

On 29 February 2008 changes to the Securities Markets Act 1998 came into force. Some of these changes involved disclosure obligations of investment advisers and investment brokers.

In summary, an adviser must give disclosure (via a Disclosure Statement) before giving investment advice to a member of the public or, in the case of a broker, before receiving investment money or property.

The information to be disclosed in a Disclosure Statement is prescribed by the Act and the accompanying Regulations.

**Any advertisement by an investment adviser or investment broker must state that a disclosure statement is available on request and free of charge so please ensure you triple check copy before accepting it.**

Three types of advertisement are covered by the new law (detailed below). The common requirement in relation to these three types of advertisement are that they are prepared by the adviser or broker concerned.

### **Advertisements by Investment Advisers and Investment Brokers <sup>21</sup>**

Any **advertisement** by an investment adviser or broker must state that a disclosure statement is available on request and free of charge. An advertisement must not be deceptive, misleading or confusing.

These requirements for advertisements are new requirements under the 2006 amendments to the Securities Markets Act 1988. They cover a large range of communications that advisers or brokers make or are involved in.

There are three types of advertisement covered by this law. They are **adviser advertisements**, **product advertisements**, and **broker advertisements**.

An advice advertisement is any communication prepared by an adviser that contains or refers to investment advice, or that is likely to induce a reader to seek investment advice.

A product advertisement is any communication prepared by an adviser that contains or refers to an offer of securities to the public, or that is reasonably likely to induce people to subscribe for those securities, and that is not an advertisement or prospectus under the Securities Act.

A broker advertisement is any communication prepared by a broker that refers to the broker, or is reasonably likely to induce a reader to seek the services of a broker.

These requirements apply to communications including:

- advice given over the telephone or in a written report;
- a research report on an issuer or security prepared by an adviser to be given to clients;
- a flyer sent to clients informing them of a new investment product;
- an account operating form sent by an adviser or a broker to a client;
- an investment seminar run by an adviser or broker.

**Examples:** Advertisements that might be deceptive, misleading or confusing are:

- an advertisement that states an adviser has been approved as an NZX Adviser, when this is not the case;
- a product advertisement that states that an issuer has assets of a particular value, but omits the fact that the issuer also has significant liabilities;
- an advertisement that claims without foundation that a particular investment will generate high returns;
- an advertisement that says an adviser can obtain special rates on investments where this is not true;
- a claim that a particular investment is of a lower risk than it really is;
- overly broad claims that an investment is suitable for a particular class or type of investor.