

**CODE OF PRACTICE - FINANCIAL
ADVERTISING**

SECURITIES COMMISSION

Wellington

29 March 1983

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CODE OF PRACTICE - FINANCIAL ADVERTISING

INTRODUCTION

The principles and rules relating to financial advertising are contained in two main statutes - the Credit Contracts Act 1981 and the Securities Act 1978, and also in the Securities Regulations 1983. Advertisers/agencies/media should be conversant with the general principles behind all advertising of a financial nature, which are:-

- (i) The basic tenets of truth and clarity should apply in all financial advertising.
- (ii) No advertisement should contain any information, sound, image or other matter that is likely to deceive, mislead, or confuse a person reading, viewing or listening to the advertisement.

In addition to these general principles the following apply in respect of:-

(a) Credit Contracts Act 1981

The Credit Contracts Act 1981 sets out other criteria which must be met when an advertisement notifies or implies to the public the availability of credit.

- (a) If such an advertisement states a rate of interest or charges then the finance rate (i.e. the total cost of credit expressed as an annual rate) must be clearly stated and given equal prominence.
- (b) Where an advertisement contains reference to a deposit then the cash price for those goods must also be stated in the advertisement.

It is important to ensure that the prospective purchaser of goods is not misled and is aware of the true cost of the finance being advanced where those goods are being purchased pursuant to a credit arrangement.

(b) Securities Act 1978

The same general principles apply in respect of advertisements containing or referring to public offerings of securities. Fundamental to the Securities Act 1978 is that advertisements should not contain any information, sound, image or other matter that is :-

- (a) likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities contained or referred to in the advertisement; or

- (b) is inconsistent with the registered prospectus referred to in the advertisement.

There are a number of specific prohibitions and constraints which are contained in the Securities Regulations (Regs. 8 to 23) with which all concerned in financial advertising and the media should be familiar.

NOTE: Under the Securities Regulations unless an advertisement is confined to certain basic matters set forth in Reg. 17(3), two directors of the company/organisation offering the security or advertising a prospectus must sign a Director's Certificate on the prescribed form which certifies:-

- (a) That the directors have read/seen/listened to the advertisement, and
- (b) that the advertisement complies with the provisions of the Securities Act 1978 and the Securities Regulations 1983, and
- (c) that the advertisement does not contain any matter that:-

- (i) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities

and if a registered prospectus is being advertised or referred to in an advertisement, that advertisement

- (ii) is not inconsistent with the registered prospectus.

(The required form of directors' certificate is set out on page 5 as an appendix.)

It is recommended that:-

- (a) Advertising agencies preparing financial advertisements, which come within the provisions of the Act, ensure that following the preparation of the advertisement, it is sighted by at least two directors of the client company, and, where necessary, a director's certificate authorising the advertisement is signed.
- (b) That the media with whom the advertisement is placed, whether it be placed by an advertising agency or not, take all reasonable steps to ensure that a director's certificate authorising the advertisement has been signed. If possible a copy of the certificate should be sighted or the

advertisement authenticated in such a way as to leave no doubt that it has been authorised by at least two directors of the company offering the security/prospectus.

Against the background of these basic principles this Code has been adopted.

CODE

1. Illustrations or pictorial techniques are as much part of the advertisement as the copy and are subject to the same rules.
2. An adequate description of the security offered should be featured in all advertisements inviting investment.
3. There should be no suggestion in any financial offer that there is an elimination of risk. (Regulation 20* specifically prohibits the use of the words "safe" or "free of risk".)
4. No security offered should be claimed as "the only" adequate security.
5. The words "guarantee", "guaranteed", "secured", and "security" should not be supported by adjectives unless those adjectives are necessary to identify the security. For example, the term "absolute security" is unacceptable whereas the term "first mortgage security" is acceptable.
6. Where a guarantee is referred to in an advertisement, the name of the guarantor must be stated and, unless the Crown is the guarantor, the advertisement must describe the nature and amount of the guarantee and the nature and amount of any security for the guarantee (Regulation 11).
7. Advertisements which state or imply that any security is authorised for investment by trustees must comply with Regulation 19.
8. Interest rates should always be shown on a per annum basis.
9. The use of the word "net" or "gross" is unacceptable in association with a rate of interest. If any qualification is required to a rate of interest it should be either "free of charges" or "less administrative charges". Where administration charges are deductible, the advertisement should carry the phrase "less administrative charges" adjacent to the interest rate quoted.

* Regulations referred to in the Code are the Securities Regulations 1983

10. Where an advertisement features a maximum interest rate in such terms as "up to 12½%" the advertisement should also include a scale of other fixed interest rates and terms included in the same offer unless it is impracticable to do so.
11. Regulation 21 requires that an advertisement which shows an interest rate must also state any minimum amount which must be invested and any minimum time the securities must be held to earn that rate.
12. In a lending advertisement the term of the loan which qualifies for the advertised interest rate should be featured immediately after the first reference to the rate of interest in a similar type size.
13. Advertisements should not refer to unnamed professionals or experts.
14. Great care should be exercised in the use of well-known but unqualified personalities as presenters to avoid their giving the appearance of endorsing particular investments.

The intention of this clause is to ensure that such persons are used merely to draw attention to the offer.

(If the person making the recommendation is an expert, then s.38A of the Securities Act requires him to give his consent, in writing, to the inclusion of his recommendation and the advertisement must contain a description of his qualifications and, if he is employed by the company, the advertisement must also state that fact.)

15. Great care should be exercised with respect to the word "bank" to ensure that the public is not misled.

FORM OF DIRECTORS CERTIFICATE FOR
ADVERTISEMENTS

I/WE HEREBY CERTIFY THAT -

- (a) I have read*/seen*/listened to* the advertisement described in the Schedule to this certificate:
- (b) The advertisement complies with the Securities Act 1978 and the Securities Regulations 1983:
- (c) The advertisement does not contain any matter that -
 - (i) Is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities; or
 - (ii) Is inconsistent with the registered prospectus referred to in the advertisement.*

Director/Authorised Signatory*

Date of signing:

Director/Authorised Signatory*

Date of signing:

SCHEDULE

Describe (sufficiently to identify it) the advertisement to which the certificate relates.

* Delete if inapplicable