or yield, resources sufficient to support such a guarantee may be indicated.
- (c) An advertisement shall not provide the impression to consumers that their savings or investments will invariably increase in value. The language used must avoid implying any urgency or emergency for making savings or investments, save and except, where regulatory deadlines apply. Words including but not limited to “get rich quick”, “greater wealth awaits you”, “you too can be rich”, “invest now before it is too late” shall be avoided.
- (d) An advertisement shall not use unreasonably promising language as regards the potential return to be derived from financial products. Statements such as “high rewards await you”, “you will reap high returns”, “you will be a winner” shall not be allowed.
- (e) An advertisement shall not aim to undermine competitors in such a way as might jeopardise the reputation of the industry. The advertisement should be clear and in simple language and, where applicable, contain support graphics.
- (f) An advertisement shall not contain language and graphics which are inconsistent with its corresponding disclosure documents. For instance, where a prospectus, offer document or any other contractual document contains a special risk warning, it would be misleading if such advertisement suggests “low risk”.

(ii) Fees and Costs

- (a) Where a fee or cost is referred to in an advertisement of a financial product, it must give a realistic impression of the overall level of fees and costs a consumer and potential consumer is likely to pay. When a claim about a fee or cost is used in the heading of an advertisement, any exclusions or qualifications shall also be contained within the heading or be clearly and prominently noted within the advertisement.
- (b) Where an advertisement for a financial product makes a claim about the fees or costs associated with advisory service, this must be clearly stated, and any qualification clearly

and prominently noted in the advertisement. Where applicable, the disclaimer 'terms and conditions apply' may be included in the advertisement.

The advertisement shall not suggest that the advisory service is 'free' or 'low cost' if, in fact, the consumer will pay for the service indirectly through the fees and costs of the financial product (for example, where commissions are derived from product fees and these are not rebated to the consumer, or through administration fees, incorporating fees or costs associated with the advisory service).

- (c) An advertisement for a financial product shall state clearly when certain benefits are mutually exclusive, that is, which cannot be simultaneously earned.

(iii) *Risks and Warning disclosures*

- (a) An advertisement must adequately reflect and explain any special or unusual risks (for instance, interest rate fluctuation risks, country and political risks, etc.) associated with a financial product.
- (b) Where a financial product is denominated in a currency other than that of Mauritius, the consumer must be warned that changes to the rates of exchange may have an effect on the value, price or income of his holding in that financial product.

(iv) *Miscellaneous*

- (a) An advertisement shall disclose adequate information concerning all applicable taxes and the impact of such taxes on consumers and potential consumers.
- (b) Where cancellation rights apply, this right must be adequately disclosed, along with the liabilities attached to the exercise of such right, to consumers and potential consumers in the advertisement or in the terms and conditions of the contract attached to the financial product or service.

Performance Information (Paragraph 2.3 of the Guidelines)

- (a) An advertisement for a financial product shall not contain any projection of performance returns based on borrowing plans. An advertisement which contains references to leverage financing shall thus only contain factual information, without any persuasive element.
- (b) If there has been, or will be, any change or restructure in relation to a financial product, the

advertisement shall state this fact and state also whether and/or describe to what extent any presentation of performance information therein, shall be affected by these changes to ensure that the presentation is fair and not misleading.

- (c) Where performance awards received are included in an advertisement for a financial product, the grantor of the award shall be clearly identified and the award explained. An advertisement shall make it clear if an award is granted by a person related to the Promoter.

Internet Advertisement (Paragraph 2.4 of the Guidelines)

- (a) Hyperlinks from an advertisement on the relevant web pages to other documents or web pages shall not be acceptable, unless the other documents and information on the other web pages have been forwarded to the Commission prior to the date of first issue or use of the said advertisement or promotional materials, where appropriate.
- (b) Where special software is necessary for the viewing of an advertisement, the software shall be provided for download, free of charge, before the consumers and potential consumers can gain access to the relevant web pages.

Non-Written and Direct Marketing (Paragraph 2.5 of the Guidelines)

- (a) The Commission is not responsible and liable for any non-written communication which is made during the course of personal visit, telephone conversation or other interactive dialogue by a Promoter. This shall be clearly conveyed to consumers, in any direct marketing or promotional materials.
- (b) A Promoter of financial products shall not make a Cold Call unless:
 - (i) the recipient has an established existing client relationship and the relationship is such that he has consented to respond to the Cold Call; or
 - (ii) the marketing communication is related to a generally marketable, low volatility and low risk financial product.

Appendix 2: Key Terms

In the Guidelines,

“advertisement” means commercial and promotional materials:

- i. communicated through any medium and in any form, including:
 - a. magazines and newspapers;
 - b. radio and television;
 - c. outdoor advertising, including billboards, window display and signs at public venues;
 - d. the internet, including webpages, banner advertisement and social networking (e.g. Facebook and Twitter);
 - e. product brochures and promotional fact sheets;
 - f. direct mail (e.g. by post, facsimile or email);
 - g. telemarketing activities; and
 - h. seminars and presentations to groups of people.

and

- ii. used for the marketing or promotion of financial products to consumers and potential consumers in Mauritius; and
- iii. which are distributed through any medium currently known or hereafter developed.

“Cold Calls” means advertisement or promotion made during the course of a personal visit, telephone conversation or other interactive dialogue, that the recipient did not initiate or expressly request;

“Commission” has the same meaning as in the Financial Services Act;

“consumer” means a consumer of financial services as defined in the Financial Services Act;

“financial products” means facilities through which, or through the acquisition of which, a person does one or more of the following:

- i. makes a financial investment;
- ii. manages financial risk;
- iii. makes non cash payments;

and it includes financial services.

“financial services” has the same meaning as in the Financial Services Act;

“management company” has the same meaning as in the Financial Services Act;

“Promoter” means any person licensed, authorised or approved under the relevant Acts to carry out or provide any activity or financial services which require a licence, approval, authorisation or registration under the relevant Acts;

“Person” and words applied to a person or individual shall apply to and include a group of persons, whether corporate or unincorporated; and

“relevant Acts” has the same meaning as in the Financial Services Act.