



# **BERMUDA MONETARY AUTHORITY**

## **ADVERTISING**

### **CODE OF CONDUCT**

THE FOLLOWING CODE IS ISSUED BY THE BERMUDA MONETARY AUTHORITY IN EXERCISE OF THE POWERS CONFERRED ON IT BY SECTION 10 OF THE INVESTMENT BUSINESS ACT 2003. ALL CORRESPONDENCE RELATING TO THIS CODE SHOULD BE ADDRESSED TO THE BERMUDA MONETARY AUTHORITY.

**March 2004**

## **1.0. PRELIMINARY**

This Code sets out specific standards for the form and content of advertisements:

- (a) which invite persons to acquire or dispose of investments, or
- (b) which contain information calculated to lead directly or indirectly to persons doing so.

## **2.0 OBJECTIVES**

The objectives of this Code are to ensure that an investment provider:

- (a) acts with high standards of integrity and fair dealing in the conduct of investment business;
- (b) acts with due skill, care and diligence in providing any services which it provides or indicates a willingness to provide;

This Code shall be interpreted in the light of the above objectives so as best to give effect thereto. The Act provides that every investment provider shall in the conduct of its business have regard to any Code of Conduct issued by the Authority. It further provides that a failure to comply with the provisions of such Code shall be taken into account by the Authority in determining whether an investment provider's business is being conducted in a prudent manner as required by paragraph 5 of the minimum licensing criteria.

*Guidance Note: The Authority expects investment providers to comply with the letter and the spirit of this Code. Where the Authority has concerns about compliance with the Code, it will bring its concerns to the attention of the investment provider and take account of the comments and representations of the investment provider as well as, where relevant, his willingness to withdraw or amend an advertisement.*

## **3.0 DEFINITIONS**

A Guidance Note appended to a paragraph gives guidance as to the Authority's approach in particular respects or circumstances. It does not form part of the Code.

For the purposes of this Code:

“advertisement” means every form of advertising whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting or television or telephone or internet or other information distribution systems. This definition includes collective investment scheme particulars, prospectuses and any other offer documents.

The definitions appearing in section 2 of the Investment Business Act 2003 shall apply to the interpretation of this Code.

#### **4.0 APPLICATION**

This Code applies to all holders of an investment business licence granted under section 17 or issued under section 87(2) of the Investment Business Act 2003.

#### **5.0 GENERAL REQUIREMENTS**

5.1 An advertisement shall not contain:

- (a) a statement, promise or forecast which is untrue or misleading;
- (b) a statement of fact which the investment provider does not at the time the advertisement is issued have reasonable grounds to believe to be true;
- (c) a statement of opinion held by any person (whether an investment provider or any other person) which the investment provider does not at the time the advertisement is issued have reasonable grounds to believe to be the honestly held opinion of that person at that time;
- (d) a statement of fact which the investment provider does not at the time the advertisement is issued have reasonable grounds to believe will continue to be true for so long as it remains relevant to the subject-matter of the advertisement;
- (e) a statement about the nature or scale of the activities of, or the resources of (or available to), the investment provider or any member of a group of which the investment provider is a member which is misleading in a material particular;
- (f) a statement relating to past performance unless:
  - i) the basis on which such performance is measured is clearly stated and the presentation is fair;
  - ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance; and
  - iii) the past performance is relevant to the investment or the services offered by the investment provider;
- (g) a statement relating to taxation benefits unless it contains appropriate qualifications to show what it means in practice and to whom such benefits apply; or

(h) a comparison with other forms of investment unless the basis of comparison is clearly stated and the comparison is fair.

5.2 The content and format of any advertisement shall not:

- (a) be so designed as to be likely to give rise to misunderstandings;
- (b) be so designed as to disguise the significance of any warning statement or information which is required to be included under this Code;
- (c) be presented in such a way that it is not clearly identifiable as an advertisement; or
- (d) signify in any way that the advertisement is approved or has been approved by the Bermuda Monetary Authority.

5.3 Any advertisement shall:

- (a) identify the investment provider who issued it or caused it to be issued;
- (b) when in printed form, contain the address of the investment provider who issued it or caused it to be issued; and
- (c) ensure that the identity of the investment provider's licensing body is disclosed. *Guidance Note* - The following wording is suggested: "Licensed to conduct Investment Business by the Bermuda Monetary Authority."

*Guidance Note:* The Bermuda Monetary Authority will not normally vet or give non-objection to advertisements before issue. Where exceptionally, it does review an advertisement, such review and any views expressed by the Authority shall not prevent it subsequently taking a different view in relation to the Code. In assessing whether an advertisement complies with the letter and spirit of this Code, the Authority will take into account matters of fact or opinion or forecasts which have been omitted (or might properly have been included) in the advertisement as well as the content and form of the advertisement itself, the context in which it is issued, the general impression that it creates, and the likelihood of any person being misled by it.

## **6.0 REQUIREMENTS RELATING TO SPECIFIC INVESTMENTS**

6.1 An advertisement shall specify all of the terms and conditions which attach to an investment unless:

- (a) the terms and conditions which are specified give a fair indication of the nature of the investment and the risks involved; and
- (b) the advertisement contains information as to how a written statement of all the terms and conditions can be obtained.

- 6.2 Any advertisement shall disclose any special areas of risk relating to the investment, such as limited marketability.
- 6.3 In the case of an investment the value of which may fluctuate and/ or which is not guaranteed, the advertisement shall state that fact prominently.
- 6.4 In the case of an investment the value of which is guaranteed, the advertisement shall state clearly the source and nature of the guarantee and to what it relates and whether there are any matters which may affect the investor's ability to benefit from it.
- 6.5 An advertisement shall not specify a rate of return without specifying how it is calculated, including any element which may involve a reduction of the investor's capital.
- 6.6 Any advertisement inviting direct investment in futures, options, and contracts for differences shall contain a risk warning as follows: **“The risks of loss from investing in [type(s) of investment(s)] can be substantial”**.
- 6.7 An investment provider must keep a record of all advertisements issued by it including the date of issue, the publications in which it has been included, and evidence to support any statement made in an advertisement which purports to be a statement of fact or opinion, or details of how access to such evidence may be obtained.

## **7.0 OFFERS AND ADVERTISEMENTS OVER THE INTERNET**

An investment provider must apply this Code to advertising over the internet as it would to any other information distribution system. Offers of investments or investment services over the internet may trigger registration, prospectus and licensing requirements in much the same fashion as other forms of solicitation. It is inappropriate for investment providers using the internet to rely on regulatory exemptions, in any jurisdiction, that are based on the offer being made only to sophisticated investors or to a limited number of persons, unless able to demonstrate that special procedures are in place to restrict access to the offering materials.