

FREQUENTLY-ASKED-QUESTIONS
GUIDELINES ON ADVERTISING FOR CAPITAL MARKET PRODUCTS
AND RELATED SERVICES

4 May 2020

Introduction

1. Why was the Guidelines on Advertising for Capital Market Products and Related Services (Guidelines) introduced?

The Guidelines was introduced to accord greater flexibility to capital market product issuers and capital market service providers to promote their products and services through a medium that best suits their needs. Advertisers can now take advantage of social media, messaging applications, video streaming sites, to promote their products and services.

Under these new guidelines, there is no requirement for advertisers to submit their advertisement to the SC. However, they would be required to comply with minimum standards that seek to promote responsible advertising and promotion by advertisers.

Scope and application

2. To whom does the Guidelines apply to?

The Guidelines will apply to the following persons who advertise their products or services:

- An issuer of a capital market product (for example, a management company that advertises its funds, issuer of structured products, an issuer seeking to list capital market products such as shares, corporate bonds, real estate investment trust, exchange traded funds and structured warrants on the exchange);
- A person carrying out a regulated activity (for example, a licensed holder or registered person who advertises about the regulated activity that he carries out);
- A person who provides a capital market service that is specified under the CMSA (for example, a trustee who advertises its services); and
- A person who operates or maintains a recognised market (for example, a digital exchange operator who advertises about the market that it provides)

3. **When will the Guidelines come into effect?**

The Guidelines adopts a staggered approach in respect of its application. There are two different effective dates which are applicable to advertisers.

Advertisers who are the issuers of structured products, as well as those who are subjected to the following guidelines will be required to comply with the Guidelines upon its issuance:

- (a) *Guidelines on Unit Trust Advertisements and Promotional Materials;*
- (b) *Guidelines on Private Retirement Schemes;*
- (c) *Prospectus Guidelines; and*
- (d) *Guidelines on Compliance Function for Fund Management Companies*

This will include issuers and distributors of unit trust funds and private retirement schemes and issuers who are seeking to list capital market products such as shares, corporate bonds, real estate investment trust, exchange traded funds and structured warrants on the exchange

Other advertisers who are not subject to the above guidelines will need to comply with the Guidelines from 4 August 2020 onwards. However, early adoption of the Guidelines are encouraged.

4. **Under the Guidelines, I am required to comply with the Guidelines on the date it is issued. I have, however, prepared an advertisement prior to the issuance of the Guidelines and it comes out shortly after the Guidelines comes into force, and my advertisement does not comply fully with the new requirements imposed by the Guidelines. Will I be in breach of these Guidelines?**

The SC appreciates that non-compliance with the Guidelines in the above circumstance is not intentional and shall give that fact due consideration. Further, the Guidelines are intended to cover advertisements that are prepared post-issuance of the Guidelines.

However, for those advertisers who are required to comply with the Guidelines on the 4th of August, they have been given 3 months to familiarise itself with the requirements. If they still fail to ensure compliance with the Guidelines post the familiarisation period, then, in such circumstance, it is likely that the advertiser will be subjected to an appropriate action.

5. **Under the Guidelines, I am required to comply with the Guidelines on the date it is issued. However, I require more time to reassess the effectiveness of my internal policies and procedures to ensure compliance with these Guidelines. Will I be given some time to carry out the exercise?**

The SC is cognizant that some advertisers will require time to reassess their existing policies and procedures. As such, advertisers who are required to immediately comply with the Guidelines, will be given time to reassess their policies and procedures. It is however expected that any changes to the policies and procedures must be completed no later than 4th August 2020.

6. **Can advertisements be disseminated through any media or channels for example Twitter, LinkedIn, Instagram and Whatsapp?**

Yes. Advertisers can choose any medium which suits their needs and this includes using Twitter, LinkedIn, Instagram, Whatsapp, etc, so long as the advertisers comply with the Guidelines.

7. **Assuming a CMSL holder appoints an advertising agency to assist in the preparation of the advertisement, would the advertising agency be subject to the Guidelines?**

The advertising agency will not be directly subjected to the Guidelines. However, the Guidelines does impose a positive obligation on the CMSL holder to ensure that the advertising agency that it appoints will comply with the Guidelines. Thus, it would be in the interest of the CMSL holder to inform the advertising agency and ensure that the advertising agency understands and complies with the requirements provided in these Guidelines.

8. **Assuming a CMSL holder appoints a marketing representative (MR) to introduce clients to the CMSL holder and the marketing representative in doing so promotes the services provided by the CMSL holder, is the marketing representative subject to the Guidelines?**

Marketing representatives will not be directly subjected to the Guidelines. However, the Guidelines does impose a positive obligation on the CMSL holder to ensure that the MR complies with the Guidelines. Thus, it would be in the interest of the CMSL holder to inform the MR and ensure that the MR understands and complies with the requirements provided in these Guidelines.

9. **Are advertisements and promotional materials that are meant for sophisticated investors only subjected to the Guidelines?**

Yes, as the Guidelines imposes minimum standards with the view to promote responsible advertising and promotional activity. All investors including sophisticated investors are entitled to the benefits resulting from responsible advertising and promotional activity.

10. **Do advertisers need to refer to documents other than the Guidelines on Advertising for Capital Market Products and Related Services?**

The Guidelines provide minimum standards for all advertisers of capital market products and services. Advertisers should also refer to relevant guidelines in relation to specific advertising requirements and restrictions for certain products and services. For example, the Guidelines on Digital Assets states that an issuer must not engage any third party individual(s) or entity, other than an Initial Exchange Offering (IEO) operator, to endorse or represent the issuer with the intended purpose of marketing, promoting, gaining publicity or soliciting funds for its digital token offering. As such, the stricter requirement in the Guidelines on Digital Assets will apply in this case.

General Requirements

11. **The Guidelines requires that policies and procedures be put in place to ensure compliance with the Guidelines. What is expected for advertisers to include in its policies and procedures?**

Written internal policies and procedures should include, amongst other things:

- (a) internal approval and reporting process;
- (b) assessment criteria to ensure compliance with the Guidelines; and
- (c) record keeping

12. **What are some examples of advertisements that would not comply with these Guidelines?**

Example 1

A stockbroking company advertises itself as having the first algorithm-based digital platform in the region. However, in actual fact, the company does not have an algorithm-based platform but merely provides an online trading platform. In such circumstances, the advertisement will not be in compliance with the Guidelines as the stockbroking company's advertisement gives rise to false or misleading impression about its services.

Example 2

A management company advertises and labels its fund as a "green" fund when only 10% of its funds are invested in environmentally conscious stocks. This advertisement would not be in compliance with the Guidelines as it is misleading investors to believe that the fund is primarily invested in environmentally conscious companies.

Example 3

A private retirement scheme (PRS) provider is using gifts and prizes to promote its schemes. The advertisement showcases a luxury car to be won by investors. There is no indicator placed near the picture of the car to alert readers that the prize is subject to terms and conditions. Furthermore, the statement to alert readers to the terms and conditions applicable to the prize is printed in a relatively small font and in non-contrasting colours such that it is not easily seen by the readers. This advertisement would not be in compliance with the Guidelines as some investors may not be aware that the gift is subject to the terms and conditions.

Example 4

An Exchange Traded Fund (ETF) provider is promoting its funds by stating in its advertisement, *"Now is the best time to invest with the following ETFs as the economy is going south. Invest now before it's too late"*. This advertisement would not be in compliance with the Guidelines as it is using overzealous and flamboyant messaging which may attempt to exploit the vulnerability of investors, thus causing investors to not have due consideration to the risks involved in such investment.

Example 5

An Equity Crowdfunding (ECF) Platform Operator is promoting its services at an exhibition. The promotional materials distributed to visitors contain warnings and qualified statements which are written in small, unclear fonts, and include the use of technical industry jargons which cannot be easily understood by investors. This advertisement is not likely to would not be in compliance with the Guidelines. Advertisers must ensure that their advertisement is fit for investors by considering the wider demographics of potential investors who would be viewing the advertisements, for example, the elderly or investors who are new to equity crowdfunding and likely not to be familiar with certain technical terms.

Example 6

Ali is a unit trust consultant who has been engaging on a personal basis through Whatsapp and Telegram with his clients. He is currently promoting and advertising ABC Growth Fund (Fund) to his clients. The company managing ABC Growth Fund recently posted an advertisement on its website, which highlighted some updated changes to the Fund, including warnings and conditions of the Fund. Ali did not inform his investors of the updated warnings and conditions as he assumed his clients were aware of the updated information on the Fund's website. Given that Ali has had a one-to-one engagement with his clients, it is likely that his clients have become reliant on him to inform them of any changes that occur with regards to the Fund. Therefore, under such circumstances, it may be said Ali has not taken such measures as may be reasonable to inform his clients of the changes to the Fund by assuming that his clients would have updated themselves of the changes to the Fund by checking the Fund's website. However, if for example, Ali at the time had informed his clients to check the Fund's website, then it is likely he would not have acted contrary to the Guidelines as he had taken such measures as may be reasonable.

Example 7

A financial planner is promoting an event to encourage investors to use its services. He has distributed some promotional materials to the general public. The SC's logo has been inserted in the promotional material. The use of the SC's logo in advertisements or promotional materials would not be in compliance with the Guidelines as it would give rise to a misleading impression that the SC endorses or is associated with the event when it is not.

13. If an information on an advertisement is no longer current or accurate over a period time, should I amend the advertisement immediately to comply with the Guidelines?

Whilst we expect advertisements to include current and accurate information, we are also cognizant that ensuring information contained in advertisements are continuously current and accurate can be burdensome. This expectation should therefore be balanced with the overall need to ensure that advertisements fairly represent the product or its key features and risks, or the nature and scope of the service.

If the inaccuracy does not lead or result in an investor making poor investment decisions or in contravention with other requirements in the Guidelines, the advertisers may exercise judgement and take measures which are practical to remain in compliance with this requirement.

However, if the advertisement is placed, for example, on the advertiser's website and the advertiser is aware of the inaccurate information which does not lead or result in poor investment decisions, it is still expected for the advertiser to take steps to correct the inaccuracy. In these circumstances, it is reasonably practicable for the advertiser to do so.

14. Must advertisers include warning statements, conditions, or qualified statements in the advertisement?

The Guidelines does not prescribe that advertisements must include warning statements, conditions, or qualified statements. However, the Guidelines does require advertisements to provide clear, fair and balanced information in order not to mislead investors. Therefore, it would be better for the advertisement to inform investors of any relevant warnings, conditions, or qualified statements or where such warnings, conditions, or qualified statements can be read in full.

15. Does the Guidelines prohibit the use of past performances in an advertisement?

The Guidelines does not prohibit the use of past performances in an advertisement. However, advertisers who include past performances should draw the investors' attention to the fact that past performance is not a reliable indicator of future performance. An advertisement containing past performances can be misleading if it encourages investors to believe that the past performance of the product is a reliable indicator of its future performance.

Furthermore, 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.

16. I am licensed by the SC. Can I include a statement in my promotional material stating that I am licensed by the SC?

Yes, you may. However, you are required to state that the SC's license does not mean the SC endorses or recommends the service advertised.

Digital and internet advertising

17. Would an advertisement with a one-liner statement or a picture, accompanied by a hyperlink to say "click here for more information" be permissible under the Guidelines?

The Guidelines does not prescribe the method in which advertisements or promotional materials must be presented. Instead, it focuses on the factors that must be considered by the advertisers or the person responsible for the promotional material. Therefore, it is permissible for a one-liner advertisement or a picture to be used, including hyperlinks. However, before the advertiser does this, he must consider whether the method used is suitable for the message. For example, where the messaging is about bringing attention or making the public aware of an ongoing promotion as opposed to inviting the public to invest in a product or subscribe to a service (e.g. algorithm-based services), the use of the above method is more likely to be suitable.

18. The Guidelines require an advertisement to be presented in a manner that allows the investors to immediately identify it as an advertisement. Can the use of hashtags, for example, "#advertisement", satisfy this purpose?

The use of hashtags can satisfy the requirement for an advertiser to clearly identify a content as an advertisement, especially if the advertisement is in the form of sponsored content such as an article written to educate readers on a type of product or service.