

**THE NATURE AND ART OF
FINANCIAL SUPERVISION
VOLUME XII**

**CONDUCT SUPERVISION
MONITORING OF MARKETING MATERIAL**

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Introduction

Background

The Malta Financial Services Authority (**'MFSA'** or **'Authority'**) is strongly committed to ensure that its licence holders operate in a manner that is honest, professional and in accordance with the best interest of their clients. Therefore, entities licenced by the Authority are required to abide by strict conduct of business rules to maximise consumer protection in their day-to-day operations.

Accordingly, the applicable conduct of business requirements address various aspects of licence holder's activities – including the issue of any marketing communications. In this context, licence holders are to ensure that these are clear, fair and not misleading.

The term “marketing communication” or “advertisement” refers to any form or medium of marketing activity or communication, other than a prospectus, which promotes the purchase or procurement of a financial service or product and which is addressed by a licence holder to a client or potential client. An advertisement would not include the provision of a specific recommendation which is personal to its recipient. Marketing communications are typically disseminated to the public via all types of communication channels such as addressed or unaddressed printed matter; emails, SMS messages or on social media posts, standard letters; press advertising, telephone calls, seminars and presentations, radio and television adverts, billboards, posters, and brochures as well as web posting including internet banners.

Advertisements and other marketing material (**'financial promotions'**) issued by licence holders may be the consumers' main or only source of information before making a financial decision. Indeed, they are what would attract a consumer to a financial product or service in the first place. This is of particular significance in case of long-term financial products and services which may be difficult to understand. The regulation and the supervision of financial promotions therefore represents an important aspect of consumer protection, through which the Authority makes sure that consumers are provided with the necessary amount of information, even at the very initial stage of their journey, so that they are in a position to avoid being misled into buying financial products or services which would not meet their objectives, expectations and needs.

The MFSA aims to ensure a level playing field regarding the standards that marketing material issued by Licence holders need to meet in the context of the Conduct Rules

relating to marketing communications, by setting the expectations across the market. Furthermore, the monitoring of financial promotions issued by licence holders is an area which the MFSA supervises on a regular basis as shall be explained further in Section 2 of this document.

Scope, Purpose and Structure of this Publication

This document is addressed to **both** the general public and licence holders such as investment firms, insurance undertakings and intermediaries, and credit institutions regulated by the MFSA.

Section 1 of this document provides some background about the regulatory requirements applicable to financial promotions and details the manner in which the Authority supervises this area.

Section 2 of this document sets out the MFSA's observations from the calendar year 2023 and examples of interventions by the Authority.

Section 3 of this document sets out some guidance to consumers as to how they should interpret financial promotions and what they should do when encountering a financial promotion that may be misleading or detrimental to them.

Section 1: Applicable Regulatory Requirements and Supervision by the MFSA

1.1 Regulatory Requirements

Chapter 1 – Section 2 of the Conduct of Business Rulebook is entitled “*Marketing Rules*” and provides that investment firms, UCITS and UCITS management companies, insurance undertakings and intermediaries, and credit institutions having an investment services licence (**‘Licence Holders’**) shall not issue or approve any promotional activity which misleads any prospective client, the financial sector in general, or the general public. Furthermore, credit institutions are required to abide by the requirements of the Notice on Advertising for Deposits by Credit Institutions Authorised Under the Banking Act 1994 (BN/05/2002) when issuing advertisements or other marketing communications in the context of their banking services.

By way of example, the Rules contain requirements for specific warnings to be included in financial promotions. They also prescribe the font size of such warnings such that these are required to be clearly visible and legible. In terms of the applicable Rules, financial promotions should give due consideration also of any risks involved when advertising benefits of a product or service. Financial promotions are also to include a statement identifying the issuer of the communication, as well as an indication of the regulatory status of the entity providing the product or services under advertisement.

In general, the above-mentioned Rules prescribe detailed requirements regarding form and content of advertisements relating to financial services and products. Licence Holders are required to abide by such requirements on an ongoing basis. In this context, every Licence Holder should have in place policies and procedures for the design and approval of financial promotions. The person responsible for approving marketing materials would usually be the compliance officer, who is also responsible for the record keeping of all advertisements and marketing campaigns. The records should be retained electronically, easily accessible, and regularly reviewed.

1.2 Supervision by the MFSA

Financial promotions issued by Licence Holders in Malta do not require the prior approval of the MFSA. However, the Authority, through its Conduct Supervision Function, reviews, on an *ex-post* basis financial promotions issued via various media by the entities it regulates. In order to effectively carry out its supervisory functions in

this very important area, the Authority adopts a risk-based approach and given the popularity, effectiveness and speed of social media and online advertising, gives increased importance to reviews of advertisements issued through this channel.

In this context, the Authority uses a software tool which alerts it whenever a Licence Holder uploads a post on its social media. This tool enables the Authority to review a number of social media posts uploaded by different categories of financial services providers such as, investment firms, insurance undertakings and intermediaries and credit institutions. These alerts are separated, via an algorithm, into posts which are relevant (i.e. contain marketing information) and those which are not relevant (e.g. containing other messages). Alerts relating to relevant posts are assessed on the basis of a risk score assigned to each entity based on specific risk factors (e.g. business model, cross-border activity, products offered, etc.). Therefore, the risk score assigned to each regulated entity affects the frequency the review of the marketing material (i.e. a higher score indicates a higher frequency of reviews). In general, around 50% of the related posts coming in from High Risk entities are reviewed; whilst the percentage for Medium and Low Risk entities is 20 and 10% respectively.

Where, following a review, the Authority considers that the financial promotion in question does not align with the applicable regulatory requirements, the issuer of the material is contacted and the matter is discussed. The Licence Holder responsible for the financial promotion under review will be required to either carry out the necessary amendments or to withdraw the advert from circulation unless and until it is amended to come in line with the applicable regulatory requirements.

The following section gives an overview of the MFSA's observations in its monitoring and review of financial promotions during 2023.

Section 2: MFSA’s Observations from the Sector

2.1 Social Media

Between 1 January 2023 to 31 December 2023, the MFSA reviewed a total of **359** adverts issued on social media platforms.

These adverts relate to:

- Investment firms (127)
- Insurance undertakings and intermediaries (153)
- Credit institutions (79)

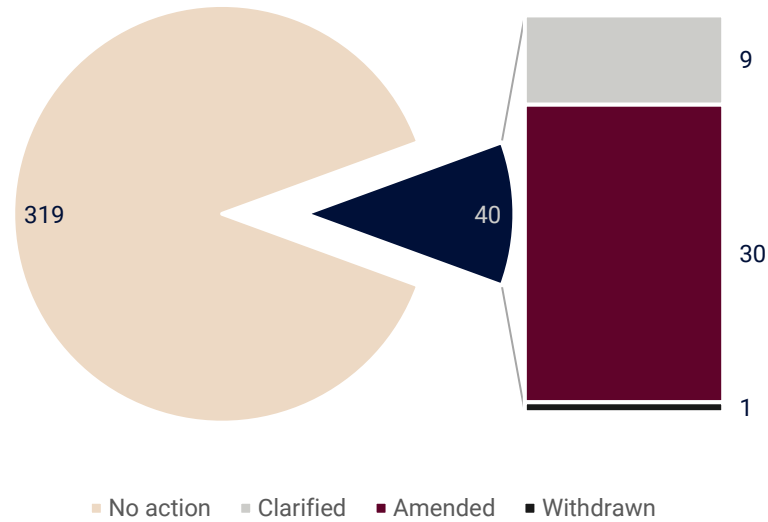
Figure 1: Advertisements Issued by Sector



Source: MFSA

Out of these 359 adverts reviewed, there were 40 cases (11.14%) where the Authority requested clarifications on the marketing material used. Out of these 40 cases, there were 30 instances (8.36%) in which the Licence Holders took remedial action and amended the advert accordingly. In one case, the Authority requested the licence holder to withdraw the marketing communication.

Figure 2: Breakdown of Marketing Materials Reviews

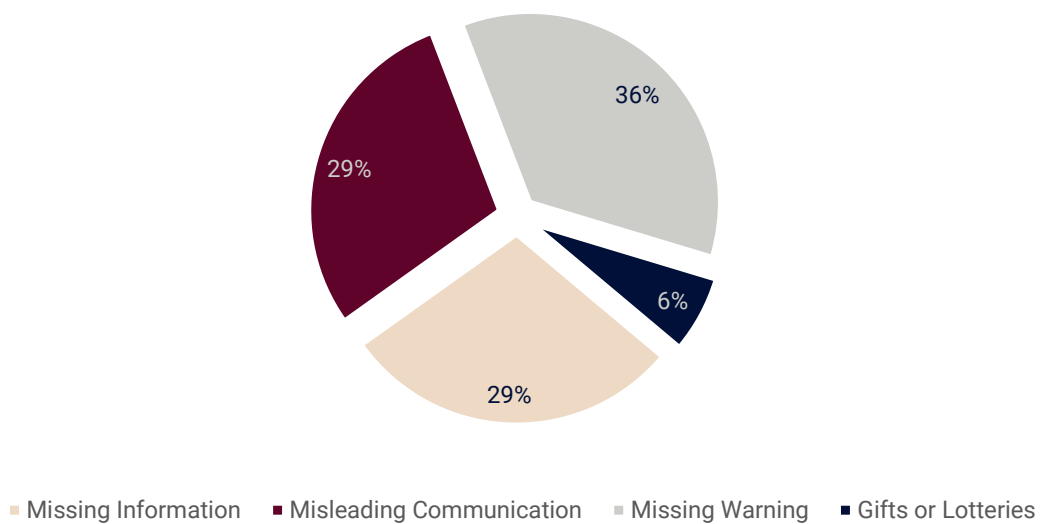


Source: MFSA

The main findings requiring the Authority’s intervention were related to:

- Missing information (29.03%)
- Misleading communication on the natures and the features of the product (29.03%)
- Missing disclaimers and/or risk warnings (35.48%)
- Misleading use of gifts, rewards, or other incentives (6.45%)

Figure 3: Common Issues with Marketing Communications



Source: MFSA

2.2 Websites

Between 1 January 2023 to 31 December 2023, a total of 35 licence holders' websites (21 investment firms and 14 insurance companies) were reviewed against the applicable rules of the Conduct of Business Rulebook.

Most of the issues identified on the websites were related to incorrect or incomplete information about:

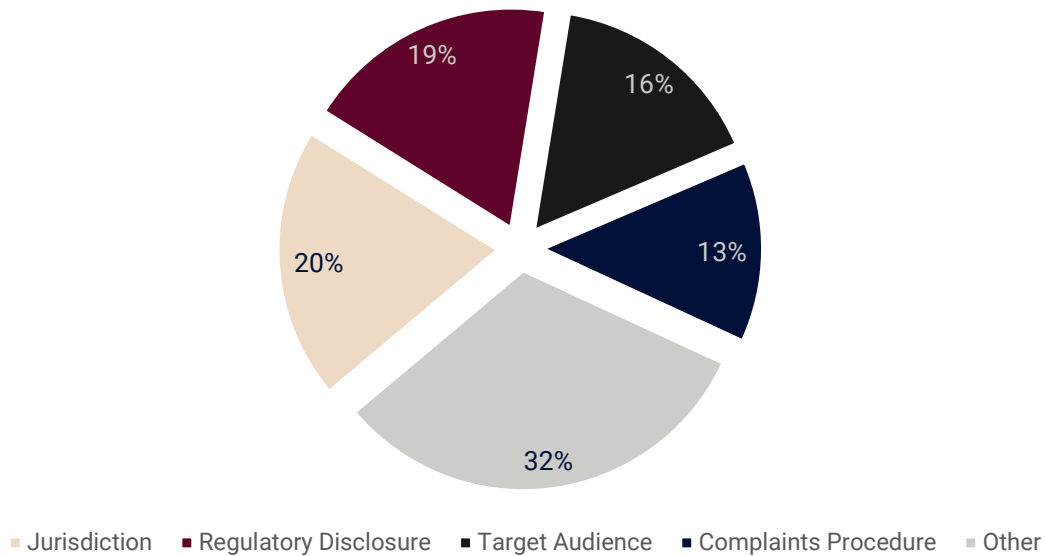
- i) the EU countries where the Company operates on a cross-border basis (20%)
- ii) licensing statements and regulatory information (18.67%),
- iii) target audience (16%),
- iv) procedure on dealing with complaints (13.33%).

2.3 Main Cases and Trends Identified

During 2023, an increase was noted in cases related to the use of gifts, prizes, lotteries and other type of incentives linked to the promotion of financial services. In this regard, the Authority refers to the [Circular](#) it had issued in July 2021 recommending Licence Holders to refrain from using such practices and in which it had clearly stated that consumer's decisions should not be clouded by the potential acquisition of any kind of reward which is not linked to the product under advertisement, nor should this decision be used by the pressure of obtaining any sort of reward or the possibility to obtain any sort of giveaway or participating in a lottery. The Authority would like to reiterate that, in carrying out their marketing activities, Licence Holders are expected to come in line with the Authority's expectations in this area, as further explained in the abovementioned Circular.

Furthermore, it was noted an increase in the promotion of financial products with particular reference to Insurance Based Investment products ('IBIPs'), being advertised as "guaranteed" or other similar terms, with no disclosure or information on the name of the guarantor, type and limitations to the guarantee, as provided by the relevant rule of the Conduct of Business Rulebook. In these cases, Licence Holders were contacted and requested to amend their adverts accordingly.

Figure 4: Common Issues on Licence Holders' Websites



Source: MFSA

2.4 Examples of Intervention

Through the use of certain IT tools, the Authority ensures an ongoing and proactive monitoring of social media utilised by licence holders to promote their products and services, on a risk-based approach basis. The Authority reaches out to licence holders on a regular basis requesting to amend or withdraw adverts or any other form of marketing communication that is deemed to be misleading or non-compliant to the applicable rules.

Examples of intervention can include requesting the adjustment of an advert or the website with specific risk warnings or disclaimers, or the removal of some elements of the communication that are deemed to be misleading, inaccurate or deficient.

By way of example, the Authority requested an investment firm to include the required risk warning “The value of your investment may go down as well as up” in all the marketing material related to the issue of a local bond.

In another case, an insurance company was requested to include the disclaimer “surrender charges may apply” in the marketing material related to a life insurance product and to refrain from using the word “assured” used in the context of potential returns, in the advert.

In such cases, the requested amendments were considered crucial for the advert to be clear, fair and not misleading and provide consumers with a balanced representation of the risks of the products.

Section 3: Reporting of Misleading Financial Promotions

The MFSA can investigate financial adverts and any other forms of marketing communications that involve financial products and services such as, for example:

- Banking services (including loans, savings, fees and others)
- Insurance such as home, motor and travel
- Retirement plans
- Life assurance
- Investments
- Payment services

These adverts may appear in various forms, such as:

- Websites
- Social media
- Mobile apps
- E-mails
- Television, radio
- Billboards
- Newspapers

It should be noted that the relevant Rules are media neutral, therefore they apply to any marketing material irrespective of the media utilised for the promotion.

Examples of misleading marketing material can include cases whereby the representation of the risks and the benefits of the product or service is not balanced within the context of the advert, or whereby the representation of the nature of the product and the related risks is not clear.

Although financial promotions are not intended to give an exhaustive description of a product or service, below are listed certain elements that consumers should look for in financial promotions:

- Who is the entity that is issuing the financial promotion, and whether it is licenced by the MFSA or another EU regulator?
- Who is the manufacturer and the distributor of the product or service being advertised?

- Will you have access to your money after purchase, and if not for how long?
- Where can you learn more about the product or service?
- Does the language used apply undue pressure in order to get you to purchase the product?
- Is there an indication risks of the product or service – in addition to the benefits - particularly in cases whereby the financial products might not give back your initial investment?
- Are there any fees linked to the product or service, especially in cases where you want to exit the product or service early?

In the case of Financial Contracts for Difference ('**CFDs**') it is important for current and prospective clients to understand the protections afforded to them under Maltese law, including margin close-out protection and negative balance protection.

CFDs are more complex than traditional investment instruments, therefore in their advertisements for such products, Licence Holders are required to disclose the percentage of their clients who lose money when trading with CFDs.

It is important to highlight that consumers should not base their financial decisions merely on the information provided in an advert. Once a potential client is interested in the product or service being advertised, they should seek more information from the service provider and read through the product documentation to learn more about the benefits and risks. Before making any financial decisions, consumers should understand the benefits and risks of the product or service and seek further information from the distributor of the product and/or professional financial advice.

All adverts and promotions for financial services must be fair, clear, and not misleading. If a consumer come across an advert or any other form of marketing communication and thinks it is unclear or misleading, this can be reported to the MFSA through the following [link](#).

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