

- (i) there may be limitations on the appropriateness of the advice provided in light of such circumstances; and
- (ii) the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs, particularly any aspects of such objectives, situation or needs that were not considered in light of the aforementioned circumstances.

(4)(c) Where a client elects to conclude a transaction that differs from that recommended by the provider, or otherwise elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide, the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances."

#### **Amendment of section 9 of the General Code**

10. Section 9 of the General Code is hereby amended by –

- (a) the insertion after subsection (1) of the following subsection:  
"(1A) The Registrar may determine the format of and the matters to be addressed in the record of advice referred to in section 9(1)."; and
- (b) the substitution of subsection (2) of the following subsection  
 "A provider[, **other than a direct marketer,**] must provide a client with a copy of the record contemplated in 9(1) in writing."

#### **Amendment of section 14 of the General Code**

11. Section 14 of the General Code is hereby amended by the substitution of that section of the following section:

### **"14 ADVERTISING**

#### **Application**

- (1)(a) For purposes of this section, "client" includes the general public.
- (b) The principles, requirements and standards contained in this section apply regardless of the medium used to publish an advertisement.
- (c) This section applies to any advertisement published on or after the date on which this section takes effect, regardless of whether the advertisement was also previously published prior to this section taking effect.

#### **General principles**

- (2)(a) A provider, other than a provider that is a natural person and a representative, must have documented processes and procedures for the approval of advertisements by a key individual.
- (b) A provider must, prior to publishing an advertisement, take reasonable measures to ensure that the information provided in the advertisement is consistent with this section.
- (c) Where feasible, measures must provide for an objective review of an advertisement other than by the person that prepared or designed it.
- (d) Where an advertisement is produced or published by another person the provider must –
  - (i) where the person producing or publishing the advertisement is the provider's representative or is otherwise acting on behalf of the provider in relation to the advertisement, ensure that the advertisement is consistent with this section and have appropriate processes in place to ensure such consistency; and
  - (ii) where the person producing or publishing the advertisement is not acting on behalf of the provider in relation to the advertisement but the provider is aware or ought reasonably to be aware of the production or publication, take reasonable steps to mitigate the risk of the advertisement not being consistent with this rule.

- (e) Where a provider becomes aware that an advertisement that relates to its business, financial services or related services, whether published by the provider or any other person, is not consistent with this section, the provider must –
  - (i) as soon as reasonably practicable correct or withdraw the advertisement; or
  - (ii) take reasonable steps to ensure that it is corrected or withdrawn; and
  - (iii) notify any persons who it knows to have relied on the advertisement.

**Factually correct, balanced and not misleading**

- (3)(a) Advertisements must –
  - (i) be factually correct, excluding aspects of an advertisement constituting puffery;
  - (ii) provide a balanced presentation of key information; and
  - (iii) must not be misleading.
- (b) An advertisement that references statistics, performance data, achievements or awards must disclose –
  - (i) the source and the date thereof; and
  - (ii) the identity of the grantor of an award and must make it clear if the award is granted by an associate of the provider or product supplier.
- (c) An advertisement that refers to premiums or other periodic investment amounts must –
  - (i) in the case where the premium or periodic investment amount will escalate automatically, indicate the escalation rate or basis; and
  - (ii) where the premium, in the case of an insurance policy, (with or without automatic escalations) is not guaranteed for the full term of the financial product but is subject to review after a period, indicate the period for which the premium is guaranteed.
- (d) Descriptions in an advertisement must not –
  - (i) give benefits or returns undue prominence compared with risks; and
  - (ii) exaggerate benefits or returns or create expectations regarding financial product or financial service performance or the performance of related services that the provider does not reasonably expect to achieve.
- (e) Descriptions in an advertisement, in respect of a specific financial product, financial service or related service, must include key limitations, exclusions, risks and charges, which must be clearly explained and must not be worded positively to imply a benefit.
- (f) References to a fee or cost must give a realistic impression of the overall level of fees or costs a person is likely to pay, including any indirect fees or costs.
- (g) Notwithstanding paragraph (e), but subject to all other requirements of this section, where a provider can demonstrate that, due to the nature of the medium used for the advertisement, it is not reasonably practicable for the information required in paragraph (e) to be fully included in the advertisement itself, the advertisement must indicate –
  - (i) that additional information on key limitations, exclusions, risks and charges related to the financial product, financial service or related service being advertised is available; and
  - (ii) where and how the additional information in (i) may be accessed.
- (h) The information referred to in paragraph (g) must be publicly available and readily accessible to the average client targeted by the advertisement.
- (i) An advertisement, when examined as a whole, must not be constructed in such a way as to lead the average targeted client to any false conclusions he or she might reasonably rely upon.
- (j) For the purposes of (i), a provider must when constructing an advertisement consider the conclusion likely to be made by policyholders that are subject to the advertisement, and in doing so have regard to –
  - (i) the literal meaning of the words;
  - (ii) impressions from nonverbal portions of the advertisement; and
  - (iii) materials and descriptions omitted from the advertisement.
- (k) An advertisement relating to a financial product that is targeted at a particular type or group of client must make this clear.
- (l) An advertisement must not obscure information.
- (m) Each piece of information in an advertisement must be prominent enough in accordance with subsection (14) and proximate enough to other information so as not to mislead the average targeted client.

- (n) An advertisement must not be designed to exaggerate the need for urgency which could encourage the average targeted client to make unduly hasty decisions.
- (o) Warnings, disclaimers and qualifications contained in an advertisement must –
  - (aa) not be inconsistent with other content in the advertisement; and
  - (bb) have sufficient prominence to effectively convey key information.
- (o) An advertisement relating to a financial service must –
  - (aa) disclose any relevant limitations on the extent of the financial service and the range of financial products on which the financial service is based;
  - (bb) not create a misleading impression about the nature and extent of a provider's skills, experience, knowledge and expertise insofar it relates to the financial service; and
  - (cc) not create a misleading impression about the cost of a financial service including that it is 'free' if the service is in fact paid for by the client directly or indirectly through other costs or charges.

**Public interest**

- (4) An advertisement must not disparage or make inaccurate, unfair or unsubstantiated criticisms about any financial product, financial service, product supplier or provider.

**Identification of product supplier or provider**

- (5)(a) An advertisement relating to a financial product or financial service must clearly and prominently in accordance with subsection (14) identify the product supplier or provider or both, as applicable.
- (b) An advertisement must not use the group or parent company name or the name of any other associate of a product supplier or provider to create the impression that any entity other than the product supplier or provider, as the case may be, is financially or otherwise liable in relation to a financial product or financial service.
- (c) An advertisement must not use the name of another person to mislead or deceive as to the true identity of the provider or product supplier or to create the impression that any person other than the provider or product supplier, as applicable, is financially or otherwise liable in relation to a financial product or financial service.
- (d) An advertisement relating to a financial product that is subject to a white labelling arrangement must clearly and prominently in accordance with subsection (14) identify the product supplier.

**Appropriate language and medium**

- (6)(a) An advertisement must use plain language.
- (b) Terms must be defined or explained if the average targeted client could not reasonably be expected to understand them.
- (c) A provider must consider the appropriateness of the medium to be used to publish any advertisement in relation to the complexity of the features of the financial product or financial service or other information being communicated.

**Record keeping of advertisements**

- (7)(a) A provider must keep adequate records of all advertisements.
- (b) All records referred to in subsection (7)(a) must be kept for a period of at least 5 years after publication.

**Negative option marketing**

- (8) A provider or any person acting on its behalf may not offer to enter into any agreement in respect of a financial product or financial service on the basis that the agreement will automatically come into existence unless the client explicitly declines the provider's offer to enter into agreement.

**Unwanted direct advertising**

- (9)(a) Where a provider or any person acting on its behalf uses a telephone or mobile phone call, voice or text message or other electronic communication for an advertisement, it must allow the client during that call or within a reasonable time after receiving the

message, the opportunity to demand that the provider or other person does not publish any further advertisements to the client through any of these mediums.

- (b) A provider or any person acting on its behalf may not charge a client a fee or allow a service supplier to charge a client any fee for making a demand in terms of paragraph (a).

### **Comparative marketing**

- (10)(a) Where a survey or other financial product or financial service comparison informs a comparative advertisement, the survey or other product or service comparison –
- (i) must be undertaken by an independent person or, if it is not reasonably practicable that it is undertaken by an independent person, the advertisement must be so qualified;
  - (ii) must be conducted at regular intervals if relied on or referenced on an on-going basis;
  - (iii) must ensure that financial products, financial services or related services being compared have the same or similar characteristics;
  - (iv) must take account of comparable features across the financial product, financial service or related service offerings included in the sample to ensure that not only the price (e.g. the Rand value of premiums or investments) is being compared, but also the benefits provided under the financial products, financial services or related services concerned;
  - (v) in particular, in the case of comparisons between financial products that are insurance policies, must ensure that price comparisons are based on policies with equivalent terms and conditions, including insured events, cover levels, exclusions, waiting periods and other key features;
  - (vi) may not focus on the price of a financial product, financial service or related service to the exclusion of the suitability of the financial product, financial service or related services or its delivery on client expectations; and
  - (viii) must ensure that the information used in comparisons is current, complete and accurate.
- (b) The survey or other comparison source and date thereof must be referenced in the advertisement and the methodology applied must be publicly available and readily accessible to the public in an easily understandable format.

### **Puffery**

- (11) Advertisements that include puffery must be consistent with the provisions relating to puffery in the Code of Advertising Practice issued by the Advertising Standards Authority of South Africa as amended from time to time.

### **Endorsements**

- (12)(a) Testimonials and third person endorsements used in an advertisement –
- (i) must be the genuine opinion and actual experience of the person making the testimonial or endorsement and be properly attributed to such person;
  - (ii) must be based upon actual statements made for testimonial or endorsement purposes; and
  - (iii) may use a pseudonym instead of the real name of the person making the testimonial or endorsement, provided this is stated in the advertisement concerned.
- (b) If the person making the testimonial or endorsement, or their employer or principal or any associate, has any financial interest or relationship to the –
- (i) provider or any associate of the provider or person acting on behalf of the provider; or
  - (ii) product supplier or any associate of the product supplier or person acting on behalf of the product supplier where the advertisement relates to a financial product, or will or has been compensated for the endorsement by any person (other than through reimbursement of actual costs incurred by the person making the endorsement), this must be disclosed in the advertisement.
- (c) Any endorsement in an advertisement must clearly and prominently in accordance with subsection (14) state that the endorsement does not constitute financial advice.

### **Loyalty benefits or bonuses**

- (13)(a) An advertisement that references a loyalty benefit (including so-called cash- or premium-back bonuses in relation to insurance policies) or no-claim bonus must not create the impression that such benefit or bonus is free and must adequately –
- (i) indicate if the loyalty benefit or no-claim bonus is optional or not; and
  - (ii) regardless of whether or not the loyalty benefit or no-claim bonus is optional, express the cost of the benefit or bonus including, where applicable, the impact that such cost has on the premium or investment amount, unless the impact is negligible; and
  - (iii) identify the grantor of the benefit or bonus.
- (b) For purposes of subsection (13)(a)–
- (i) the impact is deemed to be negligible if the cost of the loyalty benefit or no-claim bonus comprises less than 10% of the total premium or investment amount payable under a financial product.
  - (ii) where the impact of a loyalty benefit or no-claim bonus is not negligible and where the advertisement refers to the actual premium or investment amount payable –
    - (aa) the cost of the benefit or bonus must be shown as a percentage of that premium or investment amount; and
    - (bb) the provider must be able to demonstrate that the premium or investment amount and benefit cost used in the advertisement presents a true reflection of the cost impact for the average targeted client; and
  - (iii) where the impact of a loyalty benefit or no-claim bonus is not negligible and where the advertisement does not refer to the actual premium or investment amount payable, the average cost of the benefit or bonus as a percentage of premium or investment amount must be provided.
- (c) Where an advertisement highlights a loyalty benefit or no-claims bonus as a significant feature of a financial product or financial service and makes reference to a projected loyalty benefit value or no-claim bonus value that is payable on the expiry of a period in the future, it must also express the value of the projected benefit or bonus in present value terms, using reasonable assumptions about inflation.
- (d) An advertisement must clearly state whether the availability or extent of a loyalty benefit or no-claims bonus is contingent on future actions of the client or any factors not within the client's control.
- (e) An advertisement may not create the impression that the bonus or benefit is guaranteed or more likely to materialise than the provider or product supplier reasonably expects for the average targeted client.

### **Prominence**

- (14)(a) In determining prominence, whenever information must be disclosed prominently as required by this section, consideration must, as appropriate, be given to –
- (i) the target audience of the advertisement;
  - (ii) the likely information needs of the average targeted client;
  - (iii) prominence in the context of the advertisement as a whole;
  - (iv) positioning of the text and audibility and speed of speech;
  - (v) the duration of displays of key information;
  - (vi) background;
  - (vii) colour; and
  - (viii) font size.
- (b) A statement or information in an advertisement is not regarded as being prominent if, amongst other things, the statement or information is –
- (i) obscured through the close proximity of promotional illustrations and/or additional text;
  - (ii) difficult to read due to the use of small font sizes, unclear type styles or the duration for which it is displayed;
  - (iii) likely to be overlooked due to its position;
  - (iv) superimposed across a coloured or patterned background which lessens its visual impact; or
  - (v) difficult to hear or understand due to the volume or speed at which speech is delivered.

- (c) Subject to paragraph (d), in an advertisement relating to a financial product that is subject to a white labelling arrangement, the name of the product supplier must be as frequently mentioned, as audible or as visible as that of the white label and, in respect of written media, must be at least the same font size as that of the white label.
- (d) Paragraph (c) does not apply to an advertisement relating to a financial product that is subject to a white labelling arrangement where –
  - (i) the white label arrangement is with a product supplier that is part of the same group of companies that the provider is part of;
  - (ii) the advertisement uses the brand of the product supplier; and
  - (iii) all requirements of subsection (5) and paragraphs (a) and (b) are complied with in relation to the identification of the product supplier.

**Principles relating to forecasts, illustrations, hypothetical data or projected benefits and past performance data**

- (15)(a) No projected benefits (including but not limited to future investment values and, in the case of insurance policies, maturity, income, death, disability or full or partial surrender benefits) may be included in advertisements, if the benefits depend on future unknown investment performance, unless used to demonstrate the benefits of savings generally.
- (b) Any reference to projected benefits, investment performance or returns must clearly reflect the effect that fees and costs may have on actual returns or benefits.
- (c) When past investment performance is provided for or referred to in an advertisement –
  - (i) all information must be accurate and must be provided in the correct context, and the provider must be able to substantiate all claims made; and
  - (ii) a statement must be included that past performance cannot be extrapolated into the future and is not an indication of future performance.
- (d) If tax advantages are referenced in an advertisement such advantages must be explained, and any key restrictions, penalties, and mitigating circumstances must be disclosed.
- (e) Any reference to guaranteed elements or features must indicate whether the guarantee is subject to any requirements and conditions and where disclosure of those requirements and conditions can be found.
- (f) Where a financial product comprises participatory interests in an underlying collective investment scheme referred to in the Collective Investment Schemes Control Act No. 45 of 2002, or where a financial product provides for investment of client's funds into collective investment scheme portfolios, any advertisement must, in addition to the applicable requirements of this subsection, comply with any determination of advertising and marketing requirements for collective investment schemes made under the Collective Investment Schemes Control Act No. 45 of 2002."

**Amendment of section 15 of the General Code**

12. Section 15 of the General Code is hereby amended by the –

- (a) deletion of subsections (2), (3) and (4);
- (b) the substitution of subsection (5) of the following subsection:
 

"(5) A direct marketer **[shall be obliged to]** must record all telephone conversations with clients in the course of direct marketing and must have appropriate procedures and systems in place to store and retrieve such recordings. **[Records of advice furnished to a client telephonically need not be reduced to writing but a copy of the relevant voicellogged records must be provided, on request, to the client or Registrar within a reasonable time.]**";
- (c) the substitution of subsection (6) of the following subsection:
 

"(6) Notwithstanding the above **[or contrary provision in the code]**, a direct marketer must at the earliest reasonable opportunity after conclusion of a transaction provide, in writing, the client with all information referred to in sections [such of the information required to be provided to the client in terms of clauses] 4[,] and