

Consultation on the draft Financial Advertising Code

31 August 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 consultation

Financial services and products are subject to a range of legislative restrictions and industry codes. This consultation is focused on the new draft Financial Advertising Code 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](#) 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.

Previous Consultation on the Code for Financial Advertising

The Codes Committee sought views on the current code during a consultation period in May and June 2021. The consultation document is available [here](#).

The Codes Committee thanks those who took the time to provide feedback on the current code. Feedback provided in submissions has been considered by the Codes Committee in the development of a new code. The Codes Committee is now seeking feedback on the draft Financial Advertising Code.

Current Consultation on the draft Financial Advertising Code

The new draft Financial Advertising Code (Appendix 3) has been developed by the Codes Committee and is based on the following:

- The structure of other recently updated ASA [Codes](#).
- The principles and rules in the current Code for Financial Advertising. Where a current principle or rule is in the Advertising Standards Code, it will not be repeated in the new Financial Advertising Code.
- Issues raised in the submissions received from the previous consultation.

We are seeking your views on this new draft code along with any evidence you have that supports your position. Your feedback will inform possible changes to the draft new code to be sure we meet the objectives outlined above.

Submissions are due by **12 October 2021** to Claire Hofer (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 providing during this consultation 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.

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|----|---|
| 1. | The Codes Committee view is that the definition of 'Financial Product or Service' should be in a language that is easily understood by consumers. They should be able to easily recognise if an advertisement is for a Financial Product or Service based on the definition in the code. Please comment on the definition included in the new draft code. |
| 2. | In reference to question 1, are there any other financial products, services or advice that should be included in the definition of 'Financial Product or Service'? Please provide details. |
| 3. | Apart from your comments in relation to questions 1 and 2, do you agree with the wording of the rest of the new draft code? If not, please outline the part or parts you disagree with and explain why. |
| 4. | Are there matters that are not covered in the code that you believe should be included? If yes, please let us know, and explain why. |

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 new draft code and that are within the scope of this review. Changes may be made to the new draft code prior to its release.

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 consultation is focused on the new draft Financial Advertising Code.

Issues raised by submitters that are outside the scope of the consultation 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 – and are 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
Total number of ads complained about to the ASA	591	463	425	453	434
Number of ads complained about under the Code for Financial Advertising	12	13	12	13	15
% of Total Complaints	2.0%	2.8%	2.8%	2.8%	3.5%
Decisions					
No Grounds to Proceed	9	6	7	10	11
Upheld / Settled	1	4	3	0	0
Not Upheld	2	3	2	3	4

Appendix 3

Draft FINANCIAL ADVERTISING CODE

Advertising Standards Code

The Principles and Rules set out in the [Advertising Standards Code](#) apply to all advertising in all media. When applying the Advertising Standards Code to Financial Advertising, a high standard of social responsibility is required.

Financial Advertising Code

In addition to the Advertising Standards Code, the Financial Advertising Code (the Code) applies to all Financial Advertising intended for consumers and is not intended for institutional investors, businesses, or commercial enterprises. The purpose of the Code is to ensure that all facets of the advertising are conducted in a manner that demonstrates a high standard of social responsibility.

The Code requires all Financial Advertising to be socially responsible with particular regard to protecting non-expert consumers.

All Financial Advertising must be legal, decent, honest and truthful and respect the principles of fair competition. The Advertising Standards Authority (ASA) Codes are a part of the regulatory framework that applies to the advertising of Financial Products or Services. There are a number of Acts that restrict advertising, and these are enforced by government agencies. Advertisers must observe these legal restrictions and requirements.

Attention is drawn to:

- [Financial Markets Conduct Act 2013](#)
- [Credit Contracts and Consumer Finance Act 2003](#)
- [Credit Contracts and Consumer Finance Regulations 2004](#)
- [Responsible Lending Code \(version February 2021\)](#)

Application of the Financial Advertising Code

The Code, along with the Advertising Standards Code, applies to all advertising of Financial Products or Services placed in any media, including but not limited to: television (including on-demand television), radio, print, out of home (for example, billboards, bus shelters and buses), cinema, digital, email, websites, social media (including user-generated content), influencers, videos, apps, advergames, addressed and unaddressed mail, brochures and point-of-sale material.

Ultimately, the responsibility to comply with all aspects of advertising regulation is shared between all the parties to an advertisement, including the advertiser, agencies and media organisations.

The Code is made up of three parts:

- Principles: the standards expected in advertising
- Rules: how the Principles are to be interpreted and applied
- Guidelines: information and examples to explain a Rule

Interpreting the Financial Advertising Code

Social responsibility 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 or Rule 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 advertising;
- the context, medium and intended audience; and
- the product or service.

Definitions for the purposes of this Code

Financial Product or Service means any product or service relating to insurance, banking, credit, investment, payment services, financial or risk management, or advice or educational services in relation to any of those things, including but not limited to:

- All insurance products, services and advice, including but not limited to
 - Life insurance
 - Health insurance
 - Income protection insurance
 - Insurance products for buildings, homes, contents and other possessions
- All banking, debt or credit products and services and advice, including but not limited to
 - Mortgages and other loans
 - Credit cards and other credit facilities
 - Deposits and bank accounts, including term deposits and other monetary investments
 - Debt management and debt consolidation products, services and advice
- All investments products, services and advice, including but not limited to
 - Share investments
 - Managed funds, including KiwiSaver funds
 - Discretionary investment management services (DIMS)
 - Real estate investment (properties/schemes)
 - Syndicated investments such as forestry partnerships and property investment
 - Peer-to-peer lending
- All payment products, services and advice, including but not limited to
 - Payment apps

- After-pay and buy-now-pay-later products and services
- All financial or risk-trading or management products, services and advice, including but not limited to
 - Foreign exchange trading services
 - Cryptocurrencies
 - Derivatives
 - Binary options
- All investments or licence to occupy relating to a retirement village
- Financial training or courses, including courses on investments, foreign exchange, derivatives or share trading and wholesale investments

Financial Advertising 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 and is for the purpose of promoting a Financial Product or Service.

PRINCIPLE 1: SOCIAL RESPONSIBILITY

Financial Advertising must be prepared and placed with a high standard of social responsibility to consumers and society.

Rule 1 (a) Social responsibility	Guidelines
<p>Financial Advertising must be easily understood by consumers.</p>	<ol style="list-style-type: none"> 1. Information and claims in Financial Advertising must be easily understood by consumers. All relevant and required information must be disclosed. 2. Key information must be legible and/or audible with care taken to ensure disclosure is commensurate with the importance of the information. Examples include: <ol style="list-style-type: none"> i. Written text must be large enough, clear enough and present long enough to be easily read. ii. Spoken language must be clear and at a rate able to be assimilated by consumers. 3. Financial Advertising content posted online or otherwise distributed by individuals who are not licensed financial advisers (e.g. influencers and other content creators) must comply with the Principles and Rules in this Code. <p>Payment to post online or otherwise distribute Financial Advertising content must be properly disclosed. ‘Payment’ for the purposes of this Code can be any benefit or exchange of value, including (but not limited to) money, free product or service, and credit.</p> <p>User-generated comments or reviews on Financial Advertising content must meet the high standard of social responsibility expected from the Principles and Rules in this Code. A moderation practice that regularly removes non-compliant content is recommended.</p>

	Financial advice (for example, recommending particular products or telling individuals what to do with their money) may only be included in Financial Advertising content from those individuals who operate under a licence granted by the Financial Markets Authority.
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PRINCIPLE 2: TRUTHFUL PRESENTATION
 Financial Advertising must be truthful, balanced and must not be misleading.

ADVERTISING STANDARDS CODE – Additional Guidelines for Financial Advertising

<p>Rule 2 (b) Truthful presentation</p> <p>Financial Advertising must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. Misleading may be by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.</p>	<p>Guidelines</p> <p>See the full Guidelines for this Rule in the Advertising Standards Code.</p> <p>In addition, for the Financial Advertising Code,</p> <ol style="list-style-type: none"> 1. the content of Financial Advertising must not take advantage of consumers’ inexperience, credulity, lack of knowledge or financially vulnerable situation; and 2. hyperbole must not be used in relation to financial claims.
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<p>Rule 2 (c) Use of data</p> <p>Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner that is misleading or deceptive.</p>	<p>Guidelines</p> <p>See the full Guidelines for this Rule in the Advertising Standards Code.</p> <p>In addition, for the Financial Advertising Code,</p> <ol style="list-style-type: none"> 1. Financial Advertising must not <ol style="list-style-type: none"> i. portray unrealistic or exaggerated financial expectations or outcomes; or ii. provide incomplete information such that the advertising is misleading; or iii. state or imply that investments are safe or free from risk. 2. Financial Advertising that uses examples of past performance must make it clear this is not a reliable indicator of future performance. Examples of exceptional performance must be clearly identified as such. 3. Technical language and statistics are acceptable in Financial Advertising provided they are relevant and used in a way readily understood by non-expert consumers without specialist knowledge. Publication of research
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	results must identify the researcher, the reference period and source references.
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