



‘Ensuring Investor Protection’

## **APPENDIX A**

LIST OF PROVISIONS ON PLACEMENT OF  
ADVERTISEMENT IN THE SECURITIES  
INDUSTRY

**SECURITIES INDUSTRY ACT 2016 (ACT 929)**

<b>PROVISION</b>	<b>DETAILS</b>
144	<p><b>Advertisements and protection of consumers of financial services</b></p> <p>(1) A person, other than a person licensed, authorised or approved under this Act, shall not publish or cause to be published an advertisement in connection with the conduct of an activity or provision of a service which requires a licence, approval, authorisation or registration under this Act.</p> <p>(2) A person licensed, authorised or approved under this Act, shall not publish or cause to be published an advertisement in connection with the conduct of an activity or provision of a service which requires a licence, approval, authorisation or registration under this Act in a manner which is unclear, false or misleading in any material particular.</p> <p>(3) Where the Commission is satisfied that a person has contravened a provision of this section, the Commission may direct that person to immediately cease or modify the advertisement.</p> <p>(4) For the purposes of the performance of its functions under this Act, the Commission may develop and promote programmes and initiatives, where necessary in collaboration with financial institutions or bodies of the financial services industry, to inform and educate consumers or potential consumers of financial products and financial services.</p> <p>(5) A consumer of a financial product or of a financial service regulated by the Commission who is aggrieved by an act or omission of a licensee may make a complaint in writing to the Commission.</p>
149	<p><b>False or misleading statements</b></p> <p>A person shall not make a statement or disseminate information that is false or misleading in a material particular, that is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities.</p>
150	<p><b>Fraudulently inducing persons to deal in securities</b></p> <p>(1) A person shall not induce or attempt to induce any other person to deal in securities</p> <ul style="list-style-type: none"><li>(a) by making or publishing a statement, promise or forecast that that person knows to be misleading, false or deceptive; or</li><li>(b) by a dishonest concealment of material facts;</li><li>(c) by the reckless making or publishing, dishonestly or otherwise, of a statement, promise or forecast that is misleading, false or deceptive; or</li><li>(d) by recording or storing in, or by means of any mechanical, electronic or any other device, information which that person knows to be false or misleading in a material particular.</li></ul>

	<p>(2) It is a defence to a prosecution for an offence under subsection (1) (d) to establish that, at the time when the defendant recorded or stored information the defendant had no reasonable grounds for expecting that the information would be available to any other person.</p>
151	<p><b>Dissemination of information about illegal transactions</b></p> <p>A person shall not circulate or disseminate or authorise or be concerned in the circulation or dissemination of a statement or information to the effect that, the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of a transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate that is related to that body corporate, in contravention of a provision of section 147 to section 153 where</p> <p>(a) that person, or a person associated with that person, has entered into that transaction or done an act or thing; or</p> <p>(b) that person has received, or expects to receive directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of the statement or information.</p>
152	<p><b>Employment of manipulative and deceptive devices</b></p> <p>A person shall not directly or indirectly in connection with the purchase or sale of securities</p> <p>(a) employ a device, scheme or artifice to defraud;</p> <p>(b) engage in an act, practice or course of business which operates or would operate as fraud or deceit on any other person; or</p> <p>(c) make an untrue statement of a material fact or omit to state a material fact necessary with the result that the statements made in the light of the circumstances under which they were made, appear truthful.</p>

**SEC REGULATIONS 2003 (LI 1728)  
PART VII ADVERTISING**

**REGULATION DETAILS**

39 to 44

**Applicability**

39. (1) The regulations of this Part shall apply to advertisements issued or disseminated to the public offering the services of a dealer or investment adviser or offering to sell or purchase securities to or from the public.

(2) The regulations of this Part shall apply to every form of advertisement whether it is by way of publication or by display of notices or by means of circulars or other documents or by an exhibition of photographs or films, videos, discs or by way of sound broadcasting, television or website computer screens or in any other manner.

(3) For the purpose of this Part the term “advertisement” includes any public notice or announcement including the publication of research findings.

**General principles**

40. (1) An advertisement shall be based on principles of good faith and fair presentation and shall not in any way mislead or deceive prospective investors.

(2) An advertisement shall adhere to the highest standards of accuracy.

(3) An advertisement shall be couched in clear language easily understood by the public at large.

(4) An advertisement shall describe clearly and unambiguously the nature of the investment or the service offered.

(5) An advertisement shall state sufficient relevant information in order that an adequate description of the investment or services offered is conveyed to the recipient.

(6) Statements of opinion in an advertisement shall be attributable to an identified person and reasonable steps shall be taken to ensure that the person expressing the statement at the date of the publication currently holds the opinion.

(7) Where applicable, statements of facts shall be clearly distinguished from statements of opinion.

(8) Forecasts or projections of future performance shall,  
(a) be attributable to an identified source that takes responsibility

for the forecast or projection and has consented to the publication of the forecast or projection with the identity and qualifications of the source published along with the advertisement in bold print;

(b) not be misleading in form or content.

(c) state the key assumptions for the forecasts or projections; and

(d) contain a statement to the effect that the forecasts or projections are based on assumptions which are subject to risks or uncertainties that may cause actual occurrences to differ materially from the forecasts or projections.

(9) Any comparison made between alternative investments shall be fair, reasonable, accurate and compatible and shall not omit factors that are likely to be relevant to an appreciation of the comparison or contrast. The participation and involvement of any government, governmental authority or public regulatory authority responsible for regulating the subject in connection with which the advertisement is being issued shall,

(a) if stated, be stated in a factual manner;

(b) not in any way imply to investors either directly or indirectly that the regulatory authority has taken responsibility for the financial soundness of the issuer; or

(c) that the regulatory authority recommends or endorses the investment or that the regulatory authority assumes responsibility for truth and accuracy of any statements and opinions contained in the advertisement unless,

(i) the government, governmental authority or public regulatory authority has in writing sanctioned the use of its name in the context referred to above; and

(ii) the investment or service, which is the subject matter of the advertisement, is being offered by or on behalf of the government, governmental authority or public regulatory authority.

(11) Performance figures quoted, referred to or reproduced in any advertisement shall

(a) be attributable to an identified source with the identity and qualifications of the source disclosed prominently in the advertisement;

(b) if pertaining to a period of less than 12 months have the most recent figures of 12 months duration for comparison purposes unless the information is unavailable due to the advertiser or if the person for and on whose behalf the advertisement is issued has been in operation for less than 12 months; and

(c) be actual and not hypothetical or simulated.

(12) Graphs, tables and other diagrams used in an advertisement shall be to scale and presented without distortion.

(13) If any reference is made to taxation in an advertisement it shall

include,

- (a) a statement confirming that the tax relief referred to is currently available and that the value of the relief will depend on the individual circumstance of the investor where the reference is based upon an assumed rate of taxation;
  - (b) a statement clarifying whether the tax relief or exemptions referred to in the advertisement apply directly to the investor, to the provider of the investment or to the fund in which the investor participates or to more than one of them;
  - (c) a statement clarifying whether the references to taxation are only relevant to a particular class or classes of investors with particular tax liabilities and identifying the class or classes and liabilities involved;
  - (d) a statement position where tax is deducted at source or borne by an issuer of securities or provider of services or a third person;
- (14) An advertisement to be disseminated to the public shall be signed
- (a) by the individual issuing it in the case of natural person; or
  - (b) by a director, executive officer or secretary in the case of a body of persons.

### **Prohibitions**

41. (1) A person shall not
- (a) issue or publish an advertisement offering an investment in securities or a service to persuade or induce any person who responds to the advertisement to transact business of a kind not described in the advertisement;
  - (b) claim or suggest that the person or any person associated with the person can give advice, make recommendations or exercise discretion unless the claim or suggestion can be justified;
  - (c) disguise the significance of a statement, warning or other matter required by these Regulations or any other law to be included in an advertisement either through a relative lack of prominence or by the inclusion of any matter likely to detract from it;
  - (d) include any statement in an advertisement indicating the scale of activities or the extent of the resources of the advertiser which implies directly or indirectly that the resource available to support performance or its obligations are greater than they are; or
  - (e) claim or imply limited availability of investments or services in any advertisement unless the claim or implication can be justified.
- (2) An advertisement shall not carry a quotation from a testimonial or commendation unless the quotation is
- (a) a complete or a fair representation of the whole testimonial or commendation;
  - (b) accurate and not misleading at the time when the advertisement is issued;

- (c) relevant to the investment or service offered; and
- (d) attributable to an identifiable person who has consented in writing to the testimonial or commendation being used in the advertisement.

(3) An advertisement shall not describe an investment as guaranteed unless there is a legally enforceable arrangement with a third person who undertakes to meet an investors' claim in full under the guarantee.

(4) An advertisement shall not give an investor the impression either directly or indirectly that capital, income or profit is guaranteed from the investment.

(5) An advertisement shall not give an investor an impression that the investment will always increase in value.

#### **Cautionary statements**

42. (1) An advertisement shall contain a clearly displayed or audible statement which

- (a) makes it plain that the advertisement contains promotional material and has a promotional purpose;
- (b) advises investors in the case of an offer to sell or purchase securities to read and understand the contents of the prospectus issued in connection with the offer or cautions the investor to seek appropriate expert advice and assistance in reading and understanding the contents of the offer; and
- (c) display the price and fees or charges involved in subscribing to an investment or service.

#### **Content of advertisement**

43. (1) There shall be included in each advertisement,

- (a) a statement to the effect that returns may not materialise as expected if the investment offered is one that may fluctuate in value where reference is made to returns on investment;
- (b) a statement that performance cannot be taken as a guaranteed indication of future performance where reference is made to the past performance of an issuer;
- (c) a statement cautioning that income from the investment may fluctuate in value in real terms where reference is made to any income from an investment or if an investment is described as suitable for an investor seeking income from an investment;
- (d) a statement cautioning the investor that changes in the rate of exchange may cause the value of the investment to appreciate or depreciate in the case of an investment involving exposure to a foreign currency;
- (e) a statement cautioning the investor that there is no recognised market for the investment and that it may therefore be difficult

for the investor to deal in or obtain information readily about the value of the investment or the extent of the risks to which the investment is exposed in the case of an investment which is not readily realisable;

(f) a statement that deductions for charges and expenses are not made uniformly throughout the life of the investment but are loaded disproportionately on the early years if this is the case;

(g) a statement cautioning the investor that the investor may not only lose an original investment but may also be subject to more financial liability on the investment stating the quantum of the liability if it can be quantified; and

(h) a statement disclosing the nature of an interest or relationship if in relation to the investment or services that are the subject of the advertisement the advertiser has directly or indirectly a material interest or a relationship of any description with a third person which may involve a conflict of interest except an interest arising from a relationship of agency.

- (2) Sufficient prominence shall be given in an advertisement to
- (a) the conditions and qualifications to which the application for subscription and the subscription itself is subject; and
  - (b) the risks associated with the particular investment.

**Penalty**

44. Any person who contravenes any of the provisions of the regulations of this Part is liable for any or all of the following penalties,

- (a) intervention;
- (b) the payment of a penalty of €1m;
- (c) revocation, suspension or such restriction on a licence as the Commission may impose.



**CONDUCT OF BUSINESS GUIDELINE**  
**PART SIX: THE OPERATION OF THE BUSINESS**  
**REGULATION DETAILS**

29

Advertisements

(1) This Guideline applies where:

- (a) a market operator issues an advertisement on its own behalf, on behalf of a client or other third party; or
- (b) an advertisement is issued by a third party on behalf of a market operator.

(2) Any advertisement issued by a market operator or on its behalf shall include the name and address of the market operator and a statement that the market operator is regulated by the Commission.

(3) A market operator shall determine and document:

- (a) which officers have authority to approve advertisements issued by the market operator; and
- (b) procedures to be followed to ensure compliance with this Guideline.

(4) A market operator shall ensure that any advertisement subject to this Guideline is

- (a) reasonable and fair,
- (b) clear and comprehensive and capable of being readily understood by the persons who might reasonably be expected to see it;
- (c) contains accurate information that can be sustained on the basis of objective evidence; and
- (d) provides sufficient information to describe fairly the nature of the products, services, securities or investment opportunity being offered.

(5) A market operator shall not publish or cause or permit to be published any advertisement that

- (a) hides, diminishes or obscures important statements, warnings or factors that may materially affect the understanding of any claims or comparisons of alternative investments, products or services;
- (b) contains an opinion or endorsement of a person unless that opinion or endorsement is fairly represented, is attributed to that person and reasonable steps have been taken to ensure that the person holds the opinion stated;
- (c) makes a prediction or forecast of future performance of an investment product, service or opportunity unless the:
  - (i) prediction or forecast can be justified by reference to objective data;
  - (ii) prediction or forecast is attributed to an identified source that takes responsibility for the prediction or forecast;

(iii) advertisement provides appropriate warnings that forecasts and predictions

are not guaranteed; and

(iv) makes prediction or forecast misleading.

(d) provides an indication of the benefits of an investment product, service or opportunity without also giving a clear, truthful and fair indication of the

corresponding costs (including fees and charges) and risks, in a reasonably

prominent manner;

(e) promotes an investment product, security or investment opportunity in which the market operator has a direct or indirect interest, unless the nature of that interest is disclosed;

(f) refers to the past performance of an investment product, service or opportunity, unless:

(i) it is supported by objective data over a period that is not misleading; and

(ii) it includes a warning about the risks of relying on past performance as a guide to future performance;

(g) contains a reference to the tax benefits of an investment product, service or opportunity, unless it also states with reasonable prominence that tax advice should be taken by any person wishing to rely on such tax benefits;

(h) refers to a forthcoming offer of securities unless it also states where the full prospectus relating to that offer can be found and includes a warning that the full prospectus should be read;

(i) guarantees the performance of any investment product or security or other investment opportunity unless:

(i) there is a legally enforceable arrangement backed by a third party;

(ii) the third party has stated in writing that it has the capacity and is willing to meet the terms of the guarantee; and

(iii) the third party is able to demonstrate its capacity to guarantee the product and is able to demonstrate that capacity.

(6) Any reference to a government authority whose approval is required for a particular product, service, security or investment opportunity shall not state or imply that the authority has responsibility for the performance of the subject of the advertisement, or is being recommended or endorsed in any way, unless that authority gives written consent to a statement to that effect and the way in which it is made.

(7) The Commission may direct a market operator to submit to the Commission, copies of any advertisements it has issued, or which have been issued on its behalf. The Commission may direct a market operator to seek

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the approval of the Commission for any advertisement where the Commission considers that this is necessary to protect investors.

- (8) The Commission may issue a directive to a market operator which:
- (a) specifies the basis on which past performance may be calculated when used in advertisements;
  - (b) requires a market operator to submit any advertisement to it for approval prior to it being issued;
  - (c) directs a market operator to withdraw an advertisement on the grounds that it does not comply with the requirements of the Guidelines.
- (9) Where a market operator becomes aware that an advertisement it has issued does not or no longer complies with the Guidelines, it shall withdraw that advertisement and take reasonable steps to inform those who may still be relying on that advertisement.

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