

Financial Services (Investment and Fiduciary Services)

**FINANCIAL SERVICES (ADVERTISEMENTS)
REGULATIONS, 1991**

1989-47
Repealed
Subsidiary
1991/095

Regulations made under s.53.

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REGULATIONS, 1991**

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(LN. 1991/095)

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Citation.

1. These Regulations may be cited as the Financial Services (Advertisements) Regulations, 1991.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires—

“advertisement” includes every form of advertising, whether in a publication, brochure, handout, or letter-head, or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or videos or by way of sound broadcasting or television or by the distribution of recordings or by any electronic media or moving image material incorporated in any website or in any other manner, and “advertising” shall be construed accordingly;

“the Commission” means the Financial Services Commission established by section 3 of the Financial Services Commission Act 1989;

“controlled activity” has the meaning given in section 3(2)(c) of, and Schedule 3 to, the Act;

“financial services business” means any activity that constitutes investment business or a controlled activity, and “financial services” shall be construed accordingly;

“image advertisement” means an advertisement that does no more than—

- (a) promote public awareness of the licensee;
- (b) describe the services the licensee provides or the products it markets;
- (c) commend the licensee in general, but not any particular service it provides or product it markets; or
- (d) offer to supply further information on request;

“investment” has the meaning given in section 3(2)(a) of, and Schedule 1 to, the Act;

“investment advertisement” means any advertisement making a direct offer to persons to enter into an investment agreement or inviting

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persons to make an offer to enter into an investment agreement and which specifies the manner of response to the advertisement or includes a form in which any response is to be made;

“investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Schedule 2 or Schedule 3 to the Act;

“investment business” has the meaning given in section 3(2)(b) of, and Schedule 2 to, the Act;

“licensee” means a person licensed or authorised under the Financial Services Act 1989 or 1998, as the case may be, to carry on investment business or a controlled activity;

“the Act” means the Financial Services Act, 1989;

“promotion” means advertising, issuing a prospectus, application form or proposal form, or circulating or making available promotional material;

“prospectus” means any prospectus, notice, circular, or other document which is an offer to the public of any investment for subscription, purchase or exchange;

“short form advertisement” means an advertisement that contains the licensee’s name and in respect of financial services business does no more than some or all of–

- (a) display the licensee’s address, telephone number, symbol or logogram;
- (b) describe the licensee’s business and the fees charged;
- (c) contain a statement that the licensee is regulated in the conduct of financial services business by the Commission;
- (d) state, in relation to investments that the licensee will or may buy or sell (or arrange to buy or sell), their names, indicative prices, difference of prices from previous prices, their income and yields and their earnings (or price/earnings ratio);
- (e) state, simply as a matter of fact, and not so as to imply any offer to deal, that the licensee alone or with others named, arranged the issue of or a transaction in a particular investment.

(2) For the purpose of these Regulations an advertisement issued outside Gibraltar shall be treated as issued in Gibraltar if—

- (a) it is directed to persons in Gibraltar; or
- (b) it is made available to persons in Gibraltar otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside Gibraltar or in a sound or television broadcast transmitted principally for reception outside Gibraltar.

Restrictions on advertising.

3.(1) Subject to regulation 4, no person other than a licensee—

- (a) shall issue an investment advertisement or an advertisement for or in connection with financial services business in Gibraltar;
- (b) shall cause to be issued an investment advertisement or an advertisement for or in connection with financial services business in Gibraltar unless the contents of the advertisement have the prior approval of the licensee.

Exceptions from restrictions on advertising.

4. Regulation 3 does not apply to—

- (a) an advertisement issued or caused to be issued by, and relating only to investments issued by—
 - (i) the Government of Gibraltar or the government of any country or territory outside Gibraltar;
 - (ii) the central bank of any country or territory;
 - (iii) any international organisation the members of which include a member State; and
- (b) an advertisement which is issued or caused to be issued by a national of a member State in the course of investment business lawfully carried on by him in such a State and which conforms with regulation 5.

Advertisements to comply with Schedule.

5. A licensee shall not issue or cause to be issued, whether in Gibraltar or elsewhere, an investment advertisement, or an advertisement for or in connection with financial services business, unless the requirements of the Schedule to these Regulations are complied with in relation to that advertisement.

Advertisement directions.

6. (1) If the Commission considers that any investment advertisement or financial services advertisement issued, caused to be issued or proposed to be issued by a licensee is misleading, the Commission may by notice in writing give the licensee a direction under this regulation.

(2) A direction under this regulation may contain all or any of the following prohibitions or requirements—

- (a) a prohibition on the issue of advertisements of a specified kind;
- (b) a requirement that advertisements of a particular description shall be modified in a specified manner;
- (c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued or is proposed to be issued and which is identified in the direction;
- (d) a requirement to take all practical steps to withdraw from display in any place or from circulation any advertisement or any advertisements of a particular description specified in the direction.

Advertisements to be copied to the Commission.

7. A copy of every investment advertisement, and of every advertisement for or in connection with financial services, issued or caused to be issued by a licensee shall be forwarded forthwith by the licensee to the Commission.

Offences.

8. Any person who issues or causes to be issued in Gibraltar an advertisement the issue of which is prohibited by regulation 3, or which does not comply with regulation 5, commits an offence and is liable on summary conviction to a fine not exceeding £25,000:

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Provided that where, in the opinion of the Commissioner, the failure to comply with regulation 5 has not resulted and is not likely to result in misleading a person, he may, in his discretion, treat the failure in accordance with the provisions of the Financial Services (Penalty Fees) Regulations, 1993.

SCHEDULE

Regulation 5

Prominence of required statements.

1. The significance of any statement or other matter required by the provisions of this Schedule to be included in an advertisement shall not be disguised either through lack of prominence in relation to the remainder of the advertisement or by the inclusion of matter calculated to minimise the significance of the statement or the other matter required to be included.

Advertisements to be clear and not misleading.

2. (1) The content of an advertisement and the manner of its presentation shall be such that the advertisement is not likely to be misunderstood.

(1A) An advertisement shall contain sufficient information to enable an informed assessment of the investment to which it relates, to be made.

(2) An advertisement shall not contain any statement, promise or forecast unless the licensee issuing it has taken all reasonable steps to satisfy itself that each such statement, promise or forecast is not misleading in the form or context in which it appears.

(3) An advertisement shall not contain any statement purporting to be a statement of fact that the licensee issuing it does not reasonably believe at the time, on the basis of evidence of which it has a record in its possession, to be true.

(4) If the investment or financial service to which an advertisement relates is available in limited quantities, or for a limited period or on special terms for a limited period the advertisement may say so but, if that is not the case, the advertisement shall not contain any statement or matter that implies it is so.

(5) An advertisement that does not give any advice on investments shall contain a prominent statement that no advice on investments has been given and that if any person has any doubt about the suitability of the investment agreement which is the subject of the advertisement he should contact the licensee for advice on investments (or another appropriate licensee if the licensee who has issued the advertisement does not offer advice on investments).

(6) An advertisement that is issued or caused to be issued by a licensee who is not authorised to hold client money, the advertisement shall contain the name of the person to whom payment (if any) should be made.

(7) An advertisement shall contain details of the basis or the amount of any commission or remuneration which might be payable by the licensee who has issued the advertisement, to any other person.

Advertisements to be distinguished from other matter.

3. (1) The terms of an advertisement and the manner of its presentation shall be such that it appears to be an advertisement issued with the object of promoting the investment or financial service or licensee to which it relates.

(2) Where the medium in which the advertisement is carried contains or presents other matter the advertisement shall be distinguished from that other matter so that the part that is an advertisement clearly appears as such.

Advertisements to identify the investment or financial service to which they relate.

4. Except in the case of a short form advertisement or an image advertisement, the nature of the investment or the financial service to which the advertisement relates shall be clearly described.

Promotions to be genuine.

5. No advertisement shall be issued with the intention not of persuading persons who respond to the advertisement to pursue the subject matter of the advertisement but with the intention instead of persuading them to enter into an investment agreement, or use financial services, of a description not mentioned in the advertisement.

Advertisements not to imply governmental approval.

6. An advertisement shall not contain any matter that states or implies that the investment or the financial service which is the subject of the advertisement or any matter in the advertisement has the approval of any Government department or of the Commission.

Synopses to be fair.

7. An advertisement that states some only of the rights and obligations attaching to an investment or some only of the terms and conditions of an investment agreement shall—

- (a) state sufficient of them to give a fair view of the nature of the investment or of the investment agreement, of the financial commitment undertaken by an investor in acquiring the investment or in entering into the agreement and of the risks involved; and
- (b) state how a written statement of all of them can be obtained.

Comparison with other investments or services.

8. An advertisement shall not compare or contrast one investment with an alternative investment or one financial service with an alternative financial service unless the comparisons and contrasts are fair in relation to what is promoted and to the alternative having regard to what is not stated as well as to what is stated.

Taxation.

9.(1) An advertisement shall contain a summary of the taxation of any investment to which it relates and the taxation consequences for investors generally and a warning that the levels and bases of taxation can change.

(2) An advertisement that contains any matter based on an assumed rate of taxation shall state what that rate is.

(3) An advertisement that refers to reliefs from taxation—

- (a) shall state that the reliefs are those that currently apply and that they can change;
- (b) shall contain a statement that the value of a relief from taxation depends upon the circumstances of the tax payer; and
- (c) shall distinguish between the reliefs that applies directly to investors and to any other person.

(4) An advertisement that describes the investment to which it relates as being free from tax liability shall state that this describes the benefits when paid to the investor and shall state (if that be the case) with equal prominence that the income is payable out of a fund which has already paid income tax, company tax or capital gains tax (whichever is applicable).

Cancellation rights.

10. Where an advertisement states that an investor who enters into an investment agreement to which the advertisement relates will be given an opportunity to cancel the agreement, the advertisement shall define the period during which the investor will have that right and the time when the period will begin.

Past performance.

11. An advertisement shall not contain information about the past performance of investments of any description unless—

- (a) it is relevant to the performance of the investment the subject of the advertisement;
- (b) except where the source of the information is the advertiser itself, the source of the information is stated;
- (c) if the whole of the information is not set out—
 - (i) what is included is not unrepresentative, unfair or otherwise misleading; and
 - (ii) the exclusion of what is excluded does not have the effect of exaggerating the success of performance over the period to which the information that is included relates;
- (d) if the information is presented in the form of a graph or chart, no part of the information is omitted so as to give a misleading impression of the rate at which variable quantities have changed;
- (e) in the case of an advertisement of units or shares in a collective investment scheme or in a unit linked life policy, any comparison made between the value of an investment in those units or shares at different times is on an offer to bid basis, that is to say, on the basis of what it would have cost to acquire an amount of the units at the earlier time and what a disposal of that amount of those units would have realised at the later time, and the fact that that is the basis of the comparison is stated;
- (f) the period which is selected as illustrating past performance is a period of not less than 3 years which period must end no more than 3 months before the date of the issue of the advertisement; and

- (g) the advertisement contains a warning that the past is not necessarily a guide to the future.

Indications of the scale of business activities.

12. (1) An advertisement shall not contain any statement indicating the scale of the activities or the extent of the resources of a licensee, or of any group of which the licensee is a member, so as to imply that the resources available to support the performance of the licensee's obligations are greater than they are.

(2) Statements which relate to resources of members of a group other than the licensee shall clearly state that fact.

Risk warnings.

13. (1) This paragraph applies to any advertisement that is not a short form or image advertisement.

(2) An advertisement shall contain a statement (set out with due prominence and in print size no smaller than that used in the main text of the advertisement) in accordance with this paragraph warning of the risks involved in acquiring or holding the investment the subject of the advertisement.

(3) Where the advertisement relates to an investment in the case of which deductions for charges and expenses are not made uniformly throughout the life of the investment but are loaded disproportionately onto the early years, the advertisement shall draw attention to that fact and that accordingly, if the investor withdraws from the investment in the early years, he may not get back the amount he has invested.

(4) Where the advertisement relates to an investment that can fluctuate in value in money terms or which offers income distributions which may fluctuate, the statement shall draw attention to that fact in terms that are likely to be understood by the average investor to whom the advertisement is directed and to the fact that the investor may not get back the amount he has invested.

(5) Where the advertisement offers an investment as likely to yield a high income or as suitable for an investor particularly seeking income from his investment, the statement shall draw attention to the fact that income from the investment may fluctuate in value in money terms.

(6) Where the advertisement relates to an investment denominated in a currency other than that of the country in which the advertisement is issued, the advertisement shall draw attention to the fact that changes in rates of exchange between currencies may cause the value of the investment to diminish or to increase.

(7) Where the advertisement relates to a with profits life policy, that statement shall draw attention to the fact that the return on the investment depends on what profits are made and on what decisions are made by the life office as to their distribution.

(8) Where the advertisement contemplates the customer entering into a transaction the nature of which is such that the customer may not only lose what he pays at the outset but may incur a liability to pay unspecified additional amounts later, the statement shall draw attention to the fact that the investor may or, as the case may be, will have to pay more money later and that accordingly a transaction in that investment can lose the investor more than his first payment.

(9) Where the advertisement relates to an investment that is not readily realisable—

- (a) if the investment is not traded on an established investment exchange, the statement shall draw attention to the fact that there is no established market for the investment so that it may be difficult for the investor to sell the investment or for him to obtain reliable information about its value or the extent of the risks to which it is exposed; or
- (b) if the investment is traded on an established investment exchange but is dealt in so irregularly or infrequently—
 - (i) that it cannot be certain that a price of that investment will be quoted at all times; or
 - (ii) that it may be difficult to effect transactions at any price that may be quoted,

the statement shall draw attention to that fact.

(10) Where an advertisement relates to, or offers a facility for, income withdrawals in relation to a pension or annuity it shall clearly explain that—

- (a) taking withdrawals may erode the capital value of the fund, especially if investment returns are poor and a high level of

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income is taken; this could result in a lower income when the pension or annuity is eventually purchased;

- (b) the investment returns may be less than those shown in the illustrations;
- (c) the annuity rates may be at a worse level when annuity purchase eventually takes place; and
- (d) if the maximum withdrawals are to be taken, high income withdrawals may not be sustainable during the deferral period.

(11) Where an advertisement relating to a structured capital-at-risk product it shall include—

- (a) an explanation of the types of capital-at-risk products generally available and how they would typically work;
- (b) an explanation of the risks associated with investing in these capital-at-risk products;
- (c) details of the key issues that should be considered before investing in a capital-at-risk product; and
- (d) information about how to complain to the licensee and how complaints can subsequently be referred to the Consumer Protection Office or an ombudsman service (if any).

Guaranteed returns.

14 (1) An advertisement shall not describe a prospective investment return as guaranteed where none of the entities participating in the relevant arrangements is contractually bound to provide that return to investors.

(2) An investment arrangement may be advertised as being guaranteed only if there is a legally enforceable arrangement with a third party who undertakes to meet an investor's claim if the terms of commitment of the participating entities are not achieved.

Life policies.

15. (1) An advertisement relating to a life policy which gives particulars of any of the benefits payable under the policy shall state—

- (a) which of the benefits under the contract (if any) are of fixed amounts and what those amounts are, and
- (b) which of them (if any) are not of fixed amounts.

(2) Such advertisement may describe a benefit of a fixed amount or a minimum amount of a variable benefit as a 'guaranteed' amount but, if it does so and the advertisement refers to the participation of a third party and that third party will not stand as surety for the life office should the life office not meet its obligations, the advertisement shall not contain any matter which implies that the third party will so stand as surety.

(3) An advertisement relating to a life policy which is a branded fund, available as an investment only to the clients of a particular licensee shall include a statement that the licensee does not manage the investments in the life fund, if that is the case, together with the name and address of the fund manager.

Collective investment schemes.

15A.(1) An advertisement relating to an authorised or recognised collective investment scheme shall give an adequate explanation of the charging structure and shall make clear whether all or part of the scheme expenses will be taken out of capital or income and the likely long-term effect on capital or income.

(2) An advertisement relating to a collective investment scheme which is a branded fund, available as an investment only to the clients of a particular licensee shall include a statement that the licensee does not manage the investments in any of the funds of the scheme, if that is the case, together with the name and address of the fund manager.

Deals in investments.

15B. An advertisement relating to an execution-only dealing service shall in particular, if that be the case, contain a clear statement that the licensee's procedures are such that there may be a delay in the execution of customers' orders, including the reason for and the normal maximum extent of any such delay and, if that is the case, that such orders may on occasions be aggregated (in which case the statement shall also make clear that the effect of aggregation may work on some occasions to its disadvantage).

Broker funds, derivatives and warrants.

15C. An advertisement shall not relate to a broker fund, a derivative or a warrant unless the licensee itself has adequate evidence to suggest that the investment may be suitable for the person to whom the advertisement is directed.

Dating.

16. (1) Each advertisement in a publication other than a daily newspaper shall state in the bottom right hand corner of the advertisement the date on which it was first issued.

(2) Any advertisement by way of a prospectus, brochure, handout or similar marketing literature shall state the date on which it was first issued on either the front or back outside cover page.

(3) Any advertisement by way of a cinematograph film, video or TV broadcast shall bear the date on which it was first issued prominently at the beginning or end of the advertising material.

Identity of regulators.

17. (1) An advertisement issued or caused to be issued by a licensee shall state—

- (a) the name of the licensee, its registered address and its main line of business;
- (b) the places of business at which it is licensed to carry on financial services business; and
- (c) that it is regulated and authorised by the Financial Services Commission, Gibraltar to carry on the financial services business to which the advertisement relates.

(2) An advertisement issued or caused to be issued by a person to whom regulation 4(b) applies shall state that—

- (a) he is a national of that member State; and
- (b) he is authorised to carry on in that member State the financial services business to which the advertisement relates; and
- (c) the identity of the body responsible in that member State for regulating his business and, if that be the case, that he is a member of that body.