



Financial Services Commission  
Mauritius

# **EXPLANATORY NOTES TO THE GUIDELINES FOR ADVERTISING AND MARKETING OF FINANCIAL PRODUCTS**

**April 2016**

## Introduction

- (i) These Explanatory Notes ('ENs') are being issued by the Financial Services Commission ('FSC'), as an *interpretative aid* to the FSC Guidelines for Advertising and Marketing of Financial Products (the 'Guidelines') which are effective as from 1<sup>st</sup> January 2015.
- (ii) These ENs aim at providing further guidance as to the appropriate standards and conditions to be observed by Promoters, as defined in the Guidelines, for the fair treatment of consumers<sup>1</sup>. *For ease of cross-reference, the relevant Chapters and Appendices of the Guidelines have been quoted.*
- (iii) The circumstances covered hereunder are the result of the:
  - a. consultative and collaborative process with industry representatives that has preceded the finalisation of the Guidelines;
  - b. set of frequently asked questions ("FAQs") released by the FSC with the coming into force of the Guidelines; and
  - c. nature of queries received from licensees as at date.

The FSC will review and update the ENs, as and when necessary, to include other circumstances.

- (iv) As a cautionary note, the users of the ENs should be aware that the ENs are not to be interpreted as a substitute to the laws, regulations or rules governing the responsibilities of the Promoters towards consumers. Responsibility shall not, in this respect, be accepted by the FSC for any liability incurred or loss suffered as a consequence of relying on any matter published therein.
- (v) Capitalised terms used in the ENs shall have the same definition as in the Guidelines. Also, for the purpose of the Guidelines and the ENs, the term "consumer" includes a prospective consumer.

## **Chapter 1 of Guidelines -**

### **1.1 Background and Scope (Explanatory Notes 1 to 2)**

#### **Explanatory Notes 1:**

- 1.1 The Guidelines have been issued under the authority of the Financial Services Act ('FSA') and are applicable to advertisements in relation to non-banking financial products and services provided by licensees of the FSC.
- 1.2 The FSC has considered the provisions of the relevant Bank of Mauritius 'Guideline on Control of Advertisement ("BOM Guidelines")', during the drafting stage, to ensure that the BOM Guidelines and the FSC Guidelines are harmonised.

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<sup>1</sup> "consumer" means a consumer of financial services as defined in the Financial Services Act.

- 1.3 For the avoidance of doubt, the advertising and marketing of banking products (including fixed term deposits) shall not be subject to the FSC Guidelines. On the other hand, non-banking financial products, including but not limited to insurance, leasing and factoring products, which are also distributed by the banks in Mauritius, must be advertised and marketed in conformity with the FSC Guidelines.

In addition, the Guidelines govern the advertising and marketing of pension and life insurance products offered by insurance companies, as well as investment products offered by fund managers, investment companies and distributor of financial products.

**Explanatory Notes 2:**

- 2.1 One of the key statutory mandates of the FSC is to ensure for consumer and investor protection. The aim of the Guidelines is to fundamentally set and harmonise from a holistic perspective the advertising and marketing requirements for non-banking financial products and services, based on information which is current, accurate and not misleading.
- 2.2 With respect to the advertisement of non-banking financial products and services, the FSC advocates that a fair, transparent and disclosure-based approach be adopted, which ensures, to the extent possible, the use of plain, non-technical language in the advertising and marketing materials.

### **1.3 Application of the Guidelines<sup>2</sup> (Explanatory Notes 3 to 5)**

**Explanatory Notes 3:**

- 3.1 Except as otherwise required under the Relevant Acts, regulations or rules issued thereunder, the Guidelines shall apply to Promoters of financial products targeting consumers in Mauritius and Management Companies promoting the services which they offer under section 77 of the FSA or such other services as may have been approved by the Commission.

**Explanatory Notes 4:**

- 4.1 For the avoidance of doubt, the following persons shall not be interpreted as Promoters of advertising and marketing materials, under the Guidelines:
- (i) Advertising agencies when they are designing advertising materials for the Promoters;

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<sup>2</sup> This section should be read in conjunction with Appendices 1 and 2 of the Guidelines.

- (ii) Persons printing advertising and marketing materials for Promoters;
- (iii) Communication professionals providing services to Promoters; and
- (iv) Persons responsible for securing the placement of an advertisement, provided they are not responsible for the contents thereof.

4.2 In addition, the following categories of persons who may not, in practice, be deliberately aware of the fact that they may be distributing advertising and marketing materials of financial products, will not be considered as promoting same by the FSC. This list is, however, not to be considered as exhaustive.

- (i) Postal service providers;
- (ii) Telecommunication (for example, Internet) service providers;
- (iii) Broadcasting service providers;
- (iv) Web hosting providers;
- (v) Courier service providers;
- (vi) Persons employed to hand out or disseminate communications; or
- (vii) Newsagents who sell newspapers and journals, containing advertisements of financial products or services.

4.3 The Guidelines will not be applicable to situations whereby a Promoter provides additional information to its *existing* clients by telephone (“help-lines”) in relation to the products and services already purchased by these clients, without any form of inducement for them to purchase additional products or services of the Promoter.

#### **Explanatory Notes 5:**

5.1 The responsibility for the content and accuracy of advertising and marketing materials remains, at all times, with the Promoters.

5.2 With regard to advertisements which are disseminated specifically through some mediums, for instance PowerPoint presentations, Bill-Boards or Window displays amongst others, given space and size limitations in these mediums, the following are to be noted:

5.2.1 Promoters should not rely on the FSC for ‘advice’ as to the compliance with the Guidelines for an advertising and marketing material in these mediums. It is the responsibility of the Promoter to seek independent professional advice, as the case may warrant and as implied in paragraph 5.1 above.

5.2.2 Filing a copy of the final presentation with the FSC is necessary where the presentation will be targeting the general public. Except as otherwise required under the relevant Acts, regulations or rules issued thereunder, presentations targeting sophisticated investors need not be submitted to the FSC.

5.2.3 At the outset of a presentation aimed at advertising and marketing the Promoter’s products and services, the Promoter should specify or state that the

contents of the presentation are in conformity with the legal and constitutive documents of the financial products that are being promoted.

- 5.3 It is, on the other hand, mandatory for the Promoters advertising on Bill-Boards or Window displays to make sure that reference is made to the fact that the Promoters are (i) licensed/registered/authorised by the FSC and (ii) detailed Terms and Conditions ('TCs') may be applicable, if space and size of the Bill-Boards are considered as an important limiting factor. Such detailed TCs must be made available to the consumers in Mauritius, if or whenever requested.
- 5.4 The FSC urges Promoters using other similar types of advertising and marketing channels to adopt the same approach, as stipulated in paragraphs 5.2 and 5.3, in order to ensure inclusion of sufficient and necessary disclaimers in their advertisements, in the best interests of consumers, whenever space or size may be a limitation to them.

## **Chapter 2 of Guidelines - General Principles<sup>3</sup>**

### **2.1 Contents (Explanatory Notes 6 to 12)**

#### **Explanatory Notes 6:**

- 6.1 The overarching principles of the Guidelines are based on the concepts of fairness, transparency and the provision of information to consumers which is neither misleading nor deceptive, to enable them to make an informed decision.
- 6.2 Promoters have a responsibility to ensure that their staff and representatives are properly manned and trained to promptly provide adequate information to consumers in an appropriate manner.
- 6.3 Promoters are requested to refer to the "Competency Standards" issued by the FSC in October 2014 for further appropriate guidance regarding training requirements, amongst others.
- 6.4 The onus, in all cases, shall be on Promoters to ensure that the advertising and marketing material is issued in compliance with the Guidelines, depending on the mediums or channels of advertisement.

#### **Explanatory Notes 7:**

- 7.1 Advertising and marketing communications have been defined, as far as possible, in an exhaustive manner in the Guidelines.

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<sup>3</sup> This section should be read in conjunction with Appendix 1 of the Guidelines.

- 7.2 For the sake of clarity, fact or quotation sheets which are issued by Promoters shall be viewed by the FSC as an informative tool, i.e. forming part of the advertisement materials or a brief annexure thereof.
- 7.3 Promoters shall, as and when applicable, notify the FSC upon the occurrence of any material change in the inducement contents of, for example, a fund fact sheet. The Promoters shall accordingly and ultimately have the responsibility for ensuring the factual accuracy of any fund fact sheet to be sent to consumers.

**Explanatory Notes 8:**

- 8.1 It is critically important that consumers are informed on the licensing status of the Promoters with whom they are dealing.
- 8.2 The following disclosure statement or announcement shall, generally and as a minimum, be required in advertising and marketing materials of regulated licensees of the FSC, that target consumers in Mauritius.

*"The Company is licensed/regulated by the Financial Services Commission".*

**Explanatory Notes 9:**

- 9.1 When dealing with assumptions specifically related to the prediction of benefits, Promoters must ensure that same are not misreported or misrepresented in the advertising and marketing materials.
- 9.2 At all times, Promoters must take all reasonable precautions to ensure that assumptions, whenever stated, do not depart from what are provided in the legal or constitutive documents of the financial products marketed by them, for instance when having recourse to marketing brochures or pamphlets.
- 9.3 The above will form broadly the basis of the test by which the FSC shall be guided to view whether the assumptions in any advertising or marketing material are sufficiently or clearly stipulated, as per the Guidelines.
- 9.4 It is recognised that for some types of advertising and marketing materials, e.g. radio/television spots or window displays, it may not always be practicable for the Promoters to demonstrate all the underlying assumptions which have been useful for the conceptualisation and development of the financial products.
- 9.5 In these circumstances, the Promoters should base themselves on their best judgments to select and demonstrate the major and most important assumptions, for the benefits of consumers.

### **Explanatory Notes 10:**

- 10.1 The size of the text or characters used for the printing of any relevant warning statements in the advertising and marketing materials by the Promoters, as provided in the Guidelines, must be in line with the applicable requirements of the laws, regulations or rules administered by the FSC.

### **Explanatory Notes 11:**

- 11.1 A balanced and equitable message, in any format of advertising and marketing materials, is an important basis for ensuring that the overall effect of the advertisement creates a realistic expectation about the returns/benefits and risks of the financial products being advertised.
- 11.2 Information about the risks of the financial products should be explicit and not 'implicit', or difficult to understand. For example, whenever a financial product is composed of a high level of risk or there are special risk factors that would not be apparent to the consumers, the advertisement must include a prominent warning about such risks.
- 11.3 The end result must be that the advertisement does not create a misleading or deceptive impression in the minds of the consumers.

### **Explanatory Notes 12:**

- 12.1 Advertisement and marketing materials are being targeted to a wide spectrum of potential financial consumers nowadays, ranging from the individual and retail-based (or fairly less financially literate) consumers, to the more institutional and wholesale-type (or far more financially literate, professional and sophisticated) consumers.
- 12.2 The current regulatory standards for investment funds and other securities businesses in Mauritius provide for a less stringent disclosure framework for the sophisticated and professional consumers or investors, as opposed to individual consumers.
- 12.3 In this spirit, the Guidelines enable Promoters to also advertise and market complex financial products in Mauritius. "Complex financial products" are considered as products which have specific characteristics and are tailor-made for or targeted by the Promoters at, classes or groups of sophisticated<sup>4</sup> and professional consumers or investors, who already understand the nature and high risk of these products.

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<sup>4</sup> Sophisticated shall include 'Sophisticated Investors' as defined under The Securities Act.

## **2.2 Words and Layout (Explanatory Notes 13 to 21)**

### **Explanatory Notes 13:**

- 13.1 Independent sources may be quoted by the Promoters in advertising and marketing materials, whenever available. Such sources generally accord with good standard and practices of advertising and further act as comfort evidence for the consumers.
- 13.2 The test of objectivity and reasonableness of quotes made by independent sources in advertising and marketing materials will be applied by the FSC, by taking into account the integral content of the advertising and marketing materials.
- 13.3 After the test, if the FSC is of the opinion that an advertising and marketing material contains phrases which are not in accordance with the Guidelines, or contains any statement of opinion which may not be viewed as reasonable, the FSC may direct the Promoters to make necessary modifications and amendments thereto, in accordance with Chapter 4 of the Guidelines.

### **Explanatory Notes 14:**

- 14.1 In circumstances where investment in financial products may be fully recovered on the basis of a pledge of securities or assets by a financial institution, the Promoters of such financial products are required to clearly provide the relevant details or mention that 'Terms and Conditions apply' in the advertising and marketing materials.
- 14.2 Promoters shall, without reserve, clearly draw the attention of consumers during the 'pre-selling' or solicitation stage of financial products about condition(s) upon which the pledge of securities or assets, as referred to in paragraph 14.1, may be contingent or qualified.

### **Explanatory Notes 15:**

- 15.1 Subject to the paragraphs 15.2 and 15.3, the Promoters of advertising and marketing materials must not, under any circumstances, imply or cause to imply urgency of investment to the consumers, as explained in the Guidelines.
- 15.2 There are a range of words and phrases that should be avoided, in this context, as per the Guidelines.
- 15.3 Except otherwise allowed by the laws, regulations or rules, the Promoters must not state the time period within which the investment shall be made by consumers, in the advertising and marketing materials, with the sole purpose of implying an urgency for consumers to make an investment.

**Explanatory Notes 16:**

- 16.1 The spirit of the test that any graphics or language used in the advertising and marketing materials may not be appropriate, will be principally based on whether the said graphics or language could be viewed as being “misleading” to the targeted audience of consumers or investors. When this is the case, the FSC shall direct the Promoters accordingly for necessary and prompt actions.

**Explanatory Notes 17:**

- 17.1 The FSC acknowledges that Promoters may not always be able to avoid the use of technical, legal terminology or complex language in the legal or constitutive documents of financial products.
- 17.2 This being so, the FSC encourages Promoters to make use of clear and simple terms in the marketing brochures or pamphlets, for the eventual benefits of consumers’ understanding, as informative versions.
- 17.3 Promoters must guide, at all times, consumers to the existence of the more complete, detailed and authoritative version of the legal or constitutive documents. Consultation by the consumers must be allowed if or whenever a request is made.

**Explanatory Notes 18:**

- 18.1 The disclaimer statement that is communicated by the Promoters in advertising and marketing materials to consumers, in connection with the financial soundness or accuracy of the information, should be similar or derived from the relevant provisions of the laws, regulations or rules.
- 18.2 In circumstances where a specific compensation mechanism or fund is available to the consumers upon the purchase of a financial product, this should also be made known to the consumers, at the point of sale and/or contained in the detailed Terms and Conditions.

**Explanatory Notes 19:**

- 19.1 When disclosing the different types of costs which are relevant to financial products, such as interest rates, fees, and other charges, Promoters should communicate freely and fairly all the prominent features of the products’ costs. No attempts should be made to conceal costs from the attention of consumers.
- 19.1.1 Prominence is viewed, in this regard, as being ‘the state of being easily seen’, i.e. in terms of a particular statement related to specific costs within any advertising and marketing material, ‘likely to attract attention, for instance, by virtue of its size or position’.

19.1.2 Prominence can be subjective – something that may appear clear to one consumer may not be to another. In deciding whether a particular statement of costs meets the rules on prominence, consideration should be given to the target audience, the nature of the product or business and the likely information needs of the ‘average consumer/recipient’.

**Explanatory Notes 20:**

20.1 The attention of Promoters of financial products is drawn to the fact that prior to engaging in any form of business, on behalf of any other financial institution in Mauritius, in the nature of soliciting consumers for the latter, all contractual arrangements and formalities have to be set in place. All the relevant costs that will be accrued pursuant to the contractual arrangements, must be disclosed clearly and transparently to the consumers, at the point of sale.

20.2 In this context, the consumers must not be led to believe that such services are being offered as free financial planning.

**Explanatory Notes 21:**

21.1 It is considered as good practice that Promoters of financial products make adequate space in the advertising and marketing materials for the disclosure of various types of risks affecting or impacting upon the financial products.

21.2 Whenever Promoters are constrained to do so, they must, subject to the different mediums of advertising and marketing used, follow the principle of guiding consumers to more detailed Terms and Conditions, legal or constitutive documents of the relevant financial products.

**2.3 Performance Information (Explanatory Notes 22 to 24)**

**Explanatory Notes 22:**

22.1 The disclosure of performance information in advertising and marketing materials should follow pace with what other international standard setters are adopting, for instance, in the investment and securities fields.

22.2 In this relation, the Promoters of financial products (including investment and insurance products) may consider information concerning the performance of the products, based on the annualised returns principles for a period of one, three and five years respectively.

- 22.3 For financial products which have been issued for a period shorter than twelve months (since the date of initial issue), the returns must not be presented in annualised terms, in the advertising and marketing materials.
- 22.4 Promoters are encouraged to disclose, as far as possible (i.e. depending on the selected medium of advertising and marketing) the individual year's performance returns or benefits in the advertising and marketing materials. The FSC shall nonetheless take a pragmatic view that some financial products may have very long tenure or duration and accordingly, the Promoters may not be in a genuine position to disclose fully and separately on the individual years' performance of the products.

**Explanatory Notes 23:**

- 23.1 Promoters of financial products must note that projected performance figures or information in advertising and marketing materials may be considered by the FSC, but actual figures and information should not be excluded.
- 23.2 In those circumstances, the Promoters have to ensure that the necessary care and efforts are devoted to disclose and explain to the consumers the basis and the extent to which the projected figures and information may be subject to market influences or any other relevant changes.
- 23.3 On the other hand, Promoters must ensure that consumers are aware that the use of any past or historical performance information in advertising and marketing materials does not guarantee future performance and shall, in this connection, make adequate disclosures to the consumers, before and at the point of sale of financial products.

**Explanatory Notes 24:**

- 24.1 The relationship between Promoters of financial products and other parties that are associated with the issue of Awards for performance achievements, may not be direct or publicly known in practice and can be interpreted as being conflicting.
- 24.2 For this reason, Promoters must make sure that the consumers are made aware if the Award giving party or body, is in any way (for example, through business relationships or other affinities) connected with the Promoters.

**2.4 Internet Advertisement (Explanatory Notes 25 to 27)**

**Explanatory Notes 25:**

- 25.1 For sake of clarity, 'where appropriate' mentioned at paragraph 2.4 (i) in the Guidelines refers to circumstances when the Promoters of financial products have to submit hard copies of advertising and marketing materials in accordance with any applicable laws, regulations or rules.

- 25.2 Whereas, in other instances, a Promoter may consider sending a hard copy of the advertising and marketing materials, in advance of the posting of the same on-line. If the Promoter wishes to submit soft copies of the advertising and marketing materials, they may do so provided that they follow-up and receive an acknowledgement from the FSC in respect of any submission made electronically.

**Explanatory Notes 26:**

- 26.1 Internet hyperlinks will not, in normal circumstances, amount to inducements. However, an example of where a hyperlink may amount to an inducement is where the hyperlink incites consumers to use the links to engage in investment, securities, insurance or other non-banking transactions. On the other hand, when a hyperlink is used as an information tool, this is not considered as inducement by the FSC.
- 26.2 Promoters of financial products are thus advised to apply necessary judgment and discernment, prior to submitting the most relevant internet hyperlinks' information to the FSC.
- 26.3 Submission of any hyperlinks by Promoters for acceptability purposes by the FSC shall be viewed and processed in the following manners:
- 26.3.1 If it is indeed a requirement of the laws, regulations or rules for the FSC to communicate back its vetting or approval.
- 26.3.2 The FSC will, in giving its vetting, ensure that a disclaimer is made and known to both the Promoters and the consumers, as to the fact that the FSC is not vouching for the financial soundness and accuracy of the contents of the advertising and marketing materials.
- 26.3.3 A Promoter has the responsibility to ensure that the contents of other hyperlinks that are posted on its website, as well as its own hyperlinks which are posted on other internet websites, are factually correct and up-to-date on an on-going basis. For instance, if an insurance company is advertising its insurance products on another public advertising website channel, it shall be primarily responsible for the contents thereof.

**Explanatory Notes 27:**

- 27.1 A list of potentially "bad Internet advertising and marketing practices" is provided below, for clarity and caution, to the Promoters of financial products in Mauritius. Such practices must be avoided, at all times, failing which the FSC may take remedial action, as appropriate.
- 27.2 These bad Internet-based advertisement practices may in fact arise when, for example -

- (i) Essential information is hidden by the close proximity of promotional images and/or additional text.
- (ii) Risk warnings are reduced in importance due to their location outside of the main advertisement border.
- (iii) Some statements are diminished through the use of small font sizes and unclear type styles.
- (iv) Important information is hidden within, or in some cases absent from, the respective internet landing page and only accessed through significant scrolling down and/or multiple page links.
- (v) Due to positioning, risk warnings can be easily overlooked, resulting in consumers being taken directly to an application form (e.g. by clicking on to a banner advertisement or accepting a cookie).
- (vi) Risk statements are contained within a 'pop-up' box that only appears on the consumer's initial visit to the Internet website.
- (vii) Key information/warnings, such as fees or exclusions, are obscured within the Internet website or placed under a separate section or heading, such as 'FAQs', 'Legal Information' or 'Disclaimers'.
- (viii) Promoters have not taken into account the different-sized browsers of consumers when positioning risk information (i.e. it is necessary to scroll down to access the information).
- (ix) Important information, statements or warnings are superimposed across coloured or patterned backgrounds which lessen their visual impact.

## **2.5 Non-Written and Direct Marketing (*includes Cold calls*)**

### **(Explanatory Notes 28 to 29)**

#### **Explanatory Notes 28:**

- 28.1 The principle of 'prior-consent' of consumers should be followed, in circumstances where the latter are being contacted by the Promoters of financial products, for the first-time.
- 28.2 Should a consumer not be freely willing to entertain the phone call or any call made by other electronic media devices, the Promoter should not exert undue pressure or influence on the consumer to engage in any further conversation, which could lead or cause to lead to the solicitation for the purchase of a financial product.
- 28.3 Promoters of financial products have to build data protection requirements into any telephone scripts where cold calling is being practised.
  - 28.3.1 Promoters must, in this respect, disclose their telephone numbers and if possible, their names, to the caller ID service of consumers. The same standard of disclosure should also apply when Promoters rely on other electronic media services or call centres, to effect cold calls.

28.3.2 If the Promoters of financial products are collecting names, addresses, telephone numbers and email addresses over the phone, consumers must be told why their data is being collected and for what purposes it is to be used.

This includes also asking the consumers if they intend receiving further marketing offers, which channels will be used for marketing onwards and whether they object to their details being transmitted to other parties.

#### **Explanatory Notes 29:**

29.1 The *telemarketing* aspect entailed in the promotion of financial products will be subject to specific treatment by the FSC depending on the nature of the products.

29.2 The following are set out accordingly, for some guidance and illustrative purposes.

29.2.1 Securities, Insurance, Credit Finance, Leasing and Mortgage products –

The FSC would not encourage Promoters or any other party to make unsolicited real-time marketing or promotional telephone calls to consumers, unless the latter have specifically requested the call or are existing customers who envisage receiving such unsolicited calls in relation to these products regulated by the FSC.

29.2.2 Life insurance products–

The only exception to the practice, as mentioned in paragraph 29.2.1, is for life insurance products.

29.3 Promoters of financial products otherwise have to invariably inform consumers that only limited information will be provided during the course of their solicited or unsolicited telemarketing calls, and that full information is available and will be made available to them, if they decide to proceed and/or conclude a contract.

## **2.6 Miscellaneous (Explanatory Notes 30 to 33)**

#### **Explanatory Notes 30:**

30.1 The type and amount of disclosure of tax related information in the advertising and marketing materials by Promoters will be dependent and guided by the following principles, in practice:

30.1.1 Promoters must inform consumers, at the point of sale, that it is their responsibility to seek additional and independent advice, in the light of their specific financial circumstances.

30.1.2 The intent and purpose for the disclosure of tax related information in advertising and marketing materials, depending on the medium of communication used, are to ensure again that there should be 'no hidden costs' of which the consumers must be made aware and also, target common taxation by virtue of the Income tax laws.

**Explanatory Notes 31:**

- 31.1 Cancellation rights typically refer to the rights of the consumers to cancel a contract for a financial product with the Promoters of such products.
- 31.2 It is important for Promoters to inform consumers of their specific rights and conditions under which they may redeem or cancel a contract for a financial product. For example, currently the consumers may, in practice, cancel a short-term insurance contract by giving approximately at least one-month notice in advance to an insurance company or vice-versa. Similarly, the time-frame for the cancellation of a longer-term insurance or endowment policy by the consumers is around 3 months, subject to certain conditions or fees, as stipulated in the relevant contract or product offered by the Promoters.

**Explanatory Notes 32:**

- 32.1 As regard the disclosure of information and facts about incidental features of financial products, there should be a fair, balanced and equitable exposure of this type of information and facts.
- 32.2 Incidental features, in this context, may include any occurrence or likely occurrence of an event in an unplanned or subordinate conjunction with the financial products being advertised and marketed by the Promoters. For example, a non-material change in the working principle underlying a financial product.

**Explanatory Notes 33:**

- 33.1 For illustration, a change or restructuring of financial products may be related to circumstances when investment funds are, for instance, undergoing mergers or conversions from their actual status or regime, and/or could also arise when some complex financial products are mixed or bundled with other products, in the financial markets.

## Chapter 3 of Guidelines –

### 3.1 Duties of the Promoter (Explanatory Notes 34 to 36)

#### **Explanatory Notes 34:**

34.1 Where appropriate, Promoters should seek professional advice before or with regard to the issue of advertising and marketing materials to consumers in Mauritius.

#### **Explanatory Notes 35:**

35.1 It is recommended that appropriate disclosures are made by Promoters to consumers in relation to their interests in a transaction or proposed transaction and fees or commissions, in a transparent manner, to consumers in Mauritius. This principle of disclosure is, as per the Guidelines, extended to transactions which may be carried out cross-borders, but engaging consumers who are based in Mauritius.

35.2 A typical scenario may involve an investor based in Mauritius, whereby:

35.2.1 He may decide to consider or enter in a contractual arrangement to invest or place his money in a non-banking financial product which is originated and traded abroad.

35.2.2 If the contractual arrangement has been solicited and effected through a Promoter which is also based in Mauritius, the onus is on the Promoter to disclose clearly and fairly to the consumer the details covered in paragraph 35.1, before the contractual arrangement is finalised.

35.2.3 The consumer must know the interest (in terms of partnership or shareholding relationships, for instance) which may exist between the Promoter in Mauritius and the overseas party for whom that Promoter is intermediating in the deal.

#### **Explanatory Notes 36:**

36.1 The issue of gifts or inducements will be considered by the FSC in connection with the duties of Promoters.

36.2 In the performance of their duties, Promoters shall not provide or cause to be provided unreasonable inducements or gifts to the consumers. Inducement may, in fact, include entertainment and soft commissions.

36.3 A list of objects and concepts that are being provided by some Promoters have been put forward to the FSC during the consultation process. These are reproduced below, as examples, for the users of the ENs.

- 36.3.1 Exclusive corporate gift items (e.g. leather folders, pens, smartphone and/or iPad accessories).
- 36.3.2 Fashion and personal accessories (e.g. leather wallet or watch)
- 36.3.3 Experiences (e.g. hotel stays, Spa treatment, golf and big game fishing trips)
- 36.3.4 Prize draws (e.g. to win an expensive car or travel)
- 36.4 Whilst acknowledging that the provision of gifts nowadays forms part of the culture of advertising and marketing by Promoters in various spheres of financial business activities, Promoters should nonetheless be very careful not to give gifts of value which may constitute a real or apparent attempt to influence the choices or decisions of the consumers.
- 36.5 The FSC will apply an objective test to determine whether or when an advertising gift or an inducement may be deemed to be allowable by taking into account a combination of criteria, including whether the gift or inducement:
- (i) is reasonable and proportionate;
  - (ii) is of a limited scale and nature (taking into account any other benefits offered); and/or
  - (iii) does not need to be exclusively relied upon by the Promoters in the future, in order to continue to service consumers.
- 36.6 The purpose of the test is to determine the level of inducement, i.e. whether the Promoters are persuading consumers to purchase financial products.
- 36.7 The FSC will not, for example, consider the following as inducement circumstances, where:
- (i) A trustee or nominee receives an offer document of some kind and asks the beneficial owner whether he intends to accept or decline it;
  - (ii) An expert or professional adviser enquires whether or not his client would be willing to sign an agreement; or
  - (iii) A person is asked to sign an agreement on terms which he has already accepted, or to give effect to something which he has already agreed to do.
- 36.8 A Promoter should take all reasonable steps to ensure that it, or any staff or representative acting on its behalf, does not offer, give, solicit or accept an inducement which may conflict, in a significant way and adversely, with the responsibilities and accountabilities that it owes in relation to fair treatment towards consumers.

36.9 Whenever, during the exercise of its functions, the FSC believe that a Promoter is failing to meet the above standards, it may initiate actions for change or redress in consultation with the Promoter.