

# *Introduction to Advertising Regulations for Financial Products*

## **Cause**

In laws and regulations, increasingly higher and more detailed requirements are being set for advertising and marketing materials for financial products. These requirements have been further tightened by the entry into force of the Financial Supervision Act (Wft), the Decree on Conduct Supervision of Financial Enterprises Wft (Bgfo) based on it, and the Further Regulations on Conduct Supervision of Financial Enterprises Wft (NRgfo).

## **Objective and scope of this information**

This information primarily aims to raise awareness within the bank of the mandatory external regulations that advertising and marketing materials must comply with.

This information is not intended to be a guide or manual for the bank in producing its own advertising and marketing materials. Nor should it be regarded as (legal) advice on the subject.

Given the complexity of the various advertising regulations, specialized knowledge is required to create and evaluate advertisements for financial products. Due to the persistent creativity of those who develop materials, this knowledge must be applied to concrete materials. Within Rabobank, there is insufficient capacity to advise local banks on all advertising and marketing materials developed by the local banks themselves. Local banks are therefore strongly advised to make as much use as possible of the advertising and marketing materials developed by Rabobank. Rabobank's market directorates will strive to meet the needs of local banks with the marketing packages they develop.

This information will first address a number of general aspects of advertisements that are important for all financial products. Subsequently, the advertising regulations relevant to specific product categories will be addressed. First, the advertising regulations for investment services will be discussed, followed by the advertising regulations for other private financial products. This information focuses on advertising and marketing materials produced by the bank. Outside the scope of this information are:

- a) legally required forms of information provision (such as a prospectus)

- b) specific codes of conduct relevant in the context of direct marketing activities aimed at preventing aggressive sales techniques (ban on 'cold calling')
- c) deeds, forms, and documents that the local bank is required to use under Article 14 paragraph 1 sub x of Rabobank's statutes, as established and approved by Rabobank
- d) the manner in which local banks handle the materials provided by Rabobank in the context of their advice (advice risk).

## **For whom is this information intended?**

This information is primarily aimed at the officials within the bank involved in the development of advertising and marketing materials.

Additionally, internal control officers can use this information to review materials developed by the local bank itself. Furthermore, the Local Compliance Officer (LCO) will need to report any violations to Rabobank's Directorate of Supervision. Finally, the Audit Rabobank Group (ARG) will be asked to include the review of marketing materials developed by the local bank in its work program.

## **Status of this information**

This information contains a description of a large number of mandatory external regulations to which the local banks are directly subject. Insofar as this information particularly discourages local banks from developing certain advertising and marketing materials themselves, this should be regarded as a (non-binding but not optional) advice aimed at managing an increased risk of violating mandatory advertising regulations. If local banks believe they need to deviate from the advice included in this information, they must be able to justify why doing so is warranted under the given circumstances ('comply or explain'). Mandatory external regulations, however, cannot be deviated from.

As a result of Rabobank's designation in the context of the entry into force of the Wft on January 1, 2007, as the holder of a collective license, which also extends to the affiliated banks, the importance of complying with these conduct supervision rules has possibly increased even further. Non-compliance will not only have (potential) consequences for the involved local bank but also for other local banks and Rabobank. Perhaps it is unnecessary to mention that if local banks offer financial products developed by themselves (or by third parties not belonging to the Rabobank Group), prior approval from Rabobank must be obtained based on the AGRP 2004.

## **Information & Advice**

Questions about advertising regulations for financial products in general or about the above information, in particular, can be submitted to the Knowledge Center for Private & Private Banking (Kenniscentrum Particulieren & Private Banking).

# *General remarks relevant to all financial products*

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## **Legal Information**

Via the link on the right, an overview can be consulted which lists the additional information available on advertising regulations for financial products.

## **When is it considered advertising?**

The term advertising is defined in the Wft as: any form of information provision intended to promote or has a promotional character regarding a specific financial service or product.

A financial service is defined as:

- a) offering;
- b) advising on financial products other than financial instruments;
- c) mediating;
- d) reinsurance mediation;
- e) acting as a clearing institution;
- f) acting as an authorized agent or sub-agent;
- g) providing an investment service; or
- h) performing an investment activity.

Insofar as it concerns offering, advising, or mediating financial products that are not financial instruments (including participation rights in an investment fund) or insurance, the scope is limited to consumers. A consumer is defined as: a natural person not acting in the exercise of his or her business or profession. Insofar as it concerns offering, advising, or mediating insurances, offering participation rights in an investment fund, advising on financial instruments, and providing investment services, the term clients is used. A client is defined as: a person to whom a financial enterprise (intends to) provide a financial service. This also includes the business market.

A financial product is then defined as:

- a) an investment object;
- b) a payment account, including associated payment facilities;
- c) electronic money;

- d) a financial instrument;
- e) credit;
- f) a savings account, including associated savings facilities;
- g) an insurance; or
- h) another product designated by general administrative order.

Advertising does not include legally required information that must be provided to the consumer prior to the sale of a financial product, such as a prospectus. This also applies to information provided to a consumer or client after concluding an agreement regarding a financial product.

For the applicability of the various advertising regulations, it is essentially irrelevant which medium is used. However, there may be special regulations for advertising through certain media. A non-exhaustive list of media forms can include advertisements in a newspaper or magazine, a brochure, flyer, or poster, an (electronic) billboard, television or radio advertisement, internet, or email. Newly developed media due to advancing technology will automatically fall within the scope of the advertising regulations. Additional marketing rules apply to certain forms of unsolicited approaches to consumers for commercial purposes (direct marketing) via specific media (via email, phone, or in person). These regulations aim to prevent aggressive sales techniques (ban on 'cold calling').

Finally, it is a misconception to think that advertising regulations can be circumvented by choosing to send a mailing to a specific group of customers or prospects. In that case, the rationale of the various advertising regulations would still apply. Moreover, if it concerns:

- a) advising/recommending
- b) one or more specific financial products to
- c) a specific client,

the so-called advisory rules of the Wft also apply. Although these advisory rules fall outside the scope of this document, they imply, among other things, that the advice must be tailored to the client's financial position, knowledge and experience, objectives, and risk tolerance. If the advice concerns financial products other than financial instruments, the considerations underlying the advice must be explained. Also, advising implies that if the client proceeds to purchase the relevant product and later substantial changes occur in the information relevant to the client, the client must be informed again.

Given the above, Rabobank Nederland advises to avoid drafting a mailing that meets the criteria of (a) advising/recommending, (b.) one or more specific financial products to, (c.) a specific client. This way, it is avoided that advice is given.

## **Why does the government impose increasingly stricter regulations on advertising?**

The introduction has already indicated that increasingly higher and more detailed requirements are being imposed on advertising and marketing materials. With the introduction of the Wft, Bgfo, and NRGfo, these requirements are further tightened. Why was this decided? The answer can be found in the government's view on advertising. It is believed that the primary characteristic of advertisements is a selective representation of a product's properties and the persuasive nature of this information. Since a significant portion of (potential) clients' purchasing decisions is largely determined by the impression an advertisement creates, it is crucial that the information provided, despite its persuasive nature, is sufficiently balanced to prevent the (potential) client from purchasing a product without knowing or understanding its relevant properties.

The general legal requirement that advertisements must not be misleading does not sufficiently protect (potential) clients of financial products, according to the government. Therefore, the requirements for advertisements related to financial products are specified and tightened in the Bgfo and NRGfo. This includes prescribing specific warning sentences that must be included in advertisements or requirements on how (example) returns and costs should be calculated and presented.

## **Advertising rules not included in the financial supervision regulations**

In addition to the Wft, Bgfo, and NRGfo already mentioned above, the Dutch Advertising Code (Nederlandse Reclame Code), consisting of a General part and a large number of Special Advertising Codes (for example, for loans and investments, advertising to children, and advertising via email), as well as the recommendations that the Advertising Code Committee can make and make public based on complaints submitted to it, are also relevant in the context of creating and assessing advertising and marketing materials.

Furthermore, the provisions of Articles 6:194 to 6:196 of the Civil Code regarding misleading advertising are important. After the implementation of the EU Directive on unfair commercial practices, consumers can derive protection from these articles in case of misleading advertising.

This regulation can be divided into three parts. First, the regulation contains a general standard by which it is assessed whether a commercial practice is unfair. This is the case if a trader acts contrary to the requirements of professional diligence and fair market practices, thereby significantly impairing the average consumer's ability to make an informed decision and causing the average consumer to take a decision regarding an agreement that they would not have taken otherwise. This general standard for unfair commercial practices is then elaborated into misleading and

aggressive commercial practices. Not only misleading actions but also misleading omissions can be considered a misleading commercial practice. A misleading omission occurs, among other things, when essential information that the average consumer needs to make an informed decision about a transaction is omitted, concealed, or provided too late.

A commercial practice is aggressive if intimidation, coercion, or undue influence significantly impairs the freedom of choice or conduct of a consumer, causing the average consumer to enter into an agreement that they would not have entered into otherwise. The regulation includes a list of behaviors that are considered aggressive under all circumstances. This list includes, among other things, encouraging children in advertisements to persuade their parents or other adults to purchase products for them.

A commercial practice is considered misleading, among other things, when marketing the product creates confusion regarding products, trademarks, trade names, or other distinguishing features of a competitor. This can occur in the case of so-called comparative advertising. A commercial practice is also misleading if a code of conduct (e.g., self-regulation by NVB/CHF) that is indicated to be binding is not adhered to, causing the average consumer to enter into an agreement they would not have otherwise. The list of commercial practices that are misleading under all circumstances includes: presenting consumer legal rights as a distinctive feature of the offer and describing a product as free or costless if the consumer has to pay something else.

Based on the legal regulation regarding unfair commercial practices, the consumer can file a claim for damages on the grounds of tort, with a reversal of the burden of proof regarding the accuracy and completeness of the information provided. Additionally, the consumer can often successfully claim the nullification of the agreement on the grounds of a defect in consent (error, fraud, coercion, abuse of circumstances).

Insofar as the violation pertains to a financial service, the AFM is authorized to administrative enforcement (administrative fine) or civil enforcement. If the AFM can act both on the basis of the regulations stipulated in or pursuant to the Wft and on the basis of the prohibition of unfair commercial practices, the former regulations will take precedence over the general regulation on unfair commercial practices. It should be noted that there will be a certain degree of reflexivity between the regulation of unfair commercial practices in the Civil Code and the advertising rules included in or pursuant to the Wft. In this context, the open standards included in the advertising rules based on the Wft (e.g., 'not misleading') can be filled in based on the lists of commercial practices that are misleading or aggressive under all circumstances included in the regulation on unfair commercial practices.

## **Open standards 'not misleading' and 'understandable'**

Depending on the type of product, the requirements stipulated in external regulations for advertising and marketing materials will vary. Generally speaking, an important general rule is that information provided must be correct (factually accurate), clear (understandable), and not misleading. In the Policy on Information Provision posted on the AFM website ([www.afm.nl](http://www.afm.nl)), the AFM provides further explanation on what it considers correct, clear, and non-misleading information. The Policy on Information Provision is a policy rule as referred to in Article 1:3, fourth paragraph, of the General Administrative Law Act (Awb).

When assessing whether the information is correct, the AFM looks at whether:

- the information is factually accurate;
- the consumer receives what is promised;
- there are no contradictions in the information, both within a document and between different information carriers.

For the assessment of whether information is clear and not misleading, the AFM examines whether the information easily provides insight into the relevant characteristics of the product and does not mislead the consumer. This means that the information must be accessible, comprehensible, and balanced for the target audience.

When a company provides promotional or recommendatory information about a product, the information must present an accurate picture of the product and must not mislead the consumer. To provide an accurate picture of a product, the company must also provide information about the (limiting) conditions or risks associated with the features mentioned in the information. In addition, non-market-conforming features of the product must almost always be mentioned. The company must also provide all reasonably relevant information about the feature being advertised.

When assessing whether the information is accessible, the AFM looks at whether:

- all relevant features are easily found within informational documents about a product;
- topics related to each other are grouped together.

When assessing whether the information is comprehensible, the AFM looks at whether:

- the information contains as few difficult terms as possible, including legal jargon;
- the company explains difficult concepts in simple terms;
- the company explains the information as clearly as possible;
- the company presents the information as explicitly as possible.

Balanced Information:



- includes both the relevant advantages and the relevant disadvantages and risks of the product;
- makes the disadvantages and risks of the product as clear as the advantages;
- describes the (limiting) conditions and risks of features mentioned in an information carrier.

## **Consequences of not complying with advertising regulations**

By not complying with relevant laws and regulations, Rabobank Group faces significant risks. As a result of Rabobank Nederland's designation as a holder of a collective license on January 1, 2007, following the entry into force of the Wft, which also applies to the affiliated banks, the importance of complying with these conduct rules has possibly increased further. Non-compliance will not only have (potential) consequences for the involved local bank but also for other local banks and Rabobank Nederland. Regarding the consequences of non-compliance with advertising regulations, a distinction can be made between regulatory, civil consequences, and complaints.

### **Regulatory consequences**

The AFM has increasingly focused on advertising statements by financial institutions that do not meet the requirements stipulated by law and regulations. In recent cases, the AFM has already imposed administrative fines for violating advertising regulations. The entry into force of the Wft has had the effect that a decision to impose an administrative fine for the violation of advertising regulations must, in principle, always be made public by the AFM. It is clear that this can seriously damage the reputation of the Rabobank Group.

### **Complaints to the Advertising Code Committee**

Consumers and companies can submit a complaint about a Rabobank advertisement to the Advertising Code Committee if they believe the advertisement is misleading. The Advertising Code Committee and, on appeal, the Board of Appeal are tasked with assessing whether advertising is made in accordance with the provisions of the Dutch Advertising Code. The Committee can judge that the complaint is unfounded and reject it (rejection), or judge that the complaint is justified and uphold it (upholding). If a complaint is upheld, the Committee will recommend that the advertiser refrain from similar advertising practices in the future. The Committee may also decide not to make a recommendation, for example, if the party against whom the complaint is directed demonstrates that appropriate measures have been taken in response to the complaint to comply with the Advertising Code.

All decisions of the Advertising Code Committee and the Board of Appeal are included in the Committee's online database (accessible to third parties). In addition, all decisions may be included in publications (printed and digital) of the Advertising Code Foundation.

## **Civil consequences**

Non-compliance with these laws and regulations can also have various consequences in civil proceedings against the bank.

Increasingly, customers' complaints are (partly) based on the allegedly misleading nature of advertising and marketing materials. In addition to liability for the damage suffered by the customer as a result, under certain circumstances, voiding an agreement based on error may also be considered.

Furthermore, it should be realized that advertising for a specific product has implications for the content of that product. For example, if an advertisement states that something is free or has no costs, a client can derive rights from this, even if the cost aspect is arranged differently in the agreement.

## **Information & Advice**

Questions about regulations for financial product advertising in general or this document, in particular, can be directed to [fm.nl.mar.reclameregels](https://fm.nl.mar.reclameregels).

# *Advertising Regulations for Investment Services*

## **Investment Services**

In this context, investment services will be understood as all services offered by a local bank as an investment firm regarding financial instruments (securities and derivatives). This will often involve financial instruments (such as shares, bonds, participations in investment funds, options, and financial futures) that are administered on a securities account. In addition to executing orders for securities and derivatives, this also includes subscribing to an issue in the context of the introduction of a new investment product.

If a financial product consists of a combination of multiple product types, it is considered a complex product. In that case, only the advertising regulations for complex products (see below) apply. If it concerns a securities credit, the advertising regulations of the Wft are relevant.

In an advertisement, it should be clear that the bank offers investment services or the financial instruments to which those services relate. There should be no confusion about the nature of the financial product or the financial service offered. Therefore, the bank should not give the impression in an advertisement that the investment product is a savings, insurance, or other adjacent product. It also means that specialties such as reverse convertibles, asset-backed bonds, and other so-called structured products should not be offered as ordinary bonds.

## **Relevant Laws and Regulations**

For advertising and marketing materials used in the context of investment services provided by the local bank to its retail clients, the main provisions are in the Wft. This law contains conditions that the information from an investment firm must meet to be considered correct, clear, and not misleading, and it applies to advertisements. An advertisement is defined as 'any form of information provision that serves to recommend or has a promotional character regarding a particular financial service or financial product.' If a specific investment product or service is brought to attention, this will generally always be the case. The medium used is not important. In addition to newspaper ads and promotional brochures, this can also include posters, billboards, or emails.

If an advertisement contains an offer or an invitation to offer to enter into an agreement regarding a specific investment service and states how to respond to it, additional requirements apply. Reference can be made to the General Terms and

Conditions for Investment Services of Rabobank 2018, which contain the information that must be provided under these provisions.

Article 5:20 Wft obliges a securities provider to ensure that an advertisement:

1. states that a prospectus is generally available or will be made available and where the prospectus can be obtained
  2. is recognizable as such and contains information that is not incorrect or misleading and is consistent with the information in the prospectus.
- Moreover, oral or written statements by the provider regarding the offering of securities must be consistent with the information in the prospectus.

Furthermore, Article 4:19 Wft stipulates that information, including advertisements, must not detract from the legally required information. Moreover, according to this provision, the information must be correct, clear, and not misleading. Finally, this provision requires that it be ensured that the commercial intent of the provided or made available information is recognizable as such. It must be clear that the advertisement comes from Rabobank, by mentioning the logo.

Based on a list of minimum data established by the AFM pursuant to Article 35 paragraph 5 Bgfo Wft, the bank must keep (an example of) an advertisement for at least five years from the time it was first issued, to enable the AFM to monitor compliance.

## Key Regulations

Information provision, including advertisements, must comply with the following regulations:

- the name of the bank must be mentioned
- the information is accurate and indicates possible benefits as well as the potential risks of a product in a clear and balanced manner
- the information is adequate and presented in a way that is understandable to the average member of the group to whom it is addressed
- important matters, including warnings, are not hidden or presented in a diluted manner.

If the information compares investment services or financial instruments with each other:

- the comparison is meaningful and presented in a correct and balanced way
- the information sources used for the comparison are mentioned
- the main facts and assumptions used for the comparison are stated.
- If the information refers to a particular tax treatment:

it is clearly stated that the tax treatment depends on the individual circumstances of the customer and may change in the future.

## **Results from the Past or Future Results**

If information indicates the results achieved in the past with a financial instrument, a financial index, or an investment service, the following requirements must be met:

- This indication is not the most prominent feature of the communication or statement.
- The information contains data on the results over the immediately preceding five years or, if this period is shorter than five years, over the entire period during which the financial instrument was offered, the financial index was established, or the investment service was provided, or over a longer period chosen by the bank, always based on full twelve-month periods.
- The reference period and the information source are clearly indicated.
- It is clearly warned that these are past results and do not constitute a reliable indicator for future results.
- If the indication is based on data in a currency other than EUR, the relevant currency is clearly indicated and it is warned that returns may be higher or lower due to exchange rate fluctuations.
- If the indication is based on gross results, the effect of commissions, fees, and other charges is indicated.

If the information contains data on future results:

- It does not rely on or refer to fictional past results.
- It is based on reasonable assumptions supported by objective data.
- If the information is based on gross results, the effect of commissions, fees, and other charges is indicated.
- It is clearly warned that such forecasts do not constitute a reliable indicator for future results.
- Presentation scenarios under different market conditions are included.

In addition to the above specific provisions, one of the core requirements remains that the information provided must be accurate, clear, and not misleading.

Misleading information can also result from omitting essential information or using obscure terms. The assessment of whether the provided information is factually correct, clear, and not misleading must be based on the complete text. The starting point will be the level of knowledge that the average customer is assumed to have.

To avoid misleading information, it is essential to include in marketing materials at least a description of:

- The main modalities of the product.
- The functioning of the product.
- The risks associated with the product (preferably through a separate risk paragraph, which also addresses tax risks).
- The investment objective and/or investment vision underlying the product, as well as the target audience for which it is intended.
- The possibilities to exit the product and the associated consequences (attention should also be paid to market maintenance and liquidity).
- The costs associated with the product.

The requirement that the information provided must not materially deviate from the image that can be formed based on the legally required information, such as a prospectus or the essential information document (EID), is closely related to avoiding misleading information. This aims to prevent advertising from giving a much more positive picture of the risks associated with the investment product than is justified.

In advertising and marketing materials, depending on the nature of the product and the information contained therein, certain mandatory texts must be included.

## Required Texts

Investing is a risky product. Therefore, the AFM imposes additional requirements on expressions related to investing. The following sentence must be included:

'Investing carries risks. You may lose (a part of) your deposit.'

The above sentence must also meet the font size requirements. Since MiFID II, the requirements for this have been tightened, and it is prescribed that the text with risks (disclaimer) must have a font size that is at least equal to the font size predominantly used in the whole of the provided information. The text of the expression must therefore be balanced in size with the font size of the disclaimer.

In the following cases, mandatory texts must be included based on binding external regulations (Nrgfo). These texts may not be modified.

If the information provided contains expectations about the future or refers to past performance, the following sentences must always be included:

'The value of your investment may fluctuate. Past performance is no guarantee of future results.'

If the marketing material relates to a capital market transaction involving a part of the Rabobank Group as issuer and/or lead manager or otherwise involved in placing it in the market:

'This publication is not a prospectus or information memorandum. The data in this publication is derived from public information. Neither [specify entity] nor any other

legal entity that is part of the Rabobank Group is liable for any damage resulting from the data included in this publication. This publication is for information purposes only and should not be construed as an offer or invitation to make an offer. Potential investors should base their decision to invest in [specify product] solely on the full prospectus. In the event of discrepancies between the information included in this publication and the prospectus, the content of the prospectus shall prevail. The prospectus has been made generally available from [ ] at [ ]. This publication is intended for distribution within the Netherlands only. It is prohibited to make this publication available to persons outside the Netherlands, including the United States and the United Kingdom.'

In individual mailings to clients, it must always be adhered to the principle that if they (also) contain one or more investment recommendations, these must always be in line with the client's goal-risk profile. In certain generic forms of information provision, this principle cannot be complied with. In that case, the following text must be included:

'You must check yourself whether the investment recommendations included in this publication are in line with the goal-risk profile established for you. You can also contact your Rabobank advisor about this. The information/recommendations included in this publication are not explicit or implicit investment recommendations and may be changed at any time without further notice.'

It is also advisable to always include a disclaimer. A common disclaimer often used in relation to retail clients can be found on [www.rabobank.nl](http://www.rabobank.nl). This can be used as a starting point but must be checked for each specific case and, if necessary, adjusted to meet the other requirements set out in this document.

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## **Public Disclosure of Investment Recommendations**

An investment recommendation occurs when information intended for the public (i.e., information intended for more than one client) explicitly or implicitly recommends or suggests an investment strategy regarding one or more financial instruments (publicly listed) or the issuer thereof.

Financial instruments include not only shares but also investment funds and (structured) bonds.

With Explicitly is meant: buy, sell, hold, or an equivalent formulation. With Implicitly is meant: indirectly recommending aimed at buying, selling, holding.

Under the law, there are numerous rules for the public disclosure of investment recommendations. For example, the recommendation must state the name and function of the person who prepared the recommendation. Interests and conflicts of interest must also be disclosed. Furthermore, Chinese Walls procedures must be established. This means that a physical, organizational, and personnel separation must be made between certain departments. Contact Rabobank Legal for questions.

Since affiliated banks will not be able to comply with the rules regarding the public disclosure of investment recommendations, it must at least be avoided that investment recommendations are made. The investment information published by RN PB/Investment Competence via the RBI site or otherwise is for internal use only and may not be provided to clients or otherwise made public.



When local banks want to provide an investment vision in publications such as newspaper columns, investor magazines, or by using e-media, only publicly available general information (such as the Financial Market Updates) from RN PB/Investment Competence may be used and approved.

## **Advertising Rules for Investment Funds**

If it concerns a so-called 'complex product,' the provider is required to keep certain mandatory information available on their website. The provider and intermediary must also provide this information free of charge upon the customer's request.

Specific advertising rules apply to complex products, which are described in the section Advertising Rules for Other Retail Products. The advertising rules applicable to complex products, except for the rules regarding the form and use of the risk indicator, do not apply to banks.

In practice, this means that all advertisements for one or more investment funds must include the relevant risk indicator(s) (see [www.afm.nl/risicometer](http://www.afm.nl/risicometer) ). The risk indicator included in the advertisement must comply with the very detailed regulations issued by the AFM in the NRgfo concerning the location, format, and color of the risk indicator.

Banks must, of course, also comply with the rules applicable to other investment services (see Relevant Legislation and Regulations, Main Provisions, and Mandatory Texts).

## **Essential Investor Information**

Essential Investor Information (Ebi) replaces the Financial Leaflet (or the Simplified Prospectus) for investment funds. For other complex products, the essential information document (Eid) applies. The Essential Investor Information is based on European regulations, and its design and content are detailed. This ensures that consumers can more easily compare information about investment funds across Europe. The bank must provide the Essential Investor Information well before the customer places an order. The aim is for the customer to make informed investment decisions. Therefore, the customer must have sufficient time to understand the information provided and, if desired, compare different investment funds based on the information provided. When investment funds provide Essential Investor Information, banks must include a risk indicator with mandatory warning sentences in advertisements. The new mandatory warning sentences, including the risk meter, can be downloaded from [www.afm.nl/nl/professionals/regelgeving/thema/informatieverstrekking/essentiele-beleggersinfo.aspx](http://www.afm.nl/nl/professionals/regelgeving/thema/informatieverstrekking/essentiele-beleggersinfo.aspx) . Only the material provided by the AFM may be used. The risk indicator included in the advertisement must also comply with the very detailed regulations issued by the AFM regarding the location, format, and color of the risk meter.

## Exemption Statements

Information & Advice Questions about advertisement rules for financial products in general or this document, in particular, can be addressed to the Knowledge Center for Private Customers & Private Banking.

Advertising Rules for Other Retail Products Legal Information This chapter discusses the requirements set by the Wft, Bgfo, and NRGfo for information that a financial service provider provides to a consumer about a product in the period before the product is actually concluded without a legal obligation to do so. This information is also referred to as voluntary pre-contractual information.

## Essential Investor Information

Essential Investor Information (Essentiële Beleggersinformatie -Ebi) replaces the Financial Leaflet (or Simplified Prospectus) for investment funds. For other complex products, the essential information document (Eid) applies. The Essential Investor Information is based on European regulations, and its design and content are detailed. This ensures that consumers can more easily compare information about investment funds across Europe. The bank must provide the Essential Investor Information well before the customer places an order. The aim is for the customer to make informed investment decisions. Therefore, the customer must have sufficient time to understand the information provided and, if desired, compare different investment funds based on the information provided. When investment funds provide Essential Investor Information, banks must include a risk indicator with mandatory warning sentences in advertisements. The new mandatory warning sentences, including the risk meter, can be downloaded from [www.afm.nl/nl/professionals/regelgeving/thema/informatieverstrekking/essentiele-beleggersinfo.aspx](http://www.afm.nl/nl/professionals/regelgeving/thema/informatieverstrekking/essentiele-beleggersinfo.aspx). Only the material provided by the AFM may be used. The risk indicator included in the advertisement must also comply with the very detailed regulations issued by the AFM regarding the location, format, and color of the risk meter.

> Exemption Statements ( [Vrijstellingsvermeldingen](#) )

## Information & Advice

Questions about advertising rules for financial products in general or about this document, in particular, can be addressed to the Knowledge Center for Private Customers & Private Banking ( [Kenniscentrum Particulieren & Private Banking](#) ).

# *Advertising Rules for Other Private Products*

## **Legal Information**

This chapter addresses the requirements set by the Wft, Bgfo, and NRgfo regarding information that a financial service provider, without a legal obligation, provides to a consumer about a product during the period before the actual conclusion of the product. This information is also referred to as voluntary pre-contractual information.

What is not covered in this information is the mandatory pre-contractual information that a financial service provider must have provided to the consumer before concluding the agreement. Consider the obligation to make a prospectus or financial leaflet available or the obligation to inform the consumer in advance about registration with the supervisory authority or the internal complaints procedure.

The regulations of Wft, Bgfo, and NRgfo only apply to information that relates to a specific product and not to general advertising about the financial service provider itself (for example: 'Rabobank number 1 in mortgages'). For this type of advertising, the general rules that apply to advertising in general apply (see the previous paragraph on advertising rules that are not included in financial supervision legislation).

The Wft, Bgfo, and NRgfo have made a distinction in terms of setting rules between credits and complex products on the one hand, and other financial products on the other. Thus, there are regulations that apply to advertisements for all financial products (general advertising rules) and regulations that must be observed only for advertisements for credits and complex products (additional advertising rules).

For payment, savings products, and, for example, non-life insurance, the legislator has not found it necessary to establish additional advertising rules. However, for these products, the general advertising rules set by the Wft regarding information provision to consumers, listed below, must be observed.

## **Introduction**

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## **General Advertising Rules for Financial Products**

These are as follows:

1. Information must be correct/factually accurate.
2. Information must be clear/understandable.
3. Information must not be misleading.
4. Voluntary information must not detract from mandatory information.

The requirement that information must be factually accurate and understandable speaks for itself. Regarding the comprehensibility of information, the financial service provider may take the average consumer/client as a starting point. The complexity of the product will also play a role. As the product becomes more complex and/or riskier, less knowledge and insight can be expected from the average consumer/client, and the information will need to be tailored accordingly.

Concerning the third rule, it should be noted that incomplete advertising, where, for example, an important condition of the product is not mentioned, can be misleading. Not only incorrect statements but also failing to mention important aspects can result in misleading advertising.

The fourth rule means that the financial service provider must ensure that all information provided in any way is consistent with the information that must be

provided under Wft, Bgfo, and NRGfo. For example, in an advertisement about credit, no information about the interest rate may be included that contradicts what is stated in the (credit) prospectus about the interest. In this context, it should not be forgotten that a consumer/client can also derive rights from advertising and that a bank can be held to what is promised in the advertisement.

## Loans

Under the Wft concept of 'Loans' ('kredieten'), the following are included:

- Consumer loans made available to a consumer in the form of a money or goods loan (think of: personal loan, revolving loan, loan facilities on the checking account, loan card loan, securities loan);
- Mortgage financing (home financing, mortgage loan).

### Mentioning interest rates or monthly payments

In advertisements concerning (mortgage or consumer) loan, where information is provided about the costs of the loan (think of interest rate, the monthly payment), information must be provided in tabular form about:

- The total loan amount;
- The (theoretical) duration;
- The debit interest rate (fixed or variable);
- The annual cost percentage (JKP);
- The installment amount;
- The total amount to be paid by the consumer.

If concluding an agreement for an ancillary service is mandatory to obtain the loan under the conditions mentioned in the advertisement, the costs of this ancillary service must also be mentioned.

For the loan table for mortgage advertisements, we refer you to the information included under Legal Information. This table can be consulted via the link at the bottom of this paragraph.

### What is not allowed?

In advertisements about loan, the following things may not be mentioned:

- Statements aimed at the ease and speed with which the loan is provided. Think of the words 'direct', 'quick', and 'simple'. A consumer should not be prompted to conclude loan agreements in a sudden impulse. Also, the slogan 'Mortgage within a week' may no longer be used.
- Statements suggesting that despite a negative BKR registration or otherwise deviating from an applicable code of conduct, loan can still be obtained.

- The statement that existing loan agreements play no or a subordinate role in the assessment of a loan application.
- Characteristics of the loan, which include tax advantages.
- Promotional rates.

### **Consumer financing**

#### **a) Reference to further information about the loan**

In advertisements where information is provided about a specific consumer loan, it must be indicated where the consumer can obtain further information about that particular loan product.

"Further information about this product can be found at [www.rabobank.nl/<>](http://www.rabobank.nl/<>) or requested at the Rabobank."

#### **b) Mandatory warning sentence 'Attention! Borrowing money costs money.'**

In advertisements for consumer loans, but also for mortgage loans with a purpose other than acquiring one's own home, consumers must be warned about the risk of over-indebtedness, and it must be explicitly stated that loans involves costs.

For this, the AFM has designed a warning text including a logo that must be used for all loan advertisements on television, radio, the internet, and in printed media from April 1, 2009. Exceptions are general advertisements for mortgages and advertisements related to the purchase of their own home.

Providers, intermediaries, and advisors must use the fixed image and audio files that the AFM makes available when including the warning in their advertisements.

Deviation from this is not allowed! The AFM has also established rules about how this warning should be included in an advertisement. All files and rules can be found on the AFM website at [www.afm.nl/kredietwaarschuwing](http://www.afm.nl/kredietwaarschuwing). It is allowed to resize the downloaded files (for example, banners or ATM screens) or enlarge them (for example, billboards, facade posters), as long as the correct ratio of 1:10 (including warning) is maintained. To avoid disputes about readability, the minimum font size is 7 points.

The place where the mandatory warning sentence including the logo must be included in the advertisement varies by medium.

### **Written (such as advertisements, brochures, billboards, DM by post and email, and SMS messages)**

The warning sentence with the logo spans the entire width of the advertisement and is placed at the bottom of the advertisement. The height of the warning sentence with the logo is at least 10% (including warning) of the entire height of the advertisement. This means that if the height of, for example, a newspaper advertisement is 20 cm, the bottom 2 cm must be used for the mandatory warning sentence with the logo.

For written advertisements that cover multiple pages (for example, brochures), the warning sentence with the logo only needs to be on the first page.

### **Internet**

The warning sentence with the logo must be placed at the top of the screen, across the entire width. Here too, the height of this warning is equal to 10% (including warning) of the height of the advertisement on the screen.

The mandatory warning sentence with the logo must be on every web page where loan is advertised (unless it concerns mortgage loan related to the acquisition of one's own home), so not just, for example, on a homepage. These new advertising rules also apply to banners!

Is it not possible to include an image in an internet advertisement? Then only a warning text may be mentioned, which can be downloaded from [www.afm.nl/kredietwaarschuwing](http://www.afm.nl/kredietwaarschuwing).

Is it also not possible to include a text as mentioned above or an image in an internet advertisement? Then an abbreviated warning text may be mentioned, which can be downloaded from [www.afm.nl/kredietwaarschuwing](http://www.afm.nl/kredietwaarschuwing).

The abbreviated warning text is displayed at the bottom of the advertisement in the same font size as the other text. The text is shown in black or red and if possible bold and centered at the bottom. Note: the advertiser must demonstrate that it is technically not possible to include the full loan warning or the full warning text in the advertisement.

### **Radio or an audio fragment on the internet**

If loan is advertised via spoken word for consumer loan or mortgage loan with a purpose other than acquiring one's own home, a special audio fragment must be played afterward. This is a sound recording that must be downloaded from the special AFM website. Note, this recording must be played at the original speed and with the same volume as the advertisement.

### **Television**

The warning sentence with the logo must be centered at the bottom of the screen, across the entire width of the screen displayed on television. This rule also applies to so-called 'in-program' advertising, where advertising is broadcast during a television program. In this case, the warning sentence with the logo must also be displayed.

## **Complex Products**

A complex product within the meaning of the Wft/Bgfo is:

- a combination of two or more financial products, whose value of one of these products depends on the development of financial markets (for example, Rabo RendeMix, Rabo Levensloop Sparen/Beleggen);



- a right of participation in an investment institution (not being a security);
- a combination of a mortgage loan (housing financing) with a life insurance (for example, the old SpaarZekerHypotheek) or a combination with a savings account (Rabo OpbouwHypotheek);
- all bank savings products (Rabo ToekomstRekening and RaboToekomst Uitkering);
- life insurance policies (excluding term life insurance policies);
- an investment object [9];
- a combination of the aforementioned complex products with another financial product [10];
- another product designated as such by ministerial regulation.

[9] In that case, additional advertising rules apply. Assuming that affiliated banks will not offer the financial service of offering investment objects and will not be involved in mediating them, these additional advertising rules are not addressed in this document.

[10] If multiple complex products are combined, the new combined complex product must be taken as the basis for creating advertising and marketing materials. The consequences of the interaction between all elements must be addressed in the accompanying information/advertising brochure (thus not limited to a bundling of existing brochures or statements of the individual complex products).

As of January 1, 2018, the financial leaflet has been discontinued. Therefore, advertising for complex products no longer needs to refer to the financial leaflet. This also removes the obligation to include the associated risk indicator in advertising for these products. For certain investment products or insurance products with an investment component, the essential information document (EID) has been mandatory since January 1, 2018. For example, for Rabo ToekomstBeleggen, reference must be made to the Essential Information Document (EID).

## **Additional Rules**

### **Mention of Returns**

If a financial service provider mentions historical or future returns in advertising, but also in an offer or otherwise in the pre-contractual phase, calculation methodologies described in the NRGfo must be taken into account. One is not free to calculate and mention returns freely. Article 2:2 NRGfo specifies the rules for mentioning historical and future returns. Different rules apply to investment institutions for providing information about historical or future returns (see here for advertising regulations about investment institutions). Returns are distinguished between:

- historical returns



- future returns
- guaranteed returns

If information about historical or future returns is provided, information about the main costs and the main financial risks of the product must also be provided. Information about costs (not being costs of an investment institution) should be provided in absolute figures if the provider of the complex product displays returns in absolute figures. Information is displayed in percentages if returns are shown in percentages. Additionally, this cost information must be provided cumulatively (the consumer must get an overall picture, so no mention of individual costs spread throughout the text). Information about the main financial risks is displayed by including the following mandatory sentences:

The text: *"The risk that you will be left with a debt as stated in the Financial Leaflet is [...]."* must be included in the statement if it concerns a debt product. If this debt product involves wealth accumulation through investing (for example, with the investment variant of the Rabo Build-Up Mortgage), this mandatory sentence should be followed by: *"This risk can increase or decrease depending on your investment choice. Discuss your risk with an adviser."*

The text: *"The risk that you will not get your deposit back as stated in the Financial Leaflet is [...]."* should be used if it concerns a savings product. If this savings product has an investment variant (think of Rabo Future Investing), this sentence should be followed by the following text: *"This risk can increase or decrease depending on your investment choice. Discuss your risk with an adviser."*

## **Written Advertisement/Internet**

### *Historical or Future Returns*

If historical or future returns are mentioned in the advertisement, information must also be provided about the main costs of that product as well as the main financial risks of that product. In this context, the mandatory sentences mentioned above must also be included in the statement.

### *Guaranteed Returns*

If guaranteed returns are mentioned, the conditions of the guarantee may be specified in the relevant advertisement. It is not mandatory, it can also be mentioned later, as long as it takes place before entering into the agreement. The customer must therefore be informed about those conditions before entering into the agreement. This last point must be well-coordinated with the product specialists or product managers.

## **Television**

### *Historical or Future Returns*

If historical or future returns are mentioned in a television commercial, information about the main costs of the product may be provided in the advertisement. It is not

mandatory, it can also be mentioned later, as long as it takes place before entering into the agreement. If it is decided not to provide information about the costs on television, this must be well-coordinated within the bank.

#### *Guaranteed Returns*

The same applies to mentioning a guaranteed return. It is allowed to mention guaranteed returns on television, provided that the customer is informed about the main conditions of the guarantee before entering into the agreement. This requires coordination.

### **Radio**

#### *Historical or Future Returns*

If historical or future returns are mentioned in a radio advertisement, information about the main costs of the product may be provided in the advertisement. It is not mandatory, it can also be mentioned later, as long as it takes place before entering into the agreement. This last point must be well-coordinated internally.

#### *Guaranteed Returns*

The same applies to mentioning a guaranteed return. This is allowed in a radio advertisement, as long as the customer is informed about the main conditions of the guarantee before entering into the agreement. Coordination is important here as well.

### **The complex product also includes a loan**

If advertising is being done for a complex product that also includes a loan (think, for example, of the old SpaarZekerHypotheek), then the aforementioned rules about credit must also be observed (with the exception of the obligation to refer to the (credit) prospectus in that case).

### **Advertising as an intermediary with products from other companies**

When a Rabobank, in the capacity of insurance intermediary, advertises an insurance product from another company, such as Interpolis, it is advised to first contact that company. This is to check the content, but also because of the use of its brand (trademark or copyright protection).

## **Information & Advice**

Questions about advertising regulations for financial products in general or about this document in particular can be directed to the Knowledge Center for Private Banking & Individual Clients ([Kenniscentrum Particulieren & Private Banking](#)).



# *Advertising Expressions - Credit Table for Mortgage Advertisements*

## **Legal Information**

If an interest rate is mentioned in an advertisement for consumer or mortgage credit (for example, "fixed for 20 years at 4.2%") or the amount of the interest discount (for example, "now 0.2% discount on your mortgage rate"), then a credit table with explanations must be included in that advertisement.

Previously, the effective credit compensation rate had to be included in the table; now, it is the annual cost percentage (JKP). Additionally, the advertisement must disclose any ancillary services that a consumer is required to take out with their mortgage (such as property insurance).

To be clear, these advertising rules apply to all media except radio and television. Both websites listing rates or discount percentages and advertisements or, for example, Money Society screens must include this new credit table.

A link is provided under this information. Through that link, an example of this credit table can be consulted, including the text that must be included with it.

Take **Note!**:

The table contains variables, such as the interest rate. If you change one variable, you must also adjust the other variables and the corresponding text. Additionally, clearly indicate in the advertisement which rate class you have used and whether a discount percentage has been applied. If it is not immediately clear that the expression comes from Rabobank, include a reference to the address details of the (local) bank.

> Instruction - Credit Table with Annuity (example) - [Krediettabel met annuïteit \(voorbeeld\)](#)

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