



Name & Address

12 June 2007

Review of Advertising Issues

Dear Name,

The Financial Regulator actively monitors the media for advertisements of financial services and products as the advertising of financial services and products is subject to certain codes and requirements. In addition the Financial Regulator considers issues referred to us from a number of sources including consumer complaints. As you are aware, the advertising provisions in Chapter 7 of the Consumer Protection Code ('the Code') will be fully implemented from 1 July 2007. In an effort to ensure that advertisements are compliant with the Code from that date, we would like to make the following observations with regard to advertising. We hope that this will be of future assistance to you in developing and ensuring your firm's compliance.

- **Terms such as "free"** – The Code states under its general requirements on advertising that a "*regulated entity must ensure that all its advertisements are fair and not misleading*" (Chapter 7, General Requirement 1). Therefore, care should be taken when using such terms which have a widely accepted meaning. The Financial Regulator considers that an unqualified description of a service as "free" is misleading in instances where only certain fees are disappplied (for example, bank accounts where transaction and maintenance fees are not applied but other charges may apply). As another example, a service should not be advertised as "free" if charges apply where certain criteria, such as maintenance of a minimum balance, annual turnover or minimum number of transactions, have not been met.
- **Size of small print/rushed disclosures** – The Code states under its general principles that a regulated entity must make "*full disclosure of all relevant material, including all charges, in a way that seeks to inform the customer*" (Chapter 1, General Principle 6). In the context of advertising, information should therefore be given clearly. The Financial Regulator has received complaints regarding the legibility of small print, which calls into question whether a regulated entity is genuinely seeking to inform the customer. The Code also requires that, where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible. As a rule of thumb, the size of the print should be directly proportionate to the importance of the information being conveyed. A similar observation can be made regarding rushed disclosures in radio advertising.
- **Breaches of omission** – A significant portion of non-compliant advertising relates to incorrect, or absent, required information, such as disclosure statements, warning notices and use of interest rates other than APR in respect of loans. Firms should ensure that all relevant prescribed information is included in advertisements and have in place procedures to ensure compliance in this important area.
- **Use of illustrative maximum benefits/promised rates of return or interest rates** – The Code states under



its general requirements on advertising that a “*regulated entity must ensure that all its advertisements are fair and not misleading*” (Chapter 7, General Requirement 1). The Financial Regulator is concerned that such illustrations may be misleading in instances where only a very small percentage of consumers will be able to avail of the maximum benefit. This may be the case even where qualified by the use of phrases such as “*up to*”. Each firm should satisfy itself that a significant number of customers could avail of the maximum benefit. It should also be clear, and not in small print, how the benefit arises.

- **Misleading names of products** – The Code states in Chapter 2 – Common Rules For All Regulated Entities - that, “*A regulated entity must ensure that the name of a product or service which it provides is not misleading in terms of the benefits that the product or service can deliver*” (General Requirement 1). Therefore entities should ensure that where a product name implies a benefit, for example in relation to geographic range, expected growth rate or level of fees and charges, this benefit is delivered to customers.
- **Intermediary appointments** – The Code states in the general requirements for advertising that, “*A regulated entity must ensure that all its advertisements are fair and not misleading*” (Chapter 7, General Requirement 1) and that “*Any statement or promise contained in an advertisement must be true and not misleading at the time it is made*” (Chapter 7, General Requirement 9). In view of this, the Financial Regulator considers it misleading where claims in respect of the number of appointments held by an intermediary are exaggerated. [Consider the following example - an intermediary claims to have appointments from a number of institutions, whereas in fact it has a letter of appointment from another intermediary, which, in turn, has letters of appointment from the institutions in question.]
- **Advertising of rates that are not available** – The Code states in the general requirements for advertising that, “*A regulated entity must ensure that all its advertisements are fair and not misleading*” (Chapter 7, General Requirement 1) and that “*Any statement or promise contained in an advertisement must be true and not misleading at the time it is made*” (Chapter 7, General Requirement 9). All entities should review advertising material on an ongoing basis to ensure that this information continues to be accurate. This is particularly important in relation to advertisements, which have been booked to run for extended periods, in the aftermath of interest rate fluctuations.
- **Prescribed warning notices** – The Code states in the common rules for all regulated entities that “*A regulated entity must ensure that all warnings required by this Code are prominent, i.e. they must be in a box, in bold type and of a font size that is larger than the normal font size used throughout the document or advertisement*” (Chapter 2, General Requirement 6). With this in mind, the Financial Regulator considers it insufficient to have warning notices included in the small print of advertisements.
- **Comparison with competitors** – The Code states under its general principles that a regulated entity must “*act honestly, fairly and professionally in the best interests of its customers and the integrity of the market*” (Chapter 1, General Principle 1). With this in mind the Financial Regulator asks that all regulated entities use factual information and bear in mind the integrity of the market when making comparisons with competitors.
- **Regulatory disclosures clarification** – The Code requires that the regulatory disclosure for all firms is “*Full legal name of regulated entity (and trading name if applicable) is regulated by the Financial Regulator*”. It is not necessary to include this disclosure in relation to sponsorship arrangements; however, where a specific product or service is being endorsed the disclosure must always be used.



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By highlighting the above issues, the Financial Regulator seeks to promote and encourage compliance with respect to advertising. We hope that you find this information useful as you review your firm's advertising material. It is important that you consider your advertising in the context of the general principles and rules set out in the Code to ensure that all advertisements are clear, fair and not misleading.

If you have any queries on the above, please contact my colleague, Ms. Katie Philpott of this department at katie.philpott@financialregulator.ie.

Yours sincerely

Bernard Sheridan
Head of Consumer Protection Codes