



**ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY**

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# **GUIDANCE NOTE FOR DEPOSIT TAKERS**

## **Deposit Advertising**

**March 2017**

### **STATUS OF GUIDANCE**

*The Isle of Man Financial Services Authority (“the Authority”) issues guidance for various purposes including to illustrate best practice, to assist licenceholders to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.*

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## Part 1 – Deposit takers sited in, and maintaining deposit accounts within, the Isle of Man – Class 1(1) and Class 1(2)

### 1. Introduction

- 1.1 This guidance applies to all deposit takers (hereinafter referred to as bank or banks as applicable) that are licensed by the Isle of Man Financial Services Authority (“the Authority”) under the Financial Services Act 2008 to conduct Class 1(1) and Class 1(2) regulated activity. Please also refer to Rules 6.7, 6.12, 6.13, 6.15 and 6.16 of the Financial Services Rule Book (“the Rule Book”) where appropriate. Deposit takers holding a Class 1(3) licence should refer to Part 2 of this document.
- 1.2 Class 1(2) banks must not market **products or services** by means of media directed to the general public (such restriction is set by a licence condition). Examples of such media include (but may not be restricted to) the following: posters/banners; window displays; handouts; unsolicited mass email and printed mailings which have not been filtered to ensure that they only reach restricted depositors; newspapers and magazines on public sale; general internet promotion; social media and broadcast media (e.g. radio and television).
- Class 1(2) banks are permitted to advertise in subscription-only financial services industry publications; at invitation only events; and by targeted email and printed mailings. Further, products and services may be advertised on the class 1(2) bank’s own website as long as it is made clear that only restricted depositors may avail of the services. Such advertisements should have regard to the following guidance.
- 1.3 This guidance is designed to apply as widely as possible, to everything that could be interpreted to be an advertisement designed to sell a specific service or product. This does not apply to simple promotions, designed to raise brand awareness, or to internet “click-through” banner advertisements<sup>1</sup>.
- 1.4 For Class 1(1) banks using short form advertisements e.g. posters, window displays, handouts, newspaper / magazine publications and sound advertisements it is recognised that there may be restricted space available. Items marked with a double asterisk (“\*\*”) detail the minimum information which should appear in this type of advertisement, however, paragraph 6 is not required for sound advertisements. Please note, that the principles included in section 3 would still apply in all cases.
- 1.5 Advertisements issued should not contain any representation which might damage the reputation of the Island.

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<sup>1</sup> For this dispensation to be allowed there should be a link to the bank / group website, where the necessary information, as applicable to the product or service being promoted, is provided (Class 1(1) only)

- 1.6 An advertisement should also not contain any matter that states or implies that the product or service which is the subject of the advertisement, or any matter in the advertisement, has the approval of any Government department or of the Authority.

## **2. Reference to licensing**

- 2.1 Rule 6.13 of the Rule Book covers the necessary requirements in full relating to reference to licensing in advertisements\*\*.

## **3. Advertisements to be clear and not misleading**

- 3.1 The guidance provided in paragraphs 3.2 to 3.10 below is to supplement the requirements of Rule 6.12 of the Rule Book as applicable.
- 3.2 The content of an advertisement and the manner of its presentation should be such that the advertisement is not likely to be misunderstood.
- 3.3 An advertisement should contain sufficient information to enable an informed assessment of the financial product or service to which it relates, to be made.
- 3.4 An advertisement should not contain any statement, promise or forecast unless the bank issuing it has taken all reasonable steps to satisfy itself that each such statement, promise or forecast is not misleading in the form or context in which it appears.
- 3.5 An advertisement should not make a prediction or forecast of future income which is not based on and consistent with present conditions, or does not include a warning that past performance is not an indicator of future performance (*this is primarily relevant for deposit products where a return is linked to the performance of an underlying index e.g. structured deposits<sup>2</sup>*).
- 3.6 An advertisement should not contain any statement purporting to be a statement of fact unless the bank issuing it believes it to be true based on evidence which it holds.
- 3.7 If the financial product or service 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 should say so but, if that is not the case, the advertisement should not contain any statement or matter that implies so.\*\*
- 3.8 The nature of the deposit or service to which the advertisement relates should be clearly described.

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<sup>2</sup> "Structured deposit" is defined in the Rule Book. Rules 6.73 and 6.74 are also relevant in respect of the sale of structured deposits.

- 3.9 Minimum and maximum amounts that can be deposited (if any) should be clearly stated. \*\*
- 3.10 Where advertisements refer to a guaranteed return/guaranteed return of capital or equivalent statement (e.g. 100% capital security) they should also contain a statement acknowledging that the guarantee (or equivalent) is that of the bank, not any third party. Such references have been most commonly noticed within structured deposit advertisements.

#### **4. Risk warnings**

- 4.1 With reference to Rule 6.12(1) (b) of the Rule Book, an advertisement should not hide, diminish or obscure important statements or warnings. Important statements or warnings should be in a consistent font size that is clear and legible. For this purpose important statements or warnings are considered to include the information contained in sections 3.7, 3.9, 7.2, 8.1 and 9.1. Other statements such as those prescribed in sections 2.1 and 6 can be included in a smaller font but should still be clear and legible.

#### **5. Reference to compensation scheme (and other protection arrangements) in advertisements**

- 5.1 For Class 1(1) banks, rule 6.15 of the Rule Book covers the necessary requirements relating to reference to protection arrangements in advertisements for the Isle of Man Depositors' Compensation Scheme and other forms of protection other than that provided by the Isle of Man Depositors' Compensation Scheme. There are explicit requirements where any reference is made to off-island protection arrangements.

Class 1(2) banks must not suggest or imply by any means that deposits placed with it are protected by a deposit protection scheme. Any advertisement for a deposit made by a Class 1(2) bank must include the statement: "No deposit placed with [name of bank] has protection from a deposit compensation scheme". Licence conditions are set on Class 1(2) banks in relation to this.

- 5.2 Where a bank, who is a participant in the Isle of Man Depositors' Compensation Scheme, wishes to refer to that fact in advertisements, the wording used should take the form of either:-

"Deposits made with [the Isle of Man office of] [name of bank] are covered by the Isle of Man Depositors' Compensation Scheme as set out in the Depositors' Compensation Scheme Regulations 2010"; or

"[Name of bank] is a participant in the Isle of Man Depositors' Compensation Scheme as set out in the Depositors' Compensation Scheme Regulations 2010".

- 5.3 Where the word 'guarantee', 'indemnity', 'undertaking' or similar is used in the context of parental support it should be accompanied by the statement 'Note:

*the effectiveness of the guarantee / indemnity / undertaking can only be fully tested in the event a claim is made under this commitment’.*

Reference to such parental support should not be used as a headline marketing / promotional tool.

Where a bank makes reference to such a guarantee / indemnity / undertaking it should be able to provide a copy to a member of the public upon request.

## **6. Reference to group ownership \*\***

6.1 With reference to Rule 6.16 of the Rule Book information should include (*where applicable*) reference to the ultimate bank ownership, place of incorporation of the parent / ultimate parent, and the responsible regulatory authority for the parent / ultimate parent / group. It should also include details of where the most recent audited financial statements for the bank can be viewed or obtained (see wording below in paragraph 6.2).

6.2 Where relevant, Class 1(1) and Class 1(2) banks should also state the following in any literature and advertising that invites the making of deposits:-

“[name of bank] places funds with other parts of its group and thus its financial standing is linked to that of the group. Depositors may wish to form their own view on the financial standing of [name of bank] and the group based on publicly available information. The latest report and accounts are available at [insert website(s)]”; or

“[name of bank] places funds with other parts of its group and thus its financial standing is linked to that of the group. Publicly available information, including reports and accounts, is obtainable from [insert details]”.

## **7. Interest rates \*\***

7.1 Where interest rates are advertised, the advertisement should quote the Annual Equivalent Rate (AER) and the contractual rate. Because the AER will be the one rate that customers will be able to use to compare all products, it should be clearly stated close to the contractual rate, but may be shown in a slightly smaller font size, where appropriate.

7.2 Advertisements which quote a rate of interest should also contain the following:-

- (a) the frequency of payment of interest
- (b) either a statement that the contractual rate of interest is fixed for any specified term; or a statement that the interest rate is subject to variation
- (c) the minimum amount which must be deposited to achieve the advertised rate of interest

- (d) the period of time, if any, during which no or a different rate of interest will be payable (this paragraph does not relate to normally accepted cheque clearing periods)
- (e) the minimum period of notice, if any, which must be given before repayment may be required of a deposit earning that rate of interest

## **8. Currency \*\***

- 8.1 Every advertisement should state the currency in which the deposits are to be placed.

## **9. Withdrawal restrictions \*\***

- 9.1 Advertisements should contain a clear statement of the terms (if any) for withdrawal or transfer, including:-
  - (a) the period of any notice required
  - (b) the amount of any charges which may be payable (excluding normal bank charges which are included in general or specific product terms and conditions)
  - (c) any limitation which the account imposes on the amount which may be withdrawn or transferred in a single transaction or period
  - (d) a statement that the bank's standard terms and conditions apply if relevant (this may be shown in a smaller font size than the other points within section 9.1, where appropriate)

## **10. Comparison with other products or services**

- 10.1 An advertisement should not compare or contrast one financial product or service with an alternative financial product or service, unless the comparison 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. Where the comparison is made against a product provided by a different class of bank (i.e. Class 1(2) compared to Class 1(1)), it should be made clear that different levels of depositor protection may apply.

## **11. Taxation**

- 11.1 An advertisement which contains a summary of the taxation of any product or service to which it relates and the taxation consequences for clients generally should include a warning that the levels and bases of taxation can change.
- 11.2 An advertisement that contains any matter based on an assumed rate of taxation should state what the rate is.

- 11.3 An advertisement that refers to relief from taxation should:–
- (a) state that the relief is that which currently applies and can change
  - (b) contain a statement that the value of a relief from taxation depends upon the circumstances of the taxpayer
  - (c) distinguish between the relief that applies directly to the client and any other person.

## 12. Cancellation rights

- 12.1 Where an advertisement states that a client who enters into an agreement will be given an opportunity to cancel, the advertisement should define the period during which the client will have that right and the time when the period will begin.

## 13. Structured deposits

- 13.1 In addition to the information in sections 1 to 12 above, banks should also take into account the matters in paragraphs 13.2 to 13.9 below in relation to the advertising of structured deposits (*note that this does not apply to structured products which would be classified as investments and would be subject to full investment business conduct of business requirements*). The definition of what constitutes a structured deposits is contained in the Rule Book.
- 13.2 Any advertisement should clearly illustrate why the structured deposit is considered a deposit product (i.e. no loss of capital if held to maturity).
- 13.3 Use of the words ‘investment/invest/investor and similar’ are not considered appropriate when describing the product.
- 13.4 Any back-testing or illustrations within the advertisement should be representative and reasonable, and should be explained together with key assumptions.
- 13.5 Where appropriate, the product should be marketed as being of a long term nature, with appropriate risk warnings regarding early withdrawal of capital.
- 13.6 Early withdrawal penalties (if any) should be clearly stated within the body of the advertisement, not stated purely within the terms and conditions of the product.
- 13.7 All technical terms contained within the advertisement should be explained where appropriate.
- 13.8 Advertising literature should give clear and accurate information on the product, including, but not limited to, the effects of any averaging and how this is calculated, the underlying markets/indices and potential yields.



- 13.9 Further guidance on structured deposits is contained in the Authority's guidance note for deposit takers titled "OTC Derivatives and Structured Deposits". Reference must also be made to Rules 6.73 and 6.74 of the Rule Book.

## **Part 2 – Deposit takers (including those licensed as Class 1(3)) maintaining deposit accounts outside of the Isle of Man, advertising for deposits within the Isle of Man**

### **1. Background**

- 1.1 The Authority is aware that businesses incorporated outside the Island, carrying on regulated activities outside the Island with no place of business in the Island (and which are not regulated in the Island) may wish to undertake promotional activity within the Island. Further, those businesses operating a representative office (“rep office”) of a foreign bank holding a Class 1(3) licence may also wish to make its customers aware of its services locally, subject to the licence conditions which apply.

For the purposes of this guidance an advertisement issued outside the Isle of Man shall be treated as issued in the Isle of Man if:-

- (a) it is directed to persons in the Isle of Man; or
- (b) it is made available to persons in the Isle of Man otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside the Isle of Man or in a sound or television broadcast transmitted principally for reception outside the Isle of Man.

- 1.2 In such circumstances any business wishing to undertake such a promotion of a deposit should advise the Authority directly in advance, providing details of the proposed advertisement and the scale of the advertising campaign envisaged.

### **2. Requirements**

- 2.1 Unless it has a rep office holding a Class 1(3) licence, the business should ensure that the advertisement does not imply that it is a licenceholder within the Island or carrying out a regulated activity from or in connection with the Island, either on its own or another’s behalf or as an intermediary for another. This would be a breach of the Financial Services Act 2008.
- 2.2 Any advertisement issued by a business which is subject to advertising regulations or other regulations in its country of origin/domicile shall contain a statement which details the country or territory under whose Law it is regulated and the name of the regulatory authority.
- 2.3 The business should ensure that the advertisement does not imply the deposits will be sited in the Island, and should contain details of the jurisdiction in which they will be sited.
- 2.4 The business should ensure that the advertisement does not imply the deposits will be covered by the Isle of Man Depositors’ Compensation Scheme.

- 2.5 The business should indicate whether the service or product provided is covered by its home state compensation arrangements, if any.

## Appendix 1 – Glossary

For the purpose of this guidance note only, *“advertisement”* includes every form of advertising, whether in a publication, brochure, handout or letter, or by the display of notices or window displays or posters or by means of circulars or other documents or by way of sound broadcasting or television or by the distribution of recordings or by any electronic media (including websites) or moving image material incorporated in any website or automated teller machine displays in any other manner.

*“the Authority”* means the Isle of Man Financial Services Authority.

*“licenceholder”* has the same meaning as in section 7(7) of the Financial Services Act 2008.

*“promotion / promotional activity”* means advertising, issuing a prospectus, application form, or proposal form, or circulating or making available promotional material.

*“simple promotion”* means any advertisement that contains the licenceholder’s name and in respect of regulated activity does no more than some or all of the following:-

- a) display the licenceholder’s address, telephone number, symbol or logogram
- b) describe the licenceholder’s nature of business and fees charged
- c) contain a statement that the licenceholder is licensed by the Isle of Man Financial Services Authority.