

FAIS Advertising Disclosure Requirements

1 Introduction

As an authorised Financial Services Provider, the broker must comply with the prescribed provisions pertaining to advertising where applicable. These requirements specify the type of information that must be provided as part of any advertisement.

2 What constitutes an advertisement for purposes of FAIS?

The FAIS Act does not contain a definition of “advertisement”, but the General Code of Conduct for Authorised Financial Services Providers and Representatives, issued in terms of FAIS, defines an “advertisement” as:-

*“.....in relation to a provider, means any written, printed, electronic or oral communication (including a communication by means of a public radio service), which is directed to the general public, or any section thereof, or to any client on request, by any such person, **which is intended merely to call attention to the marketing or promotion of financial services offered by such person and which does not purport to provide detailed information regarding any such financial services;** and “advertising” or “advertises” has a corresponding meaning”.*

The concept “advertisements” therefore includes media advertising, press releases, billboards, sales and promotional materials as well as electronic advertising via the Internet, website or e-mail, which pertains to the marketing or promotion of financial services.

Only advertisements that “*call attention to the marketing or promotion of financial services*”, as opposed to “*financial products*” need to comply with the provisions pertaining to advertisements contained in the Act and the Code. However, if the advertisement relates to the rendering of financial services in respect of financial products, Section 14 of the General Code has application.

3 Information to be disclosed in advertisements

3.1 Section 8(8) (b) of FAIS provides that a licensee must ensure that “a reference to the fact that such a licence is held is contained in all business documentation, advertisements and other promotional material”.

3.2 All advertisements and/or promotional material published or distributed by or on behalf of the Financial Services Provider, must therefore contain the words “**Authorised Financial Services Provider**”.

3.3 Section 14(1) of the General Code for Authorised Financial Services Providers and Representatives stipulates that:

“14. (1) *An advertisement by any provider must—*

(a) *not contain any statement, promise or forecast which is fraudulent, untrue or misleading;*

(b) ***if it contains—***

(i) ***performance data*** *(including awards and rankings), include references to their source and date;*

(ii) ***illustrations, forecasts or hypothetical data—***

(aa) *contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;*

- (bb) *make it clear that they are not guaranteed and are provided for illustrative purposes only; and*
- (cc) *also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;*
- (iii) **a warning statement** *about risks involved in buying or selling a financial product, prominently render or display such statement; and*
- (iv) **information about past performances**, *also contain a warning that past performances are not necessarily indicative of future performances; and*
- (c) **if the investment value of a financial product mentioned in the advertisement is not guaranteed**, *contain a warning that no guarantees are provided.*

(2) Where a provider advertises a financial service by telephone—

- (a) **an electronic, voice-logged record of all communications must be maintained.** *Where no financial service is rendered as a result of the advertisement, such record need not be maintained for a period exceeding 45 days;*
- (b) *a copy of all such records must be provided on request by the client or the registrar within seven days of the request;*
- (c) *all the information required by sections 4 (1) (a) and (c) and 5 (a) and (c) shall not be required: Provided that the client is provided with basic details (such as business name and telephone number or address) of the provider or relevant product supplier, and of their relevant compliance departments: Provided further that, if the promotion results in the rendering of a financial service, the full details*

required by those sections are provided to the client in writing within 30 days of the relevant interaction with the client.

(3) Where a provider advertises a financial service by means of a public radio service, the advertisement must include the business name of the provider.”

4 Marketing sign-off sheet and checklist

4.1 The **Marketing Sign-Off sheet and Checklist** attached hereto should be completed by the Key Individual prior to publication/distribution.

Marketing sign-off Sheet and Checklist

1. Nature of Marketing/Promotional material

Advertisement	Insert Tick ✓
Print (including leaflets)	
Television	
Radio	

Correspondence	Insert Tick ✓
Letter / Email addressed to Client	

Internet and Intranet	Insert Tick ✓
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2. Brief description of Marketing/Promotional material and intended Publication/Distribution

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1.	Does the marketing/promotional material pertain to the rendering of financial services?		
2.	Is the marketing/promotional material going to be published or distributed?		
	If "Yes", does it contain the words "Authorised Financial Services Provider"?		
3.	Does the marketing/promotional material contain any reference to a specific financial product?		
	If "Yes", then answer 3.1 to 3.4 below:		
	3.1		Does it contain performance data pertaining to such financial product?
			If "Yes", does it include reference to the source and date of the performance data?
	3.2		Does it contain illustrations, forecasts or hypothetical data concerning such financial product?
			If "Yes", does it include support in the form of clearly stated basic assumptions (inclusive but not limited to assumptions in respect of performance, returns, costs and charges), with a reasonable prospect of being met under current circumstances, or does it make clear that the illustrations and forecasts are not guaranteed and does it clearly spell out the dependencies upon which returns or benefits are based?
	3.3		Does it contain a warning about risks involved in buying and selling financial products?
If so, is it prominently displayed?			
3.4	Does it contain information about past performance?		
	If so, does it contain a warning to the effect that past performance is not necessarily indicative of future performance?		
4.	Is the marketing/promotional material going to be broadcasted on a public radio service?		
	If "Yes", does it include the business name of the provider?		