

GUIDELINES ON ADVERTISING FOR CAPITAL MARKET PRODUCTS AND RELATED SERVICES

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**GUIDELINES ON ADVERTISING FOR CAPITAL MARKET PRODUCTS
AND RELATED SERVICES**

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PART A: GENERAL

Chapter 1

INTRODUCTION

- 1.01 The *Guidelines of Advertising for Capital Market Products and Related Services* (Guidelines) are issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 Advertising and promotional activity forms an integral part of the developmental effort within the capital market. However, investors are especially susceptible to false or misleading information or deceptive conduct with regard to advertising and promotional activity as it is one of the direct channels for investors to obtain information about a capital market product or a capital market-related service.
- 1.03 Recognising the importance of advertising and promotional activity and the risks it may pose to the investors, these Guidelines seek to provide a general framework for advertising and promotional activity within the capital market to promote responsible advertising and promotion while allowing for greater flexibility in conducting such activity.

Chapter 2

APPLICABILITY

- 2.01 These Guidelines apply to all advertisers as defined in paragraph 4.01.
- 2.02 Guidance on the application of these Guidelines is provided in the appendices herein. Any departure from the Guidance will be taken into consideration in the SC's assessment on whether a breach of these Guidelines had occurred.
- 2.03 The SC may, upon application, grant an exemption from or a variation to the requirements of these Guidelines if the SC is satisfied that—
- (a) such variation is not contrary to the intended purpose of the relevant requirements in these Guidelines; or
 - (b) there are mitigating factors which justify the said exemption or variation.

Chapter 3

RELATED PROVISIONS

- 3.01 These Guidelines supersede and replace the following:
- (a) *Guidelines on Unit Trust Advertisements and Promotional Materials;*
 - (b) Paragraph 13.37C of the *Guidelines on Private Retirement Schemes;*
 - (c) Paragraphs 4.01 to 4.07, Division 3, Part IV of the *Prospectus Guidelines;* and
 - (d) Chapter 8 of the *Guidelines on Compliance Function for Fund Management Companies.*
- 3.02 Subject to paragraph 3.01, these Guidelines are in addition to and not in derogation of any requirements provided for under securities laws or any other guidelines issued by the SC.
- 3.03 For avoidance of doubt, compliance with these Guidelines do not relieve advertisers from other legal obligations which may be imposed on them by the relevant regulators or agencies.

Chapter 4

DEFINITIONS

4.01 Unless otherwise defined, all words used in these Guidelines shall have the meaning assigned to them in the CMSA. In these Guidelines, unless the context otherwise requires:

- advertisement means any dissemination of information, other than a disclosure document, that seeks to promote a capital market product or capital market-related service, through printed, electronic, digital or any other means, and include the following:
- (a) Magazines and newspapers;
 - (b) Broadcasts (e.g. radio, television and cinema);
 - (c) Display-only materials (e.g. outdoor advertising, including billboards, signs at public venues, posters, exhibition panels and transit advertising);
 - (d) The internet, including webpages, banner advertisements, video streaming platforms (e.g. YouTube), and social networking platforms (e.g. Facebook, LinkedIn) and microblogging platforms (e.g. Twitter);
 - (e) Social media and internet discussion sites;
 - (f) Mobile phone messages or messaging applications (e.g. SMS, MMS, text messages, WhatsApp messages);
 - (g) Product or service brochures and promotional fact sheets;
 - (h) Direct mail (e.g. by post, facsimile or email);
 - (i) Telemarketing activities and audio messages for telephone callers on hold; and
 - (j) Presentations, seminars and advertorials;
- advertiser means the following persons who issue or authorise an advertisement or a promotional activity, in respect of a capital market product or capital market-related service:
- (a) An issuer of a capital market product;
 - (b) A person carrying out regulated activity;

- (c) A person who provides a capital market service;
- (d) A person who operates or maintains a recognized market;
or
- (e) Any other person specified in these Guidelines as issuing or authorising an advertisement or a promotional activity for the purposes of these Guidelines;

capital market-related service includes the carrying out of any regulated activity, capital market service, and the operating and maintaining of a recognized market;

disclosure document means any document that is issued for the purpose of inviting investment in a capital market product and includes a prospectus, product highlight sheet and information memorandum;

endorsement means any advertising message in relation to a capital market product or capital market-related service that investors are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the advertiser;

investor means any person who—

- (a) invests or may invest in a capital market product; or
- (b) uses or may use a capital market-related service.

PART B: REQUIREMENTS FOR ADVERTISING AND PROMOTION

Chapter 5

GENERAL REQUIREMENTS

- 5.01 Chapter 5 sets out the general requirements for advertisers in relation to advertising and promotional activity for capital market products and capital market-related services.
- 5.02 The board of directors of an advertiser must ensure that the advertiser has in place effective policies and procedures to ensure compliance with these Guidelines.
- 5.03 Advertisers must ensure that the advertisement provides clear, fair and balanced information regarding the capital market product or capital market-related services (hereinafter referred to as product or service). Advertisements must not contain any advertising messaging that is likely to mislead an investor, such as exaggerated, flamboyant, overstated, or over-zealous messaging.
- 5.04 Advertisers must ensure that investors are treated fairly at all times. Advertisers must not in any way attempt to mislead, deceive or exploit an investor's vulnerability including his behavioural traits, lack of expertise, experience or knowledge.
- 5.05 Advertisers must ensure that their advertisement is fit for their investors. In preparing an advertisement, advertisers must have due regard to the vulnerable segment of the investors such as the elderly, and must ensure that the advertisement can be easily understood by the investors.
- 5.06 Advertisers must ensure that content of advertisements are consistent with–
- (a) the information contained in disclosure document; or
 - (b) the terms or conditions set out in any relevant agreement or contract provided to an investor in relation to the product or service.
- 5.07 Without prejudice to the other requirements set out in these Guidelines, advertisers must, so far as reasonably practicable, ensure that information in advertisements are current and accurate.
- 5.08 Advertisers must ensure advertisements are presented in a manner that allows the investors to immediately identify it as an advertisement.
- 5.09 Advertisers engaging a third-party provider to promote products or services must ensure the third-party provider adhere to these Guidelines.

- 5.10 Advertisers must ensure that any testimonial or endorsement included in an advertisement is by a person who has invested in the advertised product or has used the advertised service, and it must be accompanied with a statement stating whether such person is being compensated in any manner by the advertisers.
- 5.11 Advertisers may, if not prohibited by any other relevant laws or requirements that may be imposed by the SC or other relevant regulators, include forward looking or forecast statement in the advertisement provided it is both relevant and there is reasonable basis for its inclusion. Further, such statements must comply with any other relevant requirements that may be imposed by the SC or other relevant regulators.
- 5.12 Advertisers must take such measures as may be reasonable to inform investors that the advertisement, or the product or service that is advertised, is subject to any relevant warning, disclaimer, qualification or terms and conditions.
- 5.13 Advertisers, where relevant, must ensure advertisements direct investors to refer to the disclosure document or any relevant agreement or contract. In this regard, the advertisement must state where the disclosure document can be found or accessed and the issuance date of the disclosure document.
- 5.14 Advertisers must ensure the disclosure document or any relevant agreement or contract is readily available and easily accessible.
- 5.15 Advertisers must clearly state that the advertisement has not been reviewed by the SC.
- 5.16 Advertisers must not use the name or logo of the SC, or include any such information or presentation in an advertisement that may give the impression or imply that the SC recommends, endorses or is in any way associated with the product, service or the advertiser, or any of its promotional activity.
- 5.17 If a product or service is described in the advertisement as having been approved or otherwise authorised by the SC, or the disclosure document or any relevant agreement or contract is described in the advertisement as having been registered by, lodged with or otherwise submitted to the SC, the advertisement must also state that the SC's approval or authorisation, or the registration, lodgement or submission of the disclosure document or any relevant agreement or contract to the SC does not amount to nor indicate that the SC has recommended or endorsed the product or service.

GUIDANCE IN RELATION TO SPECIFIC COMPONENTS OF ADVERTISING

The Guidance provided herein serves to provide further clarification in complying with the requirements of these Guidelines with respect to certain aspects and components in an advertisement.

A. Returns, features, benefits and risks

A1. Advertisements should give a balanced message about the returns, features, benefits and risks associated with the product or service. Advertisements should not overstate the potential returns or benefits, or create unrealistic expectations by giving undue prominence to the benefits compared with the risks.

B. Fees, charges and costs

B1. Where a fee, charge or cost is referred to in an advertisement, it should–

- (a) give an accurate representation of the overall level of fees, charges or costs an investor is likely to pay;
- (b) indicate clearly and prominently if there is any exclusion, qualification or condition applicable;
- (c) be specific and unambiguous in the context of how the fee, charge or cost is referred to in the advertisement, for example, which product or service package it refers to; and
- (d) not give prominence to any aspect of the fee, charge or cost that may mislead investors into believing there is only one fee, charge or cost payable, or downplay any other fee, charge or cost associated with the product or service that will be incurred.

C. Comparisons

Comparisons between products or services

C1. When comparing products or services in an advertisement–

- (a) the products or services should have sufficiently similar features and context to make the comparison relevant and not misleading. The differences between products or services should be carefully assessed for its appropriateness and clearly disclosed;

- (b) the advertisement should not give prominence to any feature of the product or service that may mislead investors into downplaying other relevant features of the comparative product or service; and
- (c) any limitation or qualification of the comparison should be clearly disclosed in the advertisement, for example, if a comparison of the said product or service was made over a short period of time, that fact must be disclosed in the advertisement.

Comparison of benefits and returns

- C2. Any comparison of benefits and returns should be accurate and balanced, and have a reasonable basis.
- C3. The information used for any comparison or contrast of returns should be verified, and any relevant assumptions should be made readily available to the investors.

Rating and ranking

- C4. Advertisers should only include rankings from credible sources, whereas ratings may include credit ratings issued by credit rating agencies as well as ratings, recommendations and opinions produced by established research houses.
- C5. When ratings or rankings are used, the advertisement should–
 - (a) properly explain in the advertisement the meaning, the context (where relevant), the scale and the source of the ratings or rankings, or provide details where such information may be obtained by an investor;
 - (b) state that ratings or rankings provided should not be solely relied upon by an investor in an investment decision; and
 - (c) refer to the current ratings or rankings. If the ratings or rankings are likely to change, the advertiser should insert a qualifying statement stating so.

Awards

- C6. Where awards received by the advertisers are included in an advertisement for a product or service, the grantor of the award should be clearly identified and the award explained. An advertisement should make it clear whether the award is granted by someone related to the advertiser.

D. Past performance and forecasts

Past performance

- D1. An advertisement for a product or service with information about past performance should draw attention to the fact that the past performance is not indicative of future performance.
- D2. Any historical period used for comparison or relating to past performance should not be chosen solely to result in a favourable impression being given to the advertised product or service. For example, the historical period used should not be an odd period (e.g. 5 years and 2 months) for the sole purpose of capturing a positive period.
- D3. When comparing the past performance of a product or service against a benchmark,—
 - (a) the comparison should be relevant to the context of the product or service that is being advertised in; and
 - (b) the basis for making the comparison should be disclosed in the advertisement.

Forecast

- D4. When information about future performance or a forecast is used in an advertisement, the relevant assumptions should be made readily available to the investors.

E. Warning statements, disclaimers, qualifications or terms and conditions

- E1. When a warning, disclaimer, qualification or term and condition is included in an advertisement, advertisers must ensure that the warning, disclaimer, qualified statement or term and condition—
 - (a) is presented as closely as possible to the main message of the advertisement;
 - (b) is highlighted with sufficient prominence, which commensurate with the significance they carry in an investor's decision making process;
 - (c) can be easily understood by the investors; and
 - (d) draws investor's attention to the fact that they should—
 - (i) read and understand the contents of the disclosure document or any relevant agreement or contract before investing;

- (ii) understand the risks involved in relation to the product or service;
 - (iii) compare and consider the fees, charges and costs involved; and
 - (iv) make their own risk assessment and seek professional advice, where necessary.
- E2. Warning statements, disclaimers, qualifications or terms and conditions in relation to an advertisement should not be inconsistent with other contents in or related to the advertisement.

F. Photographs, diagrams, images and examples

- F1. Advertisers should not use photographs, diagrams, images, examples or other forms of illustration which–
- (a) contradict, detract from or reduce the prominence of qualifying statements; or
 - (b) are likely to misrepresent the nature or scale of the product or service, regardless of the inclusion of a disclaimer.
- F2. Examples should be accompanied by a clear explanation about the purpose for which they are included and the assumptions on which they are based. If an example is used to show an increase or upward change, an example showing a decrease or downward change should also be included (and vice versa).

G. Timeliness

- G1. Information contained in advertisements should be current. Investors should be informed of any material changes to the information in a timely manner through appropriate channels.

H. Use of certain terms and phrases

- H1. Advertisers should not use terms and phrases that:
- (a) may create expectations that cannot be met;
 - (b) imply certain features which do not exist; or
 - (c) make assertions that are not verified (e.g. the best, most popular).

I. Technical language and industry jargon

- I1. The use of technical language or industry jargons in the advertisement is discouraged. If the use of such language or jargons cannot be avoided, it should be accompanied by the appropriate explanation.

J. Target audience

- J1. Advertisements should not state or imply that a product or a service is suitable for a particular group of investors unless the advertiser has actually assessed the suitability of the product or service for the particular investors targeted by the advertisement.
- J2. Where the features or complexity of a product or service are such that it will only be appropriate for a limited group of investors, advertisers should do their best to ensure that the advertisement only targets that group and not a wider audience.

K. Complexity

- K1. The more complex a product (e.g. the structure of the product or the sector) or a service is, the more important it is for an advertisement to be clear and effective to avoid creating a misleading impression.
- K2. Advertisers should consider the appropriateness of using certain channels to advertise complex product or service. Advertising a complex product or service through a channel of limited nature like signs in public venues may be less appropriate to give balanced information about the product or service.

L. Terms of Promotion

- L1. If a promotional activity (e.g. limited period discounts) forms part of an advertising campaign, the material terms and conditions of such promotions should be clearly stated.
- L2. An advertisement notifying investors of a new promotion should clearly indicate the duration of the promotional period, and the material terms and conditions which apply to that particular promotion.

M. Use of names or logos of authorities and regulators

- M1. In complying with the requirement to inform investors that the advertisements are not reviewed by the SC, the advertiser may choose appropriate platforms to notify investors including on the advertiser's website or social media home pages.

GUIDANCE IN RELATION TO MEDIA PLATFORMS

A. Audio advertisements

- A1. Where warnings, disclaimers, qualifications or terms and conditions are included in audio advertisements, they should be read at a speed that is easy for an average listener to understand.
- A2. Telemarketing and messages on hold are also forms of advertising. Statements made over the telephone about a product or service are subject to the same regulation as advertisements in other media. Similarly, our guidance also applies to advertising through podcasts.

B. Film and video advertisements

- B1. The combination of images and sounds in film and video advertisements can make it particularly easy for investors to be distracted from important information regarding the product or service such as information about risks.
- B2. Where warnings, disclaimers, qualifications or terms and conditions are used in film and video advertisements, they should be prominent despite the distractions. An average viewer should easily understand any warnings, disclaimers, qualifications or terms and conditions on the first viewing of an advertisement.

C. Internet advertising

- C1. Internet advertising can take a variety of forms, including webpages, banner advertisements, video streaming (e.g. YouTube), social networking and microblogging (e.g. Twitter), and internet discussion sites.
- C2. Advertisers should, wherever appropriate, provide a facility for investors to access additional information (e.g. hyperlink). However, providing a facility for investors to access additional information cannot be used to correct a misleading overall impression in the advertisement.
- C3. Advertisers should carefully consider the appropriateness of using certain channels (e.g. Twitter) to deliver advertisements, where such channels may impose content limitations that may limit the provision of balanced information about a product or service to investors.

- C4. Some internet sites provide lengthy warnings, disclaimers, qualifications or terms and conditions that scroll quickly. Similar to the issues with radio and television, any information should be comprehensible to an average investor on the first viewing of the advertisement.

D. Outdoor advertising

- D1. Outdoor advertising includes media such as billboards, posters, signs in public venues and aerial displays. These media pose challenges in communicating an accurate and balanced message because the advertisements are often not able to be scrutinized closely by an investor, —for example, if viewed from a distance or from a moving vehicle.
- D2. Outdoor advertising may be better suited to promoting brand or product recognition, rather than conveying more complex information about a product or service.