

SECTION 78-THE SECURITIES (ADVERTISEMENTS) RULES

Statutory Instrument
166 of 1993
13 of 1994

1. These Rules may be cited as the Securities (Advertisements) Rules. Title

2. (1) In these Rules, unless the context otherwise requires- Interpretation

"advertisement" includes every form of advertising, whether in a publication, brochure, handout, or letter-head, or by the display of notices, or by means of circulars or other documents, or by an exhibition of photographs or cinematograph films or videos, or by way of sound broadcasting or television, or by the distribution of recordings or in any other manner, but shall not include dealers' circulars to customers, nor any communications between licensees or between licensees and issuers of securities;

"image advertisement" means an advertisement that does no more than-

- (a) promote public awareness of the licensee;
- (b) describe the services the licensee provides or the types of investment the licensee markets;
- (c) commend the licensee in general, but not any particular service the licensee provides or types of investment the licensee markets; or
- (d) offer to supply further information on request;

"securities advertisement" means any advertisement for or in connection with securities or securities business;

"licensee" means a person licensed under Part IV of the Act;

"promotion" means advertising, issuing a prospectus, application form or proposal form, or circulating or making available promotional material;

"prospectus" means any prospectus, notice, circular, or other document which is an offer to the public of any securities for subscription, purchase or exchange;

"Securities" has the meaning given in section two of the Act, and includes investments in collective investment schemes;

"securities business" means dealing in, or advising in relation to, securities;

"short form advertisement" means advertisement that contains the licensee's name and in respect of the business of the licensee's securities business does no more than some or all of the following:

- (a) display the licensee's address, telephone number, symbol or logogram;
- (b) describe the licensee's business and the fees charged;

(c) contain a statement that the licensee is regulated in the conduct of the licensee's business by the Commission;

(d) state, in relation to securities that the licensee will or may buy or sell (or arrange to buy or sell), their names, indicative prices, difference of prices from previous prices, their income and yields and their earnings (or price/earnings ratio);

(e) state, simply as a matter of fact, and not so as to imply any offer to deal, that the licensee alone or with others named, arranged the issue of or a transaction in a particular security.

(2) For the purposes of these Rules, an advertisement issued outside Zambia shall be treated as issued in Zambia if-

(a) it is directed to persons in Zambia; or

(b) it is made available to persons in Zambia as a newspaper, journal, magazine or [illegible word] published and circulating principally outside Zambia or in a sound or television broadcast transmitted principally for reception outside Zambia.

3. Subject to rule four, no person other than a licensee shall issue or cause to be issued a securities advertisement in Zambia.

Restrictions on advertising

4. Rule three does not apply to an advertisement issued or caused to be issued by, and relating only to securities issued by-

Exceptions from restrictions on advertising

(a) the Government of Zambia or the government of any country or territory outside Zambia; or

(b) the central bank of any country or territory.

5. A licensee shall not issue or cause to be issued, whether in Zambia or elsewhere, a securities advertisement unless the requirements of the Schedule to these Rules are complied with in relation to that advertisement.

Advertisements to comply with Schedule

6. (1) If the Commission considers that any securities advertisement issued, caused to be issued or proposed to be issued by a licensee is misleading or is otherwise in breach of these Rules, the Commission may by notice in writing give the licensee a direction under this rule.

Advertisement directions

(2) A direction under this rule may contain all or any of the following prohibitions or requirements-

(a) a prohibition on the issue of advertisements of a specified kind;

(b) a requirement that advertisements of a particular description shall be modified in a specified manner;

(c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued or is proposed to be issued and which is identified in the direction;

(d) a requirement to take all practical steps to withdraw from display in any place or from circulation any advertisement or any advertisements of a particular description specified in the direction;

(e) a requirement, in respect of a particular advertisement, that a correction be published in the manner and form specified by the Commission.

7. A copy of every securities advertisement issued or caused to be issued by a licensee shall be forwarded forthwith by the licensee to the Commission. Advertisements to be copied to the Commission

8. Any person who issues or causes to be issued in Zambia a securities advertisement the issue of which is prohibited by rule three, or which does not comply with rule five or with a direction under rule six, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand penalty units.

(As amended by Act No. 13 of 1994) Offences

SCHEDULE

(Rule 5)

1. The significance of any statement or other matter required by the provisions of this Schedule to be included in an advertisement shall not be disguised either through lack of prominence in relation to the remainder of the advertisement or by the inclusion of matter calculated to minimise the significance of the statement or the other matter required to be included.

Prominence of required statements

2. (1) The content of a securities advertisement and the manner of its presentation shall be such that the advertisement is not likely to be misunderstood.

Advertisements to be clear and not misleading

(2) A securities advertisement shall not contain any statement, promise or forecast unless the licensee issuing it has taken all reasonable steps to ensure that each such statement, promise or forecast is not misleading in the form or context in which it appears.

(3) A securities advertisement shall not contain any statement, purporting to be a statement of fact that the licensee issuing it does not reasonably believe at the time, on the basis of evidence of which he has a record in his possession, to be true.

(4) If the securities or securities business to which an advertisement relates is available in limited quantities, or for a limited period or on special terms for a limited period, the advertisement may say so but, if that is not the case, the advertisement shall not contain any statement or matter that implies it is so.

3. (1) The terms of a securities advertisement and the manner of its presentation shall be such that it appears to be an advertisement issued with the object of promoting the securities, securities business or licensee to which it relates.

(2) Where the medium in which the advertisement is carried contains or presents other matter the advertisement shall be distinguished from that other matter so that the part that is an advertisement clearly appears as such. Advertisements to be distinguished from other matter

4. Except in the case of a short form advertisement or an image advertisement, the nature of the securities or securities business to which the advertisement relates shall be clearly described.

Advertisements to identify the securities or securities business to which they relate

5. No securities advertisement shall be issued with the intention not of persuading persons who respond to the advertisement to pursue the subject matter of the advertisement but, with the intention instead, of persuading them to enter into an agreement, or use business services, of a description not mentioned in the advertisement.

Promotions to be genuine

6. A securities advertisement shall not contain any matter that states or implies that the securities or securities business which is the subject of the advertisement or any matter in the advertisement has the approval of any Government department or of the Commission.

Advertisements not to imply governmental approval

7. A securities advertisement that states some only of the rights and obligations attaching to an investment in securities or some only of the terms and conditions of a securities agreement shall-

Synopses to be fair

(a) state sufficient of them to give a fair view of the nature of the investment in securities, of the financial commitment undertaken by an investor in acquiring the investment in securities and of the risks involved; and

(b) state how a written statement of all of them can be obtained.

8. A securities advertisement shall not compare or contrast one investment in securities with an alternative investment, or one securities service with an alternative securities service, unless the comparisons and contrasts are fair in relation to what is promoted and to the alternative having regard to what is not stated as well as to what is stated.

Comparison with other investments or services

9. (1) A securities advertisement that refers to taxation shall contain a warning that the levels and bases of taxation can change.

Taxation

(2) A securities advertisement that contains any matter based on an assumed rate of taxation shall state what that rate is.

(3) A securities advertisement that refers to reliefs from taxation-

(a) shall state that the reliefs are those that currently apply; and

(b) shall contain a statement that the value of a relief from taxation depends upon the circumstances of the tax payer.

10. Where a securities advertisement states that an investor who enters into an investment agreement to which the advertisement relates will be given an opportunity to cancel the agreement, the advertisement shall define the period during which the investor will have that right and the time when the period will begin.

Cancellation rights

11. A securities advertisement shall not contain information about the past performance of securities investments of any description unless-

Past performance

- (a) it is relevant to the performance of the securities investment the subject of the advertisement;
- (b) except where the source of the information is the advertiser itself, the source of the information is stated;
- (c) if the whole of the information is not set out-
 - (i) what is included is not unrepresentative, unfair or otherwise misleading; and
 - (ii) the exclusion of what is excluded does not have the effect of exaggerating the success of performance over the period to which the information that is included relates;
- (d) if the information is presented in the form of a graph or chart, no part of the information is omitted so as to give a misleading impression of the rate at which variable quantities have changed;
- (e) in the case of an advertisement of units or shares in a collective investment scheme, any comparison made between the value of an investment in those units or shares at different times is on an offer to bid basis, that is to say, on the basis of what it would have cost to acquire an amount of the units at the earlier time and what a disposal of that amount of those units would have realised at the later time, and the fact that that is the basis of the comparison is stated;
- (f) the period which is selected as illustrating past performance is a period of not less than three years which period must end no more than three months before the date of the issue of the advertisement; and
- (g) the advertisement contains a warning that the past is not necessarily a guide to the future.

12. (1) A securities advertisement shall not contain any statement indicating the scale of the activities or the extent of the resources of a licensee, or of any group of which the licensee is a member, so as to imply that the resources available to support the performance of the licensee's obligations are greater than they are.

Indications of the scale of business activities

(2) Statements which relate to resources of members of a group other than the licensee shall clearly state that fact.

13. (1) This paragraph applies to any securities advertisement that is not a short form or image advertisement.

(2) An advertisement shall contain a statement in accordance with this paragraph warning of the risks involved in acquiring or holding the securities investment the subject of the advertisement.

(3) Where the advertisement relates to a securities investment in the case of which deductions for charges and expenses are not made uniformly throughout the life of the investment but are loaded disproportionately onto the early years, the advertisement shall draw attention to that fact and that accordingly, if the investor withdraws from the investment in the early years, he may not get back the amount he has invested.

(4) Where the advertisement relates to an investment that can fluctuate in value in money terms, the statement shall draw attention to that fact and to the fact that the investor may not get back the amount he has invested.

(5) Where the advertisement offers an investment as likely to yield a high income or as suitable for an investor particularly seeking income from his investment, the statement shall draw attention to that fact that income from the investment may fluctuate in value in money terms.

(6) Where the advertisement relates to an investment denominated in a currency other than that of the country in which the advertisement is issued, the advertisement shall draw attention to the fact that changes in rates of exchange between currencies may cause the value of the investment to diminish or to increase.

(7) Where the advertisement contemplates the investor entering pay unspecified additional amounts later, the statement shall draw attention to the fact that the investor may or, as the case may be, will have to pay more money later and that accordingly a transaction in that investment can lose the investor more than his first payment.

(8) Where the advertisement relates to an investment that is not readily realisable-

(a) if the investment is not traded on an established securities exchange, the statement shall draw attention to the fact that there is no established market for investment so that it may be difficult for the investor to sell the investment or for him to obtain reliable information about its value or the extent of the risks to which it is exposed; or Risk warnings

(b) if the investment is traded on an established securities exchange but is dealt in so irregularly or infrequently-

(i) that it cannot be certain that a price of that investment will be quoted at all times; or

(ii) that it may be difficult to effect transactions at any price that may be quoted;

the statement shall draw attention to that fact.

14. A securities advertisement shall not describe a prospective investment return as being in any way guaranteed, secured, assured or promised, either expressly or impliedly, unless the advertisement has been approved in writing by the Commission prior to its issue. Guaranteed returns

15. (1) Each securities advertisement in a publication shall state in the bottom right hand corner of the advertisement the date on which it was first issued.

(2) Any securities advertisement by way of a prospectus, brochure, handout or similar marketing literature shall state the date on which it was first issued on either the front or back outside cover page.

(3) Any securities advertisement by way of a cinematograph film, video or TV broadcast shall bear the date on which it was first issued prominently at the beginning or end of the advertising material. Dating