

GUYANA

No. 7 of 2002

REGULATIONS

Made Under

The Securities Industry Act 1998
(No. 21 of 1998)

ARRANGEMENT OF REGULATIONS

REGULATION

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SCHEDULE

IN EXERCISE OF THE POWERS CONFERRED ON HIM BY SECTION 126(7) AND BY SECTION 126(1) OF THE SECURITIES INDUSTRY ACT 1998, THE MINISTER OF FINANCE HEREBY MAKES THE FOLLOWING REGULATIONS:-

Citation.

1. These Regulations may be cited as the Securities Industry (Advertisements) Regulations 2002.

Interpretation.

2. (1) In these Regulations-

(a) “advertisement” includes every form of public notice, 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 cinematography films or videos, or by way of sound broadcasting or television, or by computer screen display or printout, or by the distribution of recordings or in any other manner;

(b) “registered person” means a person registered by the Council under section 47 of the Act;

(c) “securities advertisement” means an advertisement offering securities within the meaning of section 59(1) of the Act.

(2) For the purposes of these Regulations an advertisement issued outside Guyana shall be treated as issued in Guyana if -

(a) it is directed at persons in Guyana; or

(b) it is made available to persons in Guyana otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside Guyana or in a sound or

television broadcast transmitted principally for reception outside Guyana.

Restrictions on advertising.

3. Subject to regulation 4 securities advertisement shall only be issued or caused to be issued in Guyana –

(a) by registered persons;

(b) by persons specifically authorised by the Council to issue securities advertisement;

(c) by any other person where the securities advertisement has been previously approved in writing by a registered person.

Exceptions from restrictions on advertising.

4. Regulation 3 does not apply to -

(a) a securities advertisement issued or caused to be issued by, and relating only to securities issued by –

(i) the Government or the government of any other country or territory; or

(ii) the central bank of any country or territory;

(b) an advertisement which is a prospectus required to be submitted to the Council under the Act; or

(c) an advertisement issued in accordance with the Securities Industry (Take-Overs) Regulations 2002.

Advertisements to comply with Schedule.
Schedule

5. No person shall issue or cause to be issued a securities advertisement unless the provisions of the Schedule are complied with in relation to that advertisement.

Advertisement directions.

6. (1) If the Council considers that any securities advertisement issued, caused to be issued or proposed to be issued by any person is misleading, the Council may by notice in writing give that person a direction under this regulation.

(2) A direction under this regulation 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 advertisement which is, wholly or substantially, repetitious 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 Council.

Advertisements to be copied to the Council.

7. A copy of every proposed securities advertisement shall be submitted to the Council not less than [two] working days before the advertisement is first published.

Contravention.

8. Any person who issues, causes to be issued or publishes in Guyana a securities advertisement in contravention of regulation 3, or which does not comply with regulation 5, commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for two years.

SCHEDULE

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**Prominence of
Required statements.**

1. The significance of any statement or other matter required by the provisions of this Schedule to be included in a securities 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.

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

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.

(2) A securities advertisement shall not contain any statement, promise or forecast unless the person 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 person issuing it does not reasonably believe at the time, on the basis of evidence of which it has a record in its possession, to be true.

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

**Advertisements to be
distinguished from
other matter.**

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 investment, securities business or person 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.

Promotions to be genuine.

4. 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.

Advertisements not to imply approval of Government or Council.

5. A securities advertisement shall not contain any matter that states or implies that the securities investment 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 Council.

Synopses to be fair.

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

(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 the procedure for obtaining a written statement of all of them.

Comparison with other investments or services.

7. 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.

Taxation.

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

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

(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.

(4) A securities advertisement that refers to taxation shall state that any person in doubt as to that person's tax status should consult a professional adviser.

Past performance.

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

(a) it is relevant to the performance of the securities investment the subject of the advertisement;

(b) the source of the information is stated;

- (c) if the full 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 or 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 or amounts have changed;
- (e) 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 [one] month before the date of the issue of the advertisement, provided that where the securities investment has been available for less than [three] years, the whole of its period of availability shall be covered;
- (f) the advertisement contains a warning that the past is not necessarily a guide to the future.

Indication of the scale of business activities.

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

than they are.

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

Risk warnings.

11. (1) A securities advertisement shall, in accordance with this paragraph, contain a statement in the nature of a warning about the risks involved in acquiring or holding the securities the subject of the advertisement.

(2) Where the advertisement relates to a security 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 recover the amount he has invested.

(3) The statement shall, other than in the case of fixed income securities, where the advertisement offers a security as likely to yield a high income or as suitable for an investor particularly seeking income from his investment, draw attention to the fact that income from the investment may fluctuate in value in money terms and that the income may fluctuate in value in real terms due to inflation.

(4) Where the advertisement relates to a security 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 security to diminish or to increase.

(5) Where the advertisement contemplates the investor entering into a transaction the nature of which is such that the investor may not only lose what the investor pays at the outset but may incur a liability to pay unspecified additional amounts later, the statement shall draw

attention to the fact that the investor may or, as the case may be, must pay more money later and that accordingly a transaction in that security can lose the investor more than the first payment made.

(6) Where there is no established securities market for the security or the security is traded on an established market only irregularly or infrequently, so that it may be difficult for an investor to sell the security, or to obtain reliable information concerning the value or the extent of the risks to which it is exposed, the statement shall draw attention to that fact.

Guaranteed, etc. returns. 12. 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 Council prior to its issue.

Dating. 13.(1) A securities advertisement published in a newspaper shall state in the bottom right hand corner of the advertisement the date on which it was first issued.

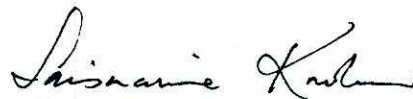
(2) A securities advertisement in the form of a brochure, handout or similar marketing literature shall state the date on which it was first issued on the outside of the front cover page.

(3) A securities advertisement by way of cinematography film, video or television broadcast shall bear the date on which it was first issued prominently at the beginning or end of the advertising material.

**Identification of
advertiser.**

14. A securities advertisement shall identify the person who issues or causes the advertisement to be issued, and where the advertisement is issued or caused to be issued by a person other than the advertiser, it shall identify the advertiser on whose behalf the advertisement is published.

Made this 22nd day of July, 2002



Saisnarine Kowlessar

Minister of Finance

EXPLANATORY NOTE
(This note is not part of the Regulations)

1. These Regulations are made by the Minister of Finance in exercise of the powers conferred on him by section 126(7) and by section 126(1) of the Securities Industry Act 1998.
2. Regulation 1 makes provision for the citation and commencement of the Regulations and regulation 2 contains interpretation provisions.
3. The general rule provided by regulation 3 is that securities advertisements may only be issued by registered market participants or persons specifically authorised by the Securities Council. Exceptions to this general rule are advertisements relating to securities issued by the Government of Guyana or any foreign Government, and by any Central Bank, an advertisement which is a prospectus (governed by the Prospectus Regulations) and an advertisement issued in accordance with the Takeovers and Tender Offers Regulations (regulation 4).
4. All securities advertisements must comply with the content requirements specified in the Schedule to the Regulations (regulation 5).
5. The Securities Council is empowered to give specified directions where it considers that any securities advertisement is misleading (regulation 6).
6. Regulation 7 requires that a copy of every proposed securities advertisement is forwarded to the Securities Council at least two days before the first publication of the advertisement.
7. Contravention of the Regulations is an offence punishable on summary conviction (regulation 8).
8. The Schedule to the Regulations lays down specific mandatory requirements in respect of securities advertisements covering the prominence of required statements, requiring them to be clear and not misleading, requiring them to be seen to be advertisements, requiring promotions to be genuine and synopses to be fair, requiring them not to imply Government or Securities Council approval, requiring any comparisons to be fair and accurate, requiring any references to tax advantages to be subject to appropriate warnings, restricting references to past performance, and requiring the

inclusion of appropriate risk warnings. A securities advertisement must not expressly or impliedly guarantee or promise any prospective return without the prior written approval of the Securities Council. An advertisement must be dated and identify the advertiser.