

# Consultation on the Review of the Code for Financial Advertising

24 May 2021

## The role of the Advertising Standards Authority

The [Advertising Standards Authority](#) (ASA) sets the standards (the Codes) for responsible advertising in New Zealand. The Codes cover truthful presentation and matters of social responsibility. The [Advertising Standards Code](#) sets the standards for all ads in all media. There are also specialist codes requiring a high standard of social responsibility to support responsible advertising, where there may be vulnerable audiences or products and services that could cause harm, if misused. The specialist codes are for advertising to children and young people and for categories including alcohol, gambling, financial and therapeutic and health.

The ASA runs a complaints process to support compliance. The ASA dealt with 1,931 enquiries during 2020, including 1151 formal complaints about 591 advertisements from a range of products and services. Appendix 2 provides a summary of the last five years complaints under the Code for Financial Advertising.

The ASA member organisations represent advertisers, agencies and media companies and it is funded through advertiser and media levies.

## The review of the Code for Financial Advertising

The ASA Codes Committee is responsible for reviewing and updating the Codes to support robust advertising standards. All codes are subject to a regular review. The ASA Codes Committee includes advertiser, agency, media and public representatives.

The Codes Committee work plan for 2021 includes a routine review of the standards for the advertising of financial products and services. This code review will ensure these standards are fit for purpose in 2021 and beyond. The current code is the [Code for Financial Advertising](#).

Prior to embarking on a code review, the Codes Committee considers information including relevant Complaints Board decisions. The drivers for a review of the standards for advertising financial products and services include the need to ensure the code is fit for purpose and reflects the current legislative environment, and is consistent with the format adopted for other recently reviewed ASA Codes.

The ASA Governance Board is responsible for approving the Codes Committee work plan, review process and the final code.

## **The scope of this review**

Financial services and products are subject to a range of legislative restrictions and industry codes. This review is focused on the ASA Code for Financial Advertising and the Codes Committee is not able to consider aspects in submissions that raise issues outside this scope. See Appendix 1 for more background information.

## **The current Code for Financial Advertising**

The ASA's [Advertising Standards Code](#) applies to all advertisements in all media, including financial product and service advertisements. The [Code for Financial Advertising](#) (Appendix 3) has additional rules that also apply to advertising of financial products and services. The emphasis in this code is to protect vulnerable audiences and advertisements must be prepared and placed with a high standard of social responsibility.

## **We are seeking your views on the current Code for Financial Advertising**

The Codes Committee is interested in your views on the current code and any evidence you have to support your position. Your feedback will inform possible changes to the current code to be sure we meet the objectives outlined above.

Submissions are due by 30 June 2021 to Claire Hofer ([claire.hofer@asa.co.nz](mailto:claire.hofer@asa.co.nz)). If you are not the right person in your organisation to respond, we would be grateful if you could please forward this request on.

The Codes Committee may release submissions to the public at the conclusion of the review. **Please advise if you do not want your submission to be released.**

## **Help spread the word**

If you know of other individuals or organisations who would also be interested in providing a submission, please forward this information to them.

## Questions to consider in your submission

It would be helpful to the Codes Committee if you would consider answering the following questions in your submission.

1. Do you think there are any inconsistencies between the current code and the current legislation that applies to the advertising of financial products and services? Please provide details.

2. The current Advertising Standards Code includes the following definition for advertising and advertisement;

*“Advertising and Advertisement(s)” means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.*

The current Code for Financial Advertising includes the following definition for financial advertisements;

*“Financial advertisements” are advertisements for the lending, saving or investment of money, financial instruments, financial transactions, offers of securities and includes category 1 and category 2 products as defined in the [Financial Advisers Act 2008](#). Advertisements for the provision of advice or services in respect of financial products, investments or securities are also deemed to be financial advertisements for the purposes of this Code.*

Please comment on what financial products and services you understand are covered by the definition of ‘financial advertisement’.

Please comment on whether there are financial products or services that need to be included or excluded from this definition and details to support your comments.

**Note: Outdated references to legislation will be amended. ‘Category 1 and category 2 products’ were defined as;**

**category 1 product** means—

- (a) an FMCA financial product (other than a product that is a category 2 product); or
- (b) a DIMS facility (other than a facility that is a category 2 product); or
- (c) an investment-linked contract of insurance; or
- (d) any other product specified by the regulations; or
- (e) a renewal or variation of the terms or conditions of an existing category 1 product

**category 2 product** means any of the following products:

- (a) a bank term deposit; or

<ul style="list-style-type: none"> <li>(b) a bonus bond; or</li> <li>(c) a call building society share; or</li> <li>(d) a call credit union share; or</li> <li>(e) a call debt security; or</li> <li>(f) a share in a co-operative company (as defined in <a href="#">section 2(1)</a> of the Co-operative Companies Act 1996); or</li> <li>(g) a unit in a cash or term portfolio investment entity (as defined in the regulations); or</li> <li>(h) a consumer credit contract within the meaning of the <a href="#">Credit Contracts and Consumer Finance Act 2003</a>; or</li> <li>(i) a contract of insurance (other than an investment-linked contract of insurance); or</li> <li>(j) a life insurance policy (within the meaning of <a href="#">section 2(1)</a> of the Securities Act 1978) issued before 1 January 2009; or</li> <li>(ja) a DIMS facility, if the investment authority covers only category 2 products; or</li> <li>(k) any other product specified by the regulations; or</li> <li>(l) a renewal or variation of the terms or conditions of any existing category 2 product</li> </ul>
<p>3. In reference to question 2, which insurance products or services advertisements should be subject to this Code, if any? Please provide details.</p>
<p>4. In reference to question 2, should advertising for crypto-currency be subject to this Code? Please provide details.</p>
<p>5. Apart from your comments in relation to questions 2, 3 and 4, do you agree with the wording of the rest of the current code? If not, please outline the part or parts you disagree with and explain why.</p>
<p>6. Are there any aspects of financial products and services advertising standards that are not captured in the current code? Please outline any additions you believe are required and why. (Please check Appendix 1 for issues outside the scope of this Code)</p>
<p>7. You are welcome to provide any current financial product or service advertisements you consider are problematic and explain why. It would be helpful for you to include a copy of the advertisement or information on where and when you saw it so that we can source it if you are not able to provide a copy.</p>

## **Next Steps**

The Codes Committee has directly invited submissions from a range of organisations and has advertised for submissions from the public via media release and its website and social media platforms. The committee will consider all issues raised in submissions that relate to the draft code and that are within the scope of this review.

The Codes Committee will draft a new code following a review of the submissions. This draft code will reflect the ASA's new code structure. Where a rule exists in the Advertising Standards Code, it will not be repeated in the Financial Advertising Code except when additional guidelines are considered necessary specific to the advertising of financial products and services.

A further period of consultation will follow.

A finalised code is expected to be released in November 2021. The new code is likely to come into effect for new advertising on 1 March 2022 and existing advertising on 1 June 2022.

## Appendix 1

### The scope of the ASA Codes

Financial services and products are subject to a range of legislative restrictions and industry codes. This review is focused on the ASA Code for Financial Advertising.

Issues raised by submitters that are outside the scope of the review will be referred on to the relevant government and non-government organisations.

Current Legislative and industry controls include:

#### Legislation

[Financial Markets Conduct Act 2013](#)

[Credit Contracts and Consumer Finance Act 2003](#) and [Credit Contracts and Consumer Finance Amendment Act 2014](#)

*Related code and guidance*

[Responsible Lending Code](#)

<https://www.consumerprotection.govt.nz/assets/uploads/responsible-lending-code-june-2017.pdf>

#### Professional Codes of Conduct

For more information see;

Financial Services Federation: [Code of Conduct](#)

Financial Services Council: [Code of Conduct](#)

Financial Advice New Zealand: [Code of Ethics](#), [Practice Standards](#) and [Rules of Conduct](#)

Financial Advice Code: [Code of Professional Conduct for Financial Advice Services](#)

New Zealand Bankers Association: [The Code of Banking Practice](#)

Insurance Council of New Zealand: [Fair Insurance Code](#)

#### Product or Service structure and content vs advertising

The structure and content of financial products or services are outside the scope of the ASA Codes. Advertisements for these products or services are within the scope of the Codes.

## Appendix 2

### Complaints to the ASA about advertisements for financial products and services

Advertisements designated in our finance category made up 2% of the total cases considered in 2020 and a breakdown of the outcomes from the cases considered under the Code for Financial Advertising is set out below along with a snapshot over a five year period.

All decisions are published and decisions from 2015 can be reviewed on the ASA website - <https://www.asa.co.nz/decisions/search-browse-decisions/>

It is not unusual for the ASA to receive complaints about advertising for financial products and services that are not related to financial matters or claims – for example, an issue relating to driving safety or a taste and decency matter – covered under the Advertising Standards Code.

From a total of 65 complaints over 5 years, 8 have been upheld or settled with 5 of these decisions in the last two years. From a total of 65 complaints, 43 or 66% were ruled no grounds to proceed. The most common breaches relate to social responsibility (including anti-social behaviour and offensiveness) and issues of truthful presentation (including misleading advertising and lack of disclosure of information). Further details about each complaint can be viewed on the ASA website [Decisions](#) page.

	2020	2019	2018	2017	2016
<b>Total number of ads complained about to the ASA</b>	591	463	425	453	434
<b>Number of ads complained about under the Code for Financial Advertising</b>	12	13	12	13	15
<b>% of Total Complaints</b>	2.0%	2.8%	2.8%	2.8%	3.5%
<b>Decisions</b>					
<b>No Grounds to Proceed</b>	9	6	7	10	11
<b>Upheld / Settled</b>	1	4	3	0	0
<b>Not Upheld</b>	2	3	2	3	4

## Appendix 3

### CURRENT Code for Financial Advertising

## CODE FOR FINANCIAL ADVERTISING

### Purpose of the Code

The purpose of this code is to ensure that advertisers maintain rigorous standards in financial advertising.

All advertising shall adhere to the laws of New Zealand and the Principles and Guidelines set out in this Code. The ASA [Advertising Standards Code](#) should also be consulted along with any relevant legislation. Advertisers should also be aware of requirements of their professional codes of conduct in relation to advertising. Relevant websites include [www.fma.govt.nz](http://www.fma.govt.nz), [www.comcom.govt.nz](http://www.comcom.govt.nz), [www.sorted.org.nz](http://www.sorted.org.nz).

### Definition of Advertisement

“Advertising and Advertisement(s)” means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

### Application of the Code

This Code covers all words and visual depictions in all advertising for the lending, saving or investment of money, for guarantees, financial instruments and the purchase or sale of securities.

### Interpreting the Code

Social responsibility in advertising is embodied in the Principles and Rules of the Code. In interpreting the Code, emphasis must be placed on compliance with both the spirit and intention of the Code. It is possible for advertising to be in breach of one or more of the Principles in the Code without being in breach of a specific Rule.

In determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters, including;

- generally prevailing community standards;
- previous decisions;
- the consumer takeout from the advertisement;
- the context, medium and intended audience; and
- the product or service being advertised.

For the avoidance of doubt, where relevant legislation that affects this Code has been updated and if a conflict occurs in relation to legislative and code requirements, legislative requirements will prevail.

### Definition for the purposes of this Code:

‘Financial advertisements’ are advertisements for the lending, saving or investment of money, financial instruments, financial transactions, offers of securities and includes category 1 and category 2 products as defined in the Financial Advisers Act 2008. Advertisements for the provision of advice or services in respect of financial products, investments or securities are also deemed to be financial advertisements for the purposes of this Code.

**PRINCIPLE 1: FINANCIAL ADVERTISEMENTS SHOULD OBSERVE A HIGH STANDARD OF SOCIAL RESPONSIBILITY PARTICULARLY AS CONSUMERS OFTEN RELY ON SUCH PRODUCTS AND SERVICES FOR THEIR FINANCIAL SECURITY.**

**Guideline 1 (a) Clarity**

Advertisements shall be set out in a way that allows them to be readily understood by the audience being addressed. All relevant information should be disclosed.

**Guideline 1 (b) Exaggeration**

Advertisements shall not portray unrealistic or exaggerated financial expectations or outcomes.

**Guideline 1 (c) Risk**

Advertisements shall not state or imply that investments are safe or free from risk.

**Guideline 1 (d) Examples**

If examples of past performance are used, financial advertisements should make clear this does not necessarily give a guide for the future. Examples used should not be unrepresentative unless clearly identified as such.

**PRINCIPLE 2: ADVERTISEMENTS SHOULD STRICTLY OBSERVE THE BASIC TENETS OF TRUTH AND CLARITY. ADVERTISEMENTS SHOULD NOT OR SHOULD NOT BE LIKELY TO MISLEAD, DECEIVE OR CONFUSE CONSUMERS, ABUSE THEIR TRUST, EXPLOIT THEIR LACK OF KNOWLEDGE OR WITHOUT JUSTIFIABLE REASON, PLAY ON FEAR. THIS INCLUDES BY IMPLICATION, OMISSION, AMBIGUITY, EXAGGERATED CLAIM OR HYPERBOLE.**

**Guideline 2 (a) Truthful presentation**

Advertisements shall be accurate and statements and claims able to be substantiated.

**Guideline 2 (b) Key information**

Key information shall be legible and / or audible with care taken to ensure disclosure commensurate with the importance of the information.

**Guideline 2 (c) Endorsements**

Advertisements shall not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent and the claim and endorsement are current and verifiable.

**Guideline 2 (d) Technical language**

Technical language and statistics are acceptable provided they are relevant and used in a way readily understood by consumers without specialist knowledge. Publication of research results must identify the researcher and source references.