

This consultation is now complete. If you wish to read the text of the responses received by the Radio Authority please contact prog&ad@radioauthority.org.uk or call 020 7405 7052.

**RADIO AUTHORITY'S ADVERTISING AND
SPONSORSHIP CODE:CONSULTATION ON PROPOSED
REVISION OF SECTION 3 RULE 1**

Financial Products and Services: September 2001

Section 3 Rule 1, Financial Products and Services, of the Radio Authority's Advertising and Sponsorship Code needs amendment to take into account the requirements of the Financial Services and Markets Act 2000 (FSMA), which takes effect on 1 December 2001. The Authority proposes to revise the Rule as suggested in the attached draft.

As required by Section 93 of the Broadcasting Act 1990, the Radio Authority is seeking views on this revision. The draft is also available on the Authority's website at www.radioauthority.org.uk and additional single paper copies are available on request from our Programming and Advertising Department on **020 7887 4328**.

Replies should be sent either via **our special email address at adcode@radioauthority.org.uk** or by letter or fax to David Burkin, Advertising Officer, at the Radio Authority, Holbrook House, 14 Great Queen Street, London WC2B 5DG, fax number 020 7405 7062.

Responses are welcome until the consultation closes on **Friday 19 October 2001**. In the interests of transparency, we would like to be able to make comments public where necessary, so unless there are good reasons for requesting confidentiality in relation to all or part of a response, the replies to this consultation will be made available for public scrutiny.

28 September 2001

PROPOSED SECTION 3 RULE 1 OF THE RADIO AUTHORITY ADVERTISING AND SPONSORSHIP CODE

1 FINANCIAL PRODUCTS AND SERVICES

Central copy clearance is required. These Rules regulate financial advertising and not the products and services themselves, which are regulated by the financial services regulators, including the Financial Services Authority (FSA). Financial advertisements must comply with all relevant legislation, in particular the Financial Services and Markets Act 2000 (FSMA).

In this Rule, 'investment activity', 'regulated activity', 'financial promotion' and 'authorised person' have the same meanings as in the FSMA and the Financial Promotion Order 2001 (FPO). Under the FSMA, a financial promotion is “an invitation or inducement to engage in investment activity”. This broad definition captures all promotional activity – including traditional advertising, telephone sales and face to face conversations – in relation to all products and services regulated by the FSA. It is important to remember that 'investment activity' under the FSMA does not cover only what are conventionally thought of as investments, but also includes deposits and all insurance.

1.1 Legal Responsibility

It is the responsibility of the advertiser to ensure that advertisements comply with all the relevant legal and regulatory requirements.

1.2 Misleadingness

Advertisements must present the financial offer or service in terms that do not mislead, whether by exaggeration, omission or otherwise (see Section 2, Rule 3 Misleadingness).

1.3 Financial Promotions in Advertising

The following financial promotions may be broadcast in advertising:

- i. those communicated by an authorised person, or those of which the contents have been approved by an authorised person;**

- ii. **those which by virtue of the FPO do not require to be approved by an authorised person (i.e. exempt promotions).**

Licensees may need to seek legal advice if an advertiser claims an advertisement should be considered:

- i. not to be a financial promotion; or
- ii. to be a financial promotion which does not require to be communicated by or approved by an authorised person (i.e. because it is subject to an exemption under the FPO).

1.4 Approval of Financial Promotions in Advertising

Before accepting financial promotions to which Section 21 of the FSMA applies and which are not subject to an exemption under the FPO, licensees must be satisfied that:

- i. **the authorised person issuing or approving the proposed advertisement, has confirmed that the final recorded version of the advertisement is in accordance with the Rules of the FSA;**
- ii. **a financial promotion or other advertisement in respect of regulated activity proposed by an appointed representative has been approved by the authorised person to whom that person is responsible.**

Advertisers or licensees may need to consult the FSA concerning the compliance of any advertisement with the FSMA requirements.

1.5 Interest on Savings

References to interest payable on savings are acceptable, subject to the following:

- a) **they must be stated clearly and be factually correct at the time of broadcast;**
- b) **all advertisements quoting a rate must use the Annual Equivalent Rate (AER) as set out in the British Bankers' Association Code of Advertising of Interest Bearing Accounts;**
- c) **where conditions apply to calculations of interest, which might affect the sum received, the advertisement must refer to the fact that conditions apply and how they can be accessed;**

- d) **it must be made clear whether the interest is gross or net of tax;**
- e) **interest rates relating to variables (e.g. a bank's base rate) must be so described.**

Attention is drawn to the code on the conduct of the advertising of interest-bearing accounts adopted and implemented by the British Bankers' Association and the Building Societies Association.

1.6 Insurance Premiums and Cover

Subject to any applicable legal requirement:

- a) **references to rates and conditions in connection with insurance must be accurate and must not mislead;**
- b) **when specifying rates of premium cover, there must be no misleading omission of conditions;**
- c) **in life insurance advertising, reference to specific sums assured must be accompanied by all relevant qualifying conditions, e.g. age and sex of the assured at the outset of the policy, period of policy and amount and number of premiums payable.**

1.7 Awareness Advertising by Insurance Intermediaries

Advertisements by insurance intermediaries who are not authorised persons under the FSMA will not be subject to the need for approval by an authorised person if they fall under the generic promotions exemption in the FPO (essentially where the advertisement does not identify any particular insurer). Except with specific approval of the Authority, these can be issued only by:

- i. **an intermediary who is an authorised person in reliance on the Generic Promotion Exemption under the FPO;**
- ii. **an intermediary who is a member (or a member's Appointed Agent or Sub-Agent) of the General Insurance Standards Council (GISC), or has undertaken to abide by the provisions of the Association of British Insurers General Insurance Business Code of Practice for intermediaries selling general insurance.**

The GISC has proposed changes to its rules which would require its members to deal only with intermediaries who are also regulated by the GISC (either as members or as appointed agents of a member). The effect of this would be to create a more coherent regulatory system. The government supports the proposal. The Director General of Fair Trading has ruled in favour of the proposal but an appeal against his decision has been upheld. When future regulation has been established, this Rule will be amended accordingly.

1.8 Lending and Credit Advertisements

a) Permitted Categories

The advertising of mortgage, other lending facilities and credit services is acceptable from:

- i. Government and local government agencies;**
 - ii. building societies authorised under the FSMA;**
 - iii. insurance companies authorised under the FSMA;**
 - iv. Friendly Societies authorised under the FSMA;**
 - v. persons authorised under the FSMA, with permission to accept deposits;**
 - vi. registered Credit Unions regulated by the Credit Unions Act 1979;**
- (vi. is effective until 1 July 2002, when v., above, will apply to Credit Unions.)
- vii. those persons and bodies granted a licence under the Consumer Credit Act 1974.**

Advertisements offering credit must comply with all relevant requirements of the Consumer Credit (Advertisements) Regulations 1989. Where there is doubt about the applicability or interpretation of these Regulations, advertisers must be encouraged to seek guidance from their Local Trading Standards department.

b) Mortgages and Re-Mortgages

- i. Advertisements for mortgages and re-mortgages are credit advertisements and the requirements of the Consumer Credit (Advertisements) Regulations 1989 therefore apply. Particular note**

should be taken of the requirements in these Regulations for secured loans;

- ii. **Advertisements for mortgages may, in some circumstances, also be considered as financial promotions**

In September 2002 the regulation of retail mortgage lending will become the responsibility of the FSA and this Rule will be amended.

1.9 Tax Benefits

References to income tax and other tax benefits must be properly qualified, clarifying what they mean in practice and making it clear, where appropriate, that the full advantage may only be received by those paying income tax at the standard rate.

1.10 Direct Remittance

Advertisements are unacceptable if they directly or indirectly invite the remittance of money direct to the advertiser or any other person without offering an opportunity to receive further details.

1.11 Financial Publications

Advertisements for paper or electronic publications (eg periodicals, books, text services etc) must make no recommendation on any specific investment offer.

(27/09/01)

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