



**FIMM's GUIDANCE NOTES ON THE SECURITIES
COMMISSION MALAYSIA'S GUIDELINES ON
ADVERTISING FOR CAPITAL MARKET PRODUCTS AND
RELATED SERVICES**

Issued: 7 February 2022

INTRODUCTION

Background

- 1.1 The Securities Commission Malaysia's (SC) Guidelines on Advertising for Capital Market Products and Related Services (SC's Advertising Guidelines) applies to capital market product issuers, recognised market operators, persons carrying out regulated activities and capital market service providers which include distributors of Unit Trust Scheme (UTS) and Private Retirement Scheme (PRS) (Distributors).
- 1.2 FIMM developed these Guidance Notes specifically for the UTS and PRS industry considering the potential for greater retail participation in this space.

Scope and Application

- 1.3 These Guidance Notes is issued pursuant to Rule 2.2.2(y) of FIMM's Consolidated Rules.
- 1.4 It is intended to serve as a guide to Distributors in relation to best practice for selected provisions of the SC's Advertising Guidelines; hence, adherence to these Guidance is strongly encouraged.
- 1.5 In the event of any inconsistency or conflict between these Guidance Notes and the SC's Advertising Guidelines or any other rules issued by the SC (collectively "the SC's Rules), the SC's Rules will take precedence.
- 1.6 These Guidance Notes does not replace any legislation or regulations and guidelines issued by any relevant authorities in Malaysia.
- 1.7 These Guidance Notes does not have the force of law and should not be interpreted in a way that would override the provisions of any law, regulations or guidelines issued by the relevant authorities. Distributors are recommended to seek legal advice where necessary.
- 1.8 Distributors should be judicious in using these Guidance Notes and the use of these Guidance Notes alone will not reduce your liability or responsibilities to investors. Distributors' paramount duty is to undertake responsible advertising and promotional activities to ensure that advertisements provide clear, fair and balanced information that are not misleading to investors.
- 1.9 These Guidance Note is applicable to all FIMM's Distributors that carry out advertising and promotional activities as specified in the SC's Guidelines on Advertising for Capital Market Products and Related Services.

Definitions

- 1.10 Unless otherwise defined, all words used in these Guidance Notes shall have the meaning assigned to them in SC's Advertising Guidelines and the Capital Markets and Services Act 2007 (CMSA).

GUIDANCE 1:

EXAGGERATED, FLAMBOYANT, OVERSTATED, OR OVER-ZEALOUS MESSAGING IN ADVERTISEMENTS

For compliance with paragraph 5.03 of the SC's Advertising Guidelines

- 2.1 Advertisements for products and services should provide clear, fair, and balanced message about their features, benefits and associated risks with the product/service.
- 2.2 Advertisements should not contain statements that are exaggerated, flamboyant, overstates or overzealous that are likely to mislead investors.
- 2.3 It may be difficult to distinguish between statements that are "exaggerated, flamboyant, overstated or overzealous messaging" as statements may contain two or more of these elements.
- 2.4 Advertisers should consider an advertisement as a whole to ensure that the advertisement does not create unrealistic expectations by giving undue prominence to the benefits compared with the risks.
- 2.5 Table A below provides a non-exhaustive list of samples that illustrates the types of statements that should be avoided in advertisements.

Table A: Sample statements

A. Statements that are exaggerated or flamboyant
<p>A1. Sample statement(s) "Our Fund is the best performing fund in Malaysia" "Invest with us, the best performing fund manager in Asia"</p> <p>A2. Rationale</p> <ul style="list-style-type: none">• This statement should be avoided unless Distributors can justify the fund's ranking via an independent third-party within a reasonable validity period for the recognition such as one (1) year (if the award is announced on a yearly basis) at most after the announcement date of the awards.• Statement of opinion regarding fund's performance should be reasonable and factual.• Statement of opinion regarding UTS or PRS or a management company should be reasonable and, where possible, verifiable.• Any testimonial quoted or referred to in an advertisement and/or promotional material should be relevant, factual and attributable to an independent source. The source and date of testimonial quoted or referred to should also be disclosed.
B. Statements that downplay investment risks
<p>B1. Sample statement(s) "Your returns are guaranteed"</p>

“Invest with zero risk!”

B2. Rationale

- An advertisement or promotional material should not give an investor the impression that his capital is secured or his income/profit is guaranteed or that a particular rate of return is certain, unless appropriate. It should also not imply that an investor could profit without risk.
- Hence, it is recommended to avoid statements that materially overstates the safety of investing in UTS and PRS.
- Words such as “secure”, “guaranteed”, “safe”, “risk-free”, “warranty” and “promise” “zero risk”, “no risk” should not be used in an advertisement and/or promotional material, unless the inclusion has a reasonable basis.
- Words such as “save” or “savings” should be avoided as the investment product is different from savings product.

C. Overzealous messaging that overstates the investment’s ability to reap returns

C1. Sample statement(s)

“Your investment will grow from strength to strength”

“Greater wealth awaits you”

“You too can be rich with one simple step”

“High-flying returns awaits you”

C2. Rationale

- “Get rich quick” statements are best avoided as they contain definitive or unreasonably promising language regarding the fund’s ability to provide returns whilst ignoring the inherent risks involved.
- Further, these statements may be misleading as they tend to give an average investor the impression that his investment will always increase in value with certainty.
- The advertisement should not give the impression to the investor that the investment is providing high returns within a short period of time or that their investment returns are guaranteed.

D. Overzealous messaging that is designed to create a sense of urgency among investors

D1. Sample statement(s)

“Invest now before it is too late”

“Buy now before it’s too late”

“Hurry, offer period ends on...”

D2. Rationale

- Distributors should avoid statements that suggest a sense of urgency or emergency.

- Investors should not be pressured into investing within a certain time frame or by a certain time, as this may impede their ability to conduct their own research and due diligence into the investment product.
- “This is the best time to invest”, “This chance will not happen that often”, “This golden opportunity to invest now only happen once in your lifetime”, “Those who had invested in the past crisis have made good returns and you should invest now” – these should be avoided as they also suggest a sense of urgency.

GUIDANCE 2:

USE OF TESTIMONIALS OR ENDORSEMENTS

For compliance with paragraph 5.10 of the SC’s Advertising Guidelines

General recommendations that are applicable for all types of testimonials or endorsements

- 3.1 Advertisers may use testimonials or endorsements in their advertisements provided that such testimonials or endorsements were obtained from a person that has invested in the advertised product or has used the advertised service. The testimonials or endorsements must be accompanied with a statement stating whether such person is being compensated in any manner by the advertisers.
- 3.2 Considering that testimonials or endorsements can influence public opinion, advertisers must ensure such testimonials or statements are factual, truthful, and only contain reasonably held and informed opinions about the product or service being advertised.

Specific recommendations for use of testimonials or endorsements from public figures, celebrities, or other well-known identities

- 3.3 In addition to the requirements in paragraphs 3.1 and 3.2 above, advertisers need to take greater care with public figures, celebrities, or other well-known identities as their testimonials or endorsements can be seen as a stamp of approval and are more likely to be accepted on its face value by investors.
- 3.4 As such, in respect of testimonials or endorsements from public figures, celebrities, or other well-known identities, the advertiser:
 - (a) may consider establishing a more stringent approval process for obtaining endorsements from public figures, celebrities, or other well-known identities. This can be achieved by:
 - (i) requiring an approval from a higher-ranking personnel within the advertiser’s organisation; or
 - (ii) differentiating the criteria for approval.

- (b) may consider imposing a minimum exclusivity period on public figures, celebrities, or other well-known identities to manage possible conflict of interest arising from endorsements for funds managed by different Distributors, as well as to avoid confusion among the public.

GUIDANCE 3:

FORWARD LOOKING OR FORECAST STATEMENTS

For compliance with paragraph 5.11 of the SC's Advertising Guidelines

- 4.1 Advertisers may include forward looking or forecast statements in their advertisements provided that these statements adhere to the following key principles:
 - (a) Information about future performance should only be used in advertising where it is relevant and there are reasonable grounds to provide the information. If a person makes a representation about any future matter for an investment product but does not have any reasonable grounds for making the representation, the representation is taken to be misleading;
 - (b) It should be clear and legible from any advertisement that forecasts about future performance may not occur. As such, the advertisement must include appropriate warnings that the projected returns might not occur;
 - (c) Any statement that indirectly relates to the future performance of a fund must allow for uncertainty in the market and must not be made in certain terms;
 - (d) The advertisement must explain the basis and assumptions for the forecast; and
 - (e) Assumptions used when making forward looking/forecast statements should be based on market research and not on improbable market conditions.

GUIDANCE 4:

WARNING STATEMENTS, DISCLAIMERS, QUALIFICATIONS OR TERMS AND CONDITIONS

For compliance with paragraph 5.12 of the SC's Advertising Guidelines

- 5.1 The use of relevant warning statements, disclaimers, qualification or terms and conditions is important to create an advertisement that provides clear, fair and balanced information to investors.
- 5.2 In the event where it may not be possible to include all possible warning statements, disclaimers, qualification or terms and conditions, advertisers are recommended to:

- (a) Consider the context of the advertised product/service and include key warning, disclaimer, qualification or terms and conditions that are relevant for investors to make an informed assessment about the product or service; and
- (b) Include a statement to advise investors to refer to relevant offering documents, websites, consultants etc. to view the full set of warning statements, disclaimers, qualification or terms and conditions.

5.3 **Illustration A** provides an example on how the recommendations in paragraph 5.2 (a) and (b) are applied.

Illustration A: Selecting the appropriate warning, disclaimer, qualification or terms and conditions

Company ABC would like to advertise its newest aggressive equity fund. However, due to the internet advertisement's limited space, Company ABC has to select one out of the two possible disclaimers:

- 1) "The Fund is suitable for investors who have a high-risk tolerance level and may not be suitable for those who have a low to medium risk appetite."
- 2) "The price of units and distributions payable, if any, may go down as well as up."

After considering the context of the aggressive equity fund, Company ABC chose to include the first disclaimer, as this is crucial for investors to make an informed assessment on whether they should purchase units from the fund.

In addition, Company ABC included a statement advising investors to refer to its website to view the full set of warning statements, disclaimers, qualification or terms and conditions.

5.4 To ensure that warning statements, disclaimers, qualification or terms and conditions are conveyed effectively, advertisers must consider the following:

- (a) Warning statements, disclaimers, qualification or terms and conditions must be explained in simple language and readily understood by the public at large;
- (b) Warning statements, disclaimers, qualification or terms and conditions must be clearly displayed in a font size, colour and formatting that can be read with reasonable ease by anyone scanning the advertisement; and
- (c) For media advertisements (e.g. television, cinema, video and radio) the warning statements, disclaimers, qualification or terms and conditions should be read out in a clear manner and at a speed that is easy for an average listener to understand.

GUIDANCE 5:

TARGET AUDIENCE

For compliance with paragraph J2 (Appendix I) of the SC's Advertising Guidelines

- 6.1 For products or services that are only 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.
- 6.2 These advertisements should not contain messages that state or imply that a product or service is suitable for a general class of investors.
- 6.3 As such, advertisers are recommended to include a disclaimer to emphasise the advertisement's intended target.
- 6.4 To ensure that this disclaimer is conveyed effectively, advertisers are recommended to observe the following minimum requirements:
- (a) For products or services that are appropriate for a limited group only, the disclaimer should clearly specify who is the intended group for the advertised product e.g. "for distributors only", "for sophisticated investors only" or "for institutional investors only"; and
 - (b) The disclaimer should further direct the reader/audience to a website, branch location or hotline if they require further clarification on the product or service.

Application of the disclaimer on target audience

- 6.5 As a minimum requirement, Distributors are advised to provide a disclaimer for High-Risk products. In determining which products are considered as High-Risk, Distributors are to be guided by their respective internal classification of risk profiles for their product offerings.
- 6.6 However, Distributors are encouraged to provide such disclaimers for all of their products for better clarity.
- 6.7 Additionally, advertisers may consider adopting the sample disclaimer listed in **Table B** below in their advertisements:

Table B: Draft disclaimer on target audience

This product(s)/service(s) *[please delete where relevant]* advertised in this promotional material is intended for the offer or sale to the following types of customers:
[insert customer type(s) here]

For further details/clarification *[please delete where relevant]*, please visit us at *[insert website link/office branch address]* / contact us at *[insert phone number]*.

GUIDANCE 6:

INTERNET ADVERTISEMENTS

For compliance with paragraph C3 (Appendix II) of the SC's Advertising Guidelines

- 7.1 Online advertising can be an effective method to communicate with investors as advertisers can incorporate more engaging and interactive forms of media. When utilising internet advertisement, advertisers should consider the following:
- (a) Certain internet advertising channels may have limitations that cause insufficient space to provide a balanced information; and
 - (b) The limitation that various devices (i.e., mobile phone, tablet, laptop and desktop) may have due to their memories or capabilities etc. that may result in different level/extent of display.
- 7.2 Advertisers, who use internet advertisement, should on a best effort basis explain the key features of the products and services offered in their advertisement.
- 7.3 In the event that the channel for internet advertising could not adequately cover the relevant features of the products and services, the advertisement should make available means for investors to access additional information (e.g., by 'clicking through' to another webpage) or by providing a hotline number to call or a list of branch offices for further consultation.

Legibility of advertisements

- 7.4 Advertiser must ensure that statements and wording in the internet advertisement are legible in the context of:
- (a) Font size used:
 - (i) advertisements should use font size of at least 10-point Times New Roman or any other standard font type that is visually equivalent to that font size.
 - (b) Format and layout of the advertisement:
 - (i) Key information should have sufficient prominence to effectively convey their message to an investor upon first viewing of the advertisement; and
 - (ii) The font colour and background colour should have sufficient contrast or colour differentiation to enable investors to read with reasonable ease.