



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 167

# Advertising financial products and advice services: Good practice guidance

August 2011

## **About this paper**

This consultation paper sets out ASIC's proposals on good practice guidance to assist promoters and publishers in presenting advertisements that are accurate and balanced and that help consumers make decisions that are appropriate for them.

The purpose of this paper is to seek the views of consumers, promoters of financial products and financial advice services, and publishers on our proposed good practice guidance.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 30 August 2011 and is based on the Corporations Act as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on advertising of financial products and advice services. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see [Section E Regulatory and financial impact](#), p. 31.

### Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 25 October 2011 to:

Geoffrey Leveritt  
 Senior Lawyer  
 Strategic Policy  
 Australian Securities and Investments Commission  
 GPO Box 9827  
 Melbourne VIC 3001  
 facsimile: 03 9280 4715  
 email: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

### What will happen next?

<b>Stage 1</b>	30 August 2011	ASIC consultation paper released
<b>Stage 2</b>	25 October 2011	Comments due on the consultation paper
<b>Stage 3</b>	January 2012	Regulatory guide released

## A Background

### Key points

One of ASIC's priorities is to promote confident and informed investors and financial consumers.

Investors and financial consumers are heavily influenced by advertisements for financial products and financial advice services when making financial decisions and seeking financial advice.

We are seeking feedback on our proposals for good practice guidance to help promoters and publishers present advertisements that are accurate and balanced and that help investors and financial consumers make decisions that are appropriate for them.

### Promoting confident and informed investors and financial consumers

- 1 We seek to promote confident and informed investors and financial consumers. This includes recognising how they make decisions, and ensuring communications about financial products facilitate effective decision-making. An important part of this is acknowledging the role that advertising plays in this process.
- 2 Research underpinning ASIC's National Financial Literacy Strategy shows that, at a time when consumers are being asked to make more financial decisions than ever before, the environment in which they are making those decisions is becoming increasingly complex.

Note: See Report 229 *Australian National Financial Literacy Strategy* (REP 229) and Report 230 *Financial literacy and behavioural change* (REP 230) at [www.asic.gov.au/reports](http://www.asic.gov.au/reports).

- 3 This is particularly of concern as the variety of products which are marketed to retail investors increases. Investors can struggle to understand the structure and associated risks of some of the more complex products, and some falsely conclude that they are similar to more familiar methods of investing, such as trading directly in shares.

## The role of advertising in investor and financial consumer decision-making

- 4 Advertisements are an important source of information to consumers. Advertisements:
- (a) promote consumer knowledge about the range and choice of financial products and services available; and
  - (b) are an important way for promoters to raise awareness of their financial products and services in the market.
- Advertising therefore holds many benefits for both industry and consumers.
- 5 Advertisements are designed to attract consumers and be easily understood. This has consequences for both promoters and consumers. For promoters, there is a temptation to focus on the benefits or advantages and to give less prominence to unattractive features. For consumers, there is a temptation to make decisions on the basis of advertisements alone and not to seek further information, even though advertisements necessarily only contain limited information about the product or service.
- 6 ASIC has commissioned a number of research projects to help understand the role of advertising in investor and financial consumer decision-making. The first project explored the role of advertising as an information source when making investment decisions. It also presented hypothetical advertisements to test consumers' interest in financial advertising in order to identify and understand the types of claims and features that attract or repel people exposed to advertised investment offers.
- 7 The research included a national phone survey of more than 1,000 adult Australian investors, including investors with shares, investment property, managed investments, self-managed super funds and other direct investments (including investments such as debentures and bonds), as well as a capped number of investors with lower-level investments such as term deposits, voluntary superannuation contributions and high interest savings accounts.
- Note: See Report 121 *Australian consumers: at a glance* (REP 121).
- 8 Overall, 44% of the investors who had used or would use media-based information sources to make an investment decision said they did or would use these media sources for both investment information and to seek investment opportunities and advertisements. A further 7% said they had used or would use these media exclusively to seek investment opportunities and advertisements. These sources included the internet, financial magazines, daily newspapers, television investment programs and radio investment programs.

- 9 Of the five hypothetical investment advertisements presented to investors during this research, the two that received the most interest used the words ‘secured’ and ‘capital guaranteed’. Attraction to the hypothetical advertisements was spread across a wide demographic range.
- 10 The second research project focused on unlisted, unrated debenture investors, including people who had invested with two debenture issuers that had previously gone into administration. To provide context to the experiences, characteristics and profile of investors, the research compared three key groups of investors:
- (a) people who had invested in the two debenture issuers that had gone into administration;
  - (b) people who had investments in other unlisted, unrated debentures at the time of the research; and
  - (c) general investors.

In all, the research involved three focus groups, 12 in-depth interviews and 1,142 online and phone questionnaires.

Note: See Report 126 *Understanding investors in the unlisted unrated debenture (UUD) market* (REP 126).

- 11 The research found that many investors were attracted and/or influenced by product advertising and, for some investors, the frequency and format of the advertising acted as a proxy for quality. Those investors who had invested with the two debenture issuers that had gone into administration were much more likely to be among those who cited advertising as the number one influence on their investment decision when compared against the other investor groups studied (88%). However, a sizable proportion of the other investors also used advertising as an information source when considering/researching investments generally (e.g. more than 20% of each of the other two investor groups studied used print advertising).
- 12 ASIC’s National Financial Literacy Strategy acknowledges that investor and consumer knowledge alone is not enough to prevent poor financial decision-making. Behavioural studies and ASIC’s own research have identified a range of related barriers that can prevent people from making good financial decisions. These include information and choice overload, complexity and uncertainty, time effects and pressures, over (and under) confidence, self-control and framing (i.e. how information is presented).

Note: See REP 229 and REP 230.

## The need for guidance in relation to advertising

- 13 While we recognise that advertising plays an important role in the financial services marketplace, we want to ensure that promoters give clear, accurate and balanced messages when promoting financial products and financial advice services.
- 14 Advertisements that do not fairly represent the financial product or its key features, or the nature and scope of the advice service can be misleading and create unrealistic expectations that can lead to poor investment decisions.
- 15 The objective of our guidance is to help promoters and publishers present advertisements that are accurate, balanced and that help consumers make decisions that are appropriate for them. While our guidance covers issues of good practice in advertising, it may also help promoters and publishers comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct. Our guidance also indicates to industry the types of advertisements we may focus on more closely.
- 16 We would like those preparing advertising to actively work to present a balanced understanding of the product or service, including its risks. It is also important they take into account the kind of audience likely to see the advertising, according to the medium they are using. They should ensure that advertising is not targeting an audience for which the product is unlikely to be suitable.
- 17 We encourage the financial services industry to strive to do more than simply meet the minimum requirement of not being misleading or deceptive. Rather, we encourage industry to actually take a role in ensuring that advertising helps investors and consumers to make decisions that are appropriate for them.
- 18 The increasing use of new technologies, such as the internet and social media, is leading to changes in the way promoters of financial products and financial advice services interact with potential customers. New media has given industry more channels through which product distributors can contact customers and these channels can raise specific issues. For example, social media can create a 'high trust' environment which may not be present in traditional media. This may affect a consumer's critical engagement with advertisements and their impressions of advertisements in social media. Other new media channels have content limitations, which mean there can be insufficient space to give a balanced message.
- 19 These factors underscore that consumers need access to clear, fair and balanced information on the financial products and services available to them. We believe that our good practice guidance for advertising will help consumers in their decision-making and assist promoters in designing their advertising.



## Disclosure obligations

- 20 Advertising and formal disclosure documents (e.g. Product Disclosure Statements (PDSs) and prospectuses) both have a role in ensuring consumers have the information they need in order to make their financial decisions.
- 21 ASIC has published guidance on how to ensure that prospectuses and PDSs meet the required standards of ‘clear, concise and effective’:
- (a) Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168); and
  - (b) the draft regulatory guide attached to Consultation Paper 155 *Prospectus disclosure: Improving disclosure for retail investors* (CP 155).

- 22 In addition to guidance on general PDS and prospectus disclosure obligations, some financial products, due to their risk or complex nature, require further specific guidance. Advertising guidance for particular financial products can be found in:
- (a) Regulatory Guide 45 *Mortgage schemes: Improving disclosure for retail investors* (RG 45);
  - (b) Regulatory Guide 46 *Unlisted property schemes: Improving disclosure for retail investors* (RG 46);
  - (c) Regulatory Guide 156 *Advertising of debentures and unsecured notes* (RG 156); and
  - (d) Regulatory Guide 227 *Over-the-counter contracts for difference: Improving disclosure for retail investors* (RG 227).

Please also refer to our proposed guidance in:

- (a) Consultation Paper 133 *Agribusiness managed investment schemes: Improving disclosure for retail investors* (CP 133); and
- (b) Consultation Paper 134 *Infrastructure entities: Improving disclosure for retail investors* (CP 134).

Note 1: We plan to publish disclosure guidance on hedge funds by the end of 2011. You can find our proposed guidance in Consultation Paper 147 *Hedge funds: Improving disclosure for retail investors* (CP 147).

Note 2: We may publish further relevant guidance on the ASIC website at [www.asic.gov.au/rg](http://www.asic.gov.au/rg).

- 23 The good practice guidance set out in the attached draft regulatory guide is intended to complement our other guidance.

## B Application of our proposed guidance

### Key points

We propose that our guidance apply to:

- *promoters* of financial products and financial advice services. The promoter will sometimes be the product issuer, but can also be a third party such as a financial adviser, distributor or agent; and
- *publishers* of promotions about financial products and financial advice services.

We propose that our guidance apply to all types of financial products, including:

- investment products;
- risk products;
- non-cash payment facilities; and
- credit facilities.

We propose that our good practice guidance also apply to both general and personal financial product advice.

### Who does our guidance apply to?

#### Proposal

B1 We propose that our guidance apply to:

- promoters* of financial products and financial advice services. The promoter will sometimes be the product issuer, but can also be a third party such as a financial adviser, distributor or agent; and
- publishers* of promotions about financial products and financial advice services.

#### Your feedback

B1Q1 Do you agree that our good practice guidance should apply to publishers, as well as promoters? Do you anticipate any practical difficulties for publishers that would arise as a result of our good practice guidance? If yes, please provide details.

#### Rationale

24 Many different people can be involved in developing and distributing advertisements for financial products and services, including in house marketing departments of financial services providers, advertising agencies and third party distributors. While these groups have different roles and functions, we think they all should be aware of our guidance.

- 25 Publishers also have a role in promoting financial products and financial advice services. Some of these products and services may be directly promoted in the media, through advertising and by media commentators.
- 26 We expect publishers and the media who deal with advertisements for financial products and services to:
- (a) be aware that advertisements need to be accurate and balanced and help consumers make decisions that are appropriate for them; and
  - (b) refuse, or cease publishing, advertisements that do not meet these criteria.
- 27 While the primary responsibility for advertising material rests with the organisation placing the advertisement, a media outlet may also have some responsibility for its content.
- 28 Our proposed guidance will help publishers minimise the legal and reputational risks that flow from the publication of advertising that contravenes provisions of the *Corporations Act 2001* (Corporations Act) and *Australian Securities and Investments Act 2001* (ASIC Act).

## What products and services does our guidance apply to?

### Proposal

- B2** We propose that our guidance apply to:
- (a) all types of financial products, including:
    - (i) investment products;
    - (ii) risk products;
    - (iii) non-cash payment facilities; and
    - (iv) credit facilities; and.
  - (b) both general and personal financial product advice.

#### Your feedback

B2Q1 Do you agree with the proposed application of our good practice guidance? If not, why not?

B2Q2 Do you think we should include other financial services? If so, which ones and why?

- B3** We propose to issue, at a later date, additional guidance for credit providers and providers of credit services under the *National Consumer Credit Protection Act 2009* (National Credit Act).

#### Your feedback

B3Q1 Do you agree with our proposed approach to issue separate guidance for credit providers and providers of credit services? If not, why not?

## Rationale

- 29 We have used the definition of ‘financial products’ in the ASIC Act because our main powers in relation to misleading or deceptive conduct flow from this Act: see draft RG 000.124–RG 000.125. Although this definition includes credit facilities, the draft regulatory guide focuses primarily on advertising of investment and risk products and financial advice services: see s12BAA, ASIC Act.
- 30 Different considerations apply for advertising of credit products and services, so we plan to issue additional guidance for credit providers and providers of credit services under the National Credit Act. Because we have only recently assumed responsibility for the regulation of consumer credit, we intend to give guidance on specific issues relating to the advertising of credit services and a more diverse range of consumer credit products as our regulatory experience of that industry sector develops.
- 31 References to ‘financial advice services’ in the draft regulatory guide mean the provision of financial product advice as defined in the ASIC Act: see s12BAB(5). We have confined the proposed guidance to financial advice services because our regulatory experience indicates that this is the area of greatest concern.

Note: The Australian Government has announced reforms to the financial planning sector, the Future of Financial Advice package of reforms: see <http://futureofadvice.treasury.gov.au/>.

## C Good practice guidance

### Key points

We propose to give good practice guidance to help promoters and publishers present advertisements that are accurate and balanced and that help investors and financial consumers make decisions that are appropriate for them.

We propose that our guidance covers:

- the nature of the product;
- returns, benefits and risks;
- warnings, disclaimers, qualifications and fine print;
- fees and costs;
- comparisons;
- past performance and forecasts;
- use of certain terms and phrases;
- the advertisement's target audience;
- consistency with disclosure documents;
- photographs, diagrams, images and examples; and
- the nature and scope of advice.

### Purpose and scope of our good practice guidance

#### Proposal

- c1** We propose to give good practice guidance on how financial product and financial advice service providers can achieve accuracy and balance in their advertising. Our good practice guidance would cover:
- (a) the nature of the product (see draft RG 000.30–RG 000.31);
  - (b) returns, benefits and risks (see draft RG 000.32–RG 000.46);
  - (c) warnings, disclaimers, qualifications and fine print (see draft RG 000.47–RG 000.51);
  - (d) fees and costs (see draft RG 000.52–RG 000.55);
  - (e) comparisons (see draft RG 000.56–RG 000.71);
  - (f) past performance and forecasts (see draft RG 000.72–RG 000.75);
  - (g) use of certain terms and phrases (see draft RG 000.76–RG 000.86);
  - (h) the advertisement's target audience (see draft RG 000.87–RG 000.93);
  - (i) consistency with disclosure document (see draft RG 000.94–RG 000.97);
  - (j) photographs, diagrams, images and examples (see draft RG 000.98–RG 000.102); and
  - (k) the nature and scope of the financial advice service (see draft RG 000.103–RG 000.104).

*Your feedback*

- C1Q1 Do you agree that good practice guidance is the best approach? Do you think prescriptive standards setting out what advertisers must do (or not do) in order to comply with their legal obligations would be a better approach?
- C1Q2 Do the areas listed above address the key issues in relation to advertising of financial products and advice services? If not, what additional areas should our guidance address?
- C1Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

**Rationale**

- 32 The objective of our guidance is to help promoters and publishers present advertisements that are accurate and balanced and that help consumers make decisions that are appropriate for them.
- 33 Our guidance may also help promoters and publishers comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.
- 34 Our regulatory experience is that the areas for good practice guidance listed in proposal C1 are the key areas where advertisements are more likely to give a misleading or deceptive impression.
- 35 Some of the good practice guidance reflects established ASIC policy—for example, our proposed standards on past performance in Regulatory Guide 53 *The use of past performance in promotional material* (RG 53) and on forecasts in Regulatory Guide 170 *Prospective financial information* (RG 170).
- 36 We may take a greater interest in advertisements that do not meet our good practice guidance when considering whether to make further inquiries or to exercise our regulatory powers.
- 37 Australian financial services (AFS) licensees should carefully consider our good practice guidance in meeting their licensee obligations: see Section D of the draft regulatory guide.

## Nature of the product

### Proposal

- c2 We propose that:
- (a) advertisements for financial products should clearly explain the nature of the advertised product, in terms likely to be understood by the audience that is likely to see the advertisement; and
  - (b) advertisements should be complete so that consumers can assess the merits of the financial product or advice service being advertised: see draft RG 000.30–RG 000.31.

#### *Your feedback*

- C2Q1 Does our proposed guidance address the key issues in relation to the nature of the product? If not, what additional issues should our guidance address?
- C2Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.
- C2Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.
- C2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

### Rationale

- 38 An understanding of the nature of the product and how it fits into a consumer's financial arrangements is necessary for the consumer to make a decision that is appropriate for them. The remainder of our guidance discusses specific issues in more detail.

## Returns, benefits and risks

### Proposal

- c3 We propose that advertisements for financial products should give a balanced message about the returns or benefits and risks associated with the product. Benefits should not be given undue prominence compared with risks: see draft RG 000.32–RG 000.46.

#### *Your feedback*

- C3Q1 Does our proposed guidance address the key issues in relation to advertising returns, benefits and risks? If not, what additional issues should our guidance address?

- C3Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.
- C3Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- C3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

## Rationale

- 39 We acknowledge that some product features will be more attractive to consumers than others and that these features are ones on which there is a greater temptation for promoters to focus. Information about returns and benefits are important but so is information about associated risks. It is for this reason that we think giving a balanced message about the returns, benefits and risks associated with a product is important.
- 40 We do not think that information about risks should always have equal prominence to information about returns and benefits, but we do think that an advertisement is more likely to create unrealistic expectations if it gives undue prominence to the returns compared with the risks.

## Warnings, disclaimers, qualifications and fine print

### Proposal

- c4 We propose that:
- (a) warnings, disclaimers and qualifications should not be inconsistent with other content in an advertisement, including any headline claims, and should have a proportionate level of prominence to the claims to which they refer; and
  - (b) advertisements should be self-contained—that is, consumers should not need to access a warning, disclaimer or qualification contained in another website (or other page of the website) or document: see draft RG 000.47–RG 000.51.

### *Your feedback*

- C4Q1 Does our proposed guidance address the key issues in relation to using warnings, disclaimers, qualifications and fine print? If not, what additional issues should our guidance address?
- C4Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.



- C4Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- C4Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

## Rationale

- 41 We recognise that not all relevant information can be included in the headline claim. However, the more that a qualification is required to complete or balance the information contained in the headline claim, the more prominently placed the qualification should be.
- 42 Warnings, disclaimers, qualifications and fine print, where they are inconsistent with other content of the advertisement, do not have sufficient prominence or are hard to find, can have the effect of undermining the consumer's understanding or impression of the advertisement.

## Fees and costs

### Proposal

- c5 We propose that where fees or costs are referred to in an advertisement, it should give a realistic impression of the overall level of fees and costs a consumer is likely to pay, including any indirect fees or costs: see draft RG 000.52–RG 000.55.

#### *Your feedback*

- C5Q1 Does our proposed guidance address the key issues in relation to advertising fees and costs? If not, what additional issues should our guidance address?
- C5Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.
- C5Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- C5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

## Rationale

- 43 Like risks, fees and costs associated with a product are less attractive features and therefore there can be a temptation to underplay their importance in an advertisement.

- 44 However, the fees and costs that are associated with a financial product and, in particular, their affect on returns, should be clearly understood by consumers so that they do not have an unrealistic impression of what the product will cost them (or how those fees and costs will affect their likely return). Information in an advertisement should realistically reflect the cost of the product or service to consumers.
- 45 The draft regulatory guide indicates some factors promoters should consider when referring to fees: see draft RG 000.54.

## Comparisons

### Proposal

c6 We propose that:

- (a) comparisons should only be made between financial products that have sufficiently similar features;
- (b) comparisons should only be made about returns if the information used is current, complete and accurate; and
- (c) if an advertisement discloses a rating, the rating used should be properly explained, including the rating scale and where an investor can obtain further information about the rating: see draft RG 000.56–RG 000.71.

#### *Your feedback*

- C6Q1 Does our proposed guidance address the key issues in relation to using comparisons in advertising? If not, what additional issues should our guidance address?
- C6Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.
- C6Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- C6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

### Rationale

- 46 Consumers often use information from advertising when making decisions between competing products.
- 47 Advertisements that compare two or more products, or use tools such as ratings and awards to highlight differences in products, can be misleading if the comparative features or tools are not used accurately or properly explained.

- 48 We acknowledge that a promoter will naturally focus attention on those aspects of a product which are most attractive. However, if a comparison is made between financial products that do not have sufficiently similar features, this can create a misleading impression of the overall nature of the product.
- 49 Ratings and awards can create an impression of third party endorsement of a product. If ratings or awards are included in an advertisement, they need to be explained so that consumers can form their own view about whether to trust this implied endorsement.

## Past performance and forecasts

### Proposal

- c7 We propose that:
- (a) past performance information in advertisements should be accompanied by a warning that past performance is not indicative of future performance; and
  - (b) forecasts about future performance of a financial product in advertisements should be based on reasonable assumptions and should also state that the forecasted future performance is not guaranteed to occur: see draft RG 000.72–RG 000.75.

### *Your feedback*

- C7Q1 Does our proposed guidance address the key issues in relation to use of past performance and forecasts in advertising? If not, what additional issues should our guidance address?
- C7Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.
- C7Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- C7Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

### Rationale

- 50 Information about past performance or forecasts about future performance in advertisements can be very influential for consumers when deciding whether to invest in a financial product as they can create expectations about likely returns.
- 51 Where an advertisement relies on statements of past performance or forecasts of future performance, it could create an impression that this past performance will be repeated or that the forecasted future performance is guaranteed.

- 52 We have previously provided detailed guidance on disclosure of past performance and forecasts: see RG 53 and RG 170. The draft regulatory guide reflects this guidance.

## Use of certain terms and phrases

### Proposal

- c8 We propose that:
- (a) terms and phrases should not be used in a particular way by industry where this usage is inconsistent with the ordinary meaning commonly recognised by consumers (e.g. ‘free’, ‘secure’, and ‘guaranteed’); and
  - (b) industry concepts or jargon should be avoided, unless the promoter is confident that those terms will be understood by the audience: see draft RG 000.76–RG 000.86.

#### *Your feedback*

- C8Q1 Does our proposed guidance address the key issues in relation to the use of certain terms and phrases and industry jargon in advertising? If not, what additional issues should our guidance address?
- C8Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.
- C8Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- C8Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

### Rationale

- 53 While using terms and phrases that are commonly recognised can make advertising more understandable, consumers may be misled if those terms and phrases are used in a way that is inconsistent with their ordinary meaning.
- 54 Certain terms and phrases may also have a strong emotive pull on consumers (e.g. ‘free’, ‘secure’ or ‘guaranteed’) and care should be taken in how those terms and phrases are used.
- 55 Technical language and jargon can have very precise meanings that are well understood by industry. While this can help make an advertisement more ‘precise’ technically, it may not convey a clear message for consumers if the likely audience is unfamiliar with the concepts.

## The advertisement's target audience

### Proposal

- c9 We propose that:
- (a) advertisements should be capable of being clearly understood by the audience that might reasonably be expected to see the advertisements;
  - (b) advertisements should not state or imply that a financial product is suitable for particular types of consumers unless the promoter has assessed that the product is suitable for that class; and
  - (c) advertisements for complex products that are only appropriate for a limited group of consumers should not be targeted at a wider audience: see draft RG 000.87–RG 000.93.

### Your feedback

- C9Q1 Does our proposed guidance address the key issues in relation to the advertisement's target audience? If not, what additional issues should our guidance address?
- C9Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances (e.g. where complex products are advertised to a mainstream audience)? If yes, please provide details.
- C9Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- C9Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

### Rationale

- 56 Advertising, particularly through mass media channels, is designed to reach wide audiences and this is part of its appeal for promoters. However, all consumers bring their own background, knowledge and expectations when viewing an advertisement, and this will be different for each consumer. While advertising cannot take into account each consumer's background and understanding, we think that promoters should consider the actual audience that is likely to see the advertisement and whether the advertisement provides adequate information for that audience.
- 57 We also think that particular care should be taken when advertising complex products where these are marketed to retail investors. Retail investors can struggle to understand the structure and associated risks of such products, and often falsely conclude they are similar to more familiar methods of investing, such as trading directly in shares.

## Consistency with disclosure documents

### Proposal

**c10** We propose that advertising content should be consistent with information contained in any disclosure document (such as a PDS or prospectus) or contracts: see draft RG 000.94–RG 000.97.

#### *Your feedback*

C10Q1 Does our proposed guidance address the key issues in relation to consistency with disclosure documents in advertising? If not, what additional issues should our guidance address?

C10Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.

C10Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C10Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

### Rationale

- 58 Advertising and other disclosure documents (such as a PDS or prospectus) are both important sources of information in a consumer's financial decision-making. Inconsistencies between the information presented in an advertisement and in a disclosure document may reduce a consumer's ability to fully understand the features of the product or advice service.
- 59 Inconsistency can arise not only where the information in an advertisement is different to what is included in a disclosure document, but also where an advertisement, in order to be fully understood, must rely on context or additional material that is not included in the disclosure document.

## Photographs, diagrams, images and examples

### Proposal

**c11** We propose that:

- (a) photographs and images should be relevant and not contradict, detract from or reduce the prominence of any warnings, disclaimers or qualifications; and
- (b) graphical presentations should not be ambiguous or overly complicated: see draft RG 000.98–RG 000.102.

*Your feedback*

- C11Q1 Does our proposed guidance address the key issues in relation to the use of photographs, diagrams, images and examples in advertising? If not, what additional issues should our guidance address?
- C11Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.
- C11Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- C11Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

**Rationale**

- 60 Photographs and other images are an important tool for promoters and can increase the broad appeal of an advertisement. However, they can have a strong emotive influence in communicating things such as the features or suitability of a product or service. They can also contradict, distract or detract from key messages in the advertisement. For this reason, we think promoters need to carefully consider how they use imagery so that the overall impression of the advertisement is not misleading.
- 61 Tables, diagrams, graphs, charts and maps can help present information in a way that is easy for consumers to absorb, provided they are not used in a misleading way. Our draft regulatory guide indicates some issues for promoters to consider when presenting them: see draft RG 000.101.

**Nature and scope of advice****Proposal**

- c12 We propose that an advertisement for a financial advice service should not create unrealistic expectations about what the service can achieve: see draft RG 000.103–RG 000.104.

*Your feedback*

- C12Q1 Does our proposed guidance address the key issues in relation to advertising the nature and scope of a financial advice service? If not, what additional issues should our guidance address?
- C12Q2 Should our proposed guidance in this area be modified to better address particular services, media or other circumstances? If yes, please provide details.

C12Q3 Is the example helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C12Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

## Rationale

62 Financial advice can be provided in a variety of different ways depending on the consumer's needs, the structure of the adviser's business and the adviser's area of expertise. For example, some financial advisers will provide a comprehensive financial plan addressing the consumer's needs across the full range of financial products, whereas other advisers are more limited in the range of products from which they select when making a recommendation. A consumer's expectations of the nature and scope of the advice service they will receive are often shaped by advertising.

Note: The Future of Financial Advice reforms propose expanding the availability of low-cost 'simple advice' to improve access to and affordability of financial advice.



## D Media-specific issues

### Key points

As well as the general content areas covered by our guidance, we propose to give good practice guidance to assist promoters in developing advertisements for specific media, including:

- mass media, such as radio, television, newspapers, magazines and internet; and
- outdoor advertising.

### What advertising does our guidance apply to?

#### Proposal

D1 We propose that:

- (a) our good practice guidance should apply to any advertising designed to inform consumers about or promote financial products or financial advice services, communicated through any medium, including:
  - (i) magazines and newspapers;
  - (ii) radio and television;
  - (iii) outdoor advertising, including billboards, signs at public venues, transit advertising;
  - (iv) internet, including webpages, banner advertisements, video streaming (e.g. YouTube) and social networking and microblogging (e.g. Twitter);
  - (v) social media and internet discussion sites;
  - (vi) product brochures and promotional fact sheets;
  - (vii) direct mail (e.g. by post, facsimile or email);
  - (viii) telemarketing activities and audio messages for telephone callers on hold; and
  - (ix) presentations to groups of people, and advertorials; and
- (b) where particular media raise specific issues in relation to misleading or deceptive advertising, we would include additional good practice guidance specific to that media.

#### *Your feedback*

D1Q1 Do you agree that our good practice guidance should apply to advertising communicated through any medium? If not, why not?

D1Q2 Do you agree that media-specific guidance is necessary and useful to illustrate specific issues associated with certain types of media? Which media raise such issues?

## Rationale

- 63 We believe our proposed good practice guidance can be usefully applied to any communication medium used. However, we recognise that there can be specific problems associated with certain types of media. In Section C of the draft regulatory guide, we have highlighted some issues to consider when applying our guidance to particular types of media.

## Mass media

### Proposal

- D2 We propose that when advertising through the mass media:
- (a) promoters must consider the actual audience that is likely to see the advertisement and whether the advertisement is accurate, balanced and helpful for that audience; and
  - (b) advertising should be clearly distinguished from normal program or editorial content: see draft RG 000.105–RG 000.109.

#### *Your feedback*

- D2Q1 Does our proposed guidance address the key issues in relation to mass media advertising? If not, what additional issues should our guidance address?
- D2Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.
- D2Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.
- D2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

## Rationale

- 64 Mass media refers to media channels used for mass communication, such as radio, television, newspapers, magazines, and the internet. Mass media advertising can take the form of audio, video, images, text, or a combination of all four.
- 65 As noted in paragraph 56, mass media has capacity to reach a wide audience, often beyond the promoter's target or anticipated market. Therefore, we think promoters should consider the actual audience that is likely to see the advertisement and whether the advertisement is accurate, balanced and helpful for that audience.

- 66 Consumers may not employ the same critical analysis of program content as they do for advertising and other commercial messages they are exposed to. Where the form of an advertisement is similar to surrounding program content (e.g. a live read by a radio announcer, or an advertorial lift out in a newspaper), there is potential for consumer confusion if a clear distinction is not drawn between the advertising and the program content.

## Audio advertisements

### Proposal

- D3 We propose that any warnings, disclaimers or qualifications included in audio advertisements should be read at a speed that is comprehensible to an average listener: see draft RG 000.110–RG 000.112.

#### *Your feedback*

- D3Q1 Does our proposed guidance address the key issues in relation to audio advertisements? If not, what additional issues should our guidance address?
- D3Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.
- D3Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.
- D3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

### Rationale

- 67 Broadcast media, such as radio, does not allow the listener to process the information in an advertisement at their own pace. It is important that information in an audio advertisement is presented in a manner that a consumer is able to understand.

## Film and video advertisements

### Proposal

- D4 We propose that information about risks and any warnings included in film and video advertisements should be easy to understand by an average viewer on the first viewing of an advertisement and not undermined by distracting sounds or images: see draft RG 000.113–RG 000.115.

*Your feedback*

- D4Q1 Does our proposed guidance address the key issues in relation to film and video advertisements? If not, what additional issues should our guidance address?
- D4Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.
- D4Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.
- D4Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

**Rationale**

- 68 The combination of images and sound in film and video advertisements can make it particularly easy for consumers to be distracted from important information such as information about risks. This occurs regardless of the distribution method for the advertisement, including television, cinema, and internet video (e.g. YouTube).

**Internet advertising****Proposal**

- D5 We propose that:
- (a) internet advertisements should be self-contained. Consumers should not need to click through from an online advertisement to additional information on another website to ensure they are not misled;
  - (b) promoters should consider the appropriateness of using new media channels for advertising if content limitations mean there is insufficient space to provide balanced information; and
  - (c) promoters and consumers should be able to keep a record of an advertisement (e.g. by printing it), including any disclaimers or warnings: see draft RG 000.116–RG 000.121.

*Your feedback*

- D5Q1 Does our proposed guidance address the key issues in relation to internet advertising? If not, what additional issues should our guidance address?
- D5Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.

D5Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

D5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

## Rationale

- 69 Internet advertising can take the form of banner advertisements, webpages, video streaming (e.g. YouTube) and social networking and microblogging (e.g. Twitter). These media share common features, in that they are interactive, more easily targeted directly at individual consumers, and can allow consumers to access additional information. However, regardless of the form an internet advertisement takes, our guidance is media neutral and applies similarly to internet advertising as for other media.
- 70 Internet banner advertising is often relatively short and consumers can quickly access additional information. Despite this, internet advertisements should be self-contained—that is, consumers should not need to click through to another page to find additional information, including relevant qualifications or disclaimers about the headline claims in the advertisement.
- 71 Video streaming on the internet raises similar issues as for television advertising. For example, the combination of images and sound can make it particularly easy for consumers to be distracted from important information such as information about risks.
- 72 Social networking and microblogging services (e.g. Twitter) deliver short ‘bites’ of information directly to consumers. The content limitations imposed by some new media channels may mean that there is insufficient space to provide balanced information.

## Outdoor advertising

### Proposal

- D6 We propose that promoters should take into account the conditions under which an outdoor advertisement will be viewed (e.g. from a distance or from a moving vehicle) when considering whether the overall impression of the advertisement is misleading or deceptive: see draft RG 000.122–RG 000.123.

#### *Your feedback*

- D6Q1 Does our proposed guidance address the key issues in relation to outdoor advertising? If not, what additional issues should our guidance address?

D6Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.

D6Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.

D6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

## Rationale

73 Outdoor advertising is often viewed under circumstances where the consumer is undertaking some other activity so is not fully engaged with the advertisement (e.g. billboards at the side of the road, which are seen from a moving vehicle). This raises significant issues in relation to the consumer's ability to take in and understand any fine print or disclaimers set out in the advertisement. These factors are relevant in determining the overall impression of the advertisement as viewed by the consumer.

## E Regulatory and financial impact

- 74 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) helping promoters and publishers present advertisements that are accurate, balanced and help consumers make appropriate decisions; and
  - (b) not unduly interfering with the marketing and sale of financial products and services.
- 75 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
  - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
  - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 76 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 77 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about our proposals or any alternative approaches:
- (a) the likely compliance costs;
  - (b) the likely effect on competition; and
  - (c) other impacts, costs and benefits.

See 'The consultation process' p. 4.

## List of proposals and questions

Proposal	Your feedback
<p><b>B1</b> We propose that our guidance apply to:</p> <p>(a) <i>promoters</i> of financial products and financial advice services. The promoter will sometimes be the product issuer, but can also be a third party such as a financial adviser, distributor or agent; and</p> <p>(b) <i>publishers</i> of promotions about financial products and financial advice services.</p>	<p>B1Q1 Do you agree that our good practice guidance should apply to publishers, as well as promoters? Do you anticipate any practical difficulties for publishers that would arise as a result of our good practice guidance? If yes, please provide details.</p>
<p><b>B2</b> We propose that our guidance apply to:</p> <p>(a) all types of financial products, including:</p> <p>(i) investment products;</p> <p>(ii) risk products;</p> <p>(iii) non-cash payment facilities; and</p> <p>(iv) credit facilities; and</p> <p>(b) both general and personal financial product advice.</p>	<p>B2Q1 Do you agree with the proposed application of our good practice guidance? If not, why not?</p> <p>B2Q2 Do you think we should include other financial services? If so, which ones and why?</p>
<p><b>B3</b> We propose to issue, at a later date, additional guidance for credit providers and providers of credit services under the <i>National Consumer Credit Protection Act 2009</i> (National Credit Act).</p>	<p>B3Q1 Do you agree with our proposed approach to issue separate guidance for credit providers and providers of credit services? If not, why not?</p>
<p><b>C1</b> We propose to give good practice guidance on how financial product and financial advice service providers can achieve accuracy and balance in their advertising. Our good practice guidance would cover:</p> <p>(a) the nature of the product (see draft RG 000.30–RG 000.31);</p> <p>(b) returns, benefits and risks (see draft RG 000.32–RG 000.46);</p> <p>(c) warnings, disclaimers, qualifications and fine print (see draft RG 000.47–RG 000.51);</p> <p>(d) fees and costs (see draft RG 000.52–RG 000.55);</p> <p>(e) comparisons (see draft RG 000.56–RG 000.71);</p> <p>(f) past performance and forecasts (see draft RG 000.72–RG 000.75);</p> <p>(g) use of certain terms and phrases (see draft RG 000.76–RG 000.86);</p> <p>(h) the advertisement's target audience (see draft RG 000.87–RG 000.93);</p> <p>(i) consistency with disclosure document (see draft RG 000.94–RG 000.97);</p> <p>(j) photographs, diagrams, images and examples (see draft RG 000.98–RG 000.102); and</p> <p>(k) the nature and scope of the financial advice service (see draft RG 000.103–RG 000.104).</p>	<p>C1Q1 Do you agree that good practice guidance is the best approach? Do you think prescriptive standards setting out what advertisers must do (or not do) in order to comply with their legal obligations would be a better approach?</p> <p>C1Q2 Do the areas listed above address the key issues in relation to advertising of financial products and advice services? If not, what additional areas should our guidance address?</p> <p>C1Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p>



Proposal	Your feedback
<p><b>C2</b> We propose that:</p> <p>(a) advertisements for financial products should clearly explain the nature of the advertised product, in terms likely to be understood by the audience that is likely to see the advertisement; and</p> <p>(b) advertisements should be complete so that consumers can assess the merits of the financial product or advice service being advertised: see draft RG 000.30–RG 000.31.</p>	<p>C2Q1 Does our proposed guidance address the key issues in relation to the nature of the product? If not, what additional issues should our guidance address?</p> <p>C2Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C2Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.</p> <p>C2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>C3</b> We propose that advertisements for financial products should give a balanced message about the returns or benefits and risks associated with the product. Benefits should not be given undue prominence compared with risks: see draft RG 000.32–RG 000.46.</p>	<p>C3Q1 Does our proposed guidance address the key issues in relation to advertising returns, benefits and risks? If not, what additional issues should our guidance address?</p> <p>C3Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C3Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>C4</b> We propose that:</p> <p>(a) warnings, disclaimers and qualifications should not be inconsistent with other content in an advertisement, including any headline claims, and should have a proportionate level of prominence to the claims to which they refer; and</p> <p>(b) advertisements should be self-contained—that is, consumers should not need to access a warning, disclaimer or qualification contained in another website (or other page of the website) or document: see draft RG 000.47–RG 000.51.</p>	<p>C4Q1 Does our proposed guidance address the key issues in relation to using warnings, disclaimers, qualifications and fine print? If not, what additional issues should our guidance address?</p> <p>C4Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C4Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C4Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>

Proposal	Your feedback
<p><b>C5</b> We propose that where fees or costs are referred to in an advertisement, it should give a realistic impression of the overall level of fees and costs a consumer is likely to pay, including any indirect fees or costs: see draft RG 000.52–RG 000.55.</p>	<p>C5Q1 Does our proposed guidance address the key issues in relation to advertising fees and costs? If not, what additional issues should our guidance address?</p> <p>C5Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C5Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>C6</b> We propose that:</p> <p>(a) comparisons should only be made between financial products that have sufficiently similar features;</p> <p>(b) comparisons should only be made about returns if the information used is current, complete and accurate; and</p> <p>(c) if an advertisement discloses a rating, the rating used should be properly explained, including the rating scale and where an investor can obtain further information about the rating: see draft RG 000.56–RG 000.71.</p>	<p>C6Q1 Does our proposed guidance address the key issues in relation to using comparisons in advertising? If not, what additional issues should our guidance address?</p> <p>C6Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C6Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>C7</b> We propose that:</p> <p>(a) past performance information in advertisements should be accompanied by a warning that past performance is not indicative of future performance; and</p> <p>(b) forecasts about future performance of a financial product in advertisements should be based on reasonable assumptions and should also state that the forecasted future performance is not guaranteed to occur: see draft RG 000.72–RG 000.75.</p>	<p>C7Q1 Does our proposed guidance address the key issues in relation to use of past performance and forecasts in advertising? If not, what additional issues should our guidance address?</p> <p>C7Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C7Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C7Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>

Proposal	Your feedback
<p><b>C8</b> We propose that:</p> <p>(a) terms and phrases should not be used in a particular way by industry where that usage is inconsistent with the ordinary meaning commonly recognised by consumers (e.g. 'free', 'secure', and 'guaranteed'); and</p> <p>(b) industry concepts or jargon should be avoided, unless the promoter is confident that those terms will be understood by the audience: see draft RG 000.76–RG 000.86.</p>	<p>C8Q1 Does our proposed guidance address the key issues in relation to the use of certain terms and phrases and industry jargon in advertising? If not, what additional issues should our guidance address?</p> <p>C8Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C8Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C8Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>C9</b> We propose that:</p> <p>(a) advertisements should be capable of being clearly understood by the audience that might reasonably be expected to see the advertisements;</p> <p>(b) advertisements should not state or imply that a financial product is suitable for particular types of consumers unless the promoter has assessed that the product is suitable for that class; and</p> <p>(c) advertisements for complex products that are only appropriate for a limited group of people should not be targeted at a wider audience: see draft RG 000.87–RG 000.93.</p>	<p>C9Q1 Does our proposed guidance address the key issues in relation to the advertisement's target audience? If not, what additional issues should our guidance address?</p> <p>C9Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances (e.g. where complex products are advertised to a mainstream audience)? If yes, please provide details.</p> <p>C9Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C9Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>C10</b> We propose that advertising content should be consistent with information contained in any disclosure document (such as a PDS or prospectus) or contracts: see draft RG 000.94–RG 000.97.</p>	<p>C10Q1 Does our proposed guidance address the key issues in relation to consistency with disclosure documents in advertising? If not, what additional issues should our guidance address?</p> <p>C10Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C10Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C10Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>

Proposal	Your feedback
<p><b>C11</b> We propose that:</p> <p>(a) photographs and images should be relevant and not contradict, detract from or reduce the prominence of any warnings, disclaimers or qualifications; and</p> <p>(b) graphical presentations should not be ambiguous or overly complicated: see draft RG 000.98–RG 000.102.</p>	<p>C11Q1 Does our proposed guidance address the key issues in relation to the use of photographs, diagrams, images and examples in advertising? If not, what additional issues should our guidance address?</p> <p>C11Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.</p> <p>C11Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C11Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>C12</b> We propose that an advertisement for a financial advice service should not create unrealistic expectations about what the service can achieve: see draft RG 000.103–RG 000.104.</p>	<p>C12Q1 Does our proposed guidance address the key issues in relation to advertising the nature and scope of a financial advice service? If not, what additional issues should our guidance address?</p> <p>C12Q2 Should our proposed guidance in this area be modified to better address particular services, media or other circumstances? If yes, please provide details.</p> <p>C12Q3 Is the example helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>C12Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>D1</b> We propose that:</p> <p>(a) our good practice guidance should apply to any advertising designed to inform consumers about or promote financial products or financial advice services, communicated through any medium, including:</p> <p>(i) magazines and newspapers;</p> <p>(ii) radio and television;</p> <p>(iii) outdoor advertising, including billboards, signs at public venues, transit advertising);</p> <p>(iv) internet, including webpages, banner advertisements, video streaming (e.g. YouTube) and social networking and microblogging (e.g. Twitter);</p> <p>(v) social media and internet discussion sites;</p>	<p>D1Q1 Do you agree that our good practice guidance should apply to advertising communicated through any medium? If not, why not?</p> <p>D1Q2 Do you agree that media-specific guidance is necessary and useful to illustrate specific issues associated with certain types of media? Which media raise such issues?</p>

Proposal	Your feedback
<ul style="list-style-type: none"> <li>(vi) product brochures and promotional fact sheets;</li> <li>(vii) direct mail (e.g. by post, facsimile or email);</li> <li>(viii) telemarketing activities and audio messages for telephone callers on hold; and</li> <li>(ix) presentations to groups of people, and advertorials; and</li> </ul> <p>(b) where particular media raise specific issues in relation to misleading or deceptive advertising, we would include additional good practice guidance specific to that media.</p>	
<p><b>D2</b> We propose that when advertising through the mass media:</p> <ul style="list-style-type: none"> <li>(a) promoters must consider the actual audience that is likely to see the advertisement and whether the advertisement is accurate, balanced and helpful for that audience; and</li> <li>(b) advertising should be clearly distinguished from normal program or editorial content: see draft RG 000.105–RG 000.109.</li> </ul>	<p>D2Q1 Does our proposed guidance address the key issues in relation to mass media advertising? If not, what additional issues should our guidance address?</p> <p>D2Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.</p> <p>D2Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>D2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>D3</b> We propose that any warnings, disclaimers or qualifications included in audio advertisements should be read at a speed that is comprehensible to an average listener: see draft RG 000.110–RG 000.112.</p>	<p>D3Q1 Does our proposed guidance address the key issues in relation to audio advertisements? If not, what additional issues should our guidance address?</p> <p>D3Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.</p> <p>D3Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.</p> <p>D3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>

Proposal	Your feedback
<p><b>D4</b> We propose that information about risks and any warnings included in film and video advertisements should be easy to understand by an average viewer on the first viewing of an advertisement and not undermined by distracting sounds or images: see draft RG 000.113–RG 000.115.</p>	<p>D4Q1 Does our proposed guidance address the key issues in relation to film and video advertisements? If not, what additional issues should our guidance address?</p> <p>D4Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.</p> <p>D4Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.</p> <p>D4Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>D5</b> We propose that:</p> <p>(a) internet advertisements should be self-contained. Consumers should not need to click through from an online advertisement to additional information on another website to ensure they are not misled;</p> <p>(b) promoters should consider the appropriateness of using new media channels for advertising if content limitations mean there is insufficient space to provide balanced information; and</p> <p>(c) promoters and consumers should be able to keep a record of an advertisement (e.g. by printing it), including any disclaimers or warnings: see draft RG 000.116–RG 000.121.</p>	<p>D5Q1 Does our proposed guidance address the key issues in relation to internet advertising? If not, what additional issues should our guidance address?</p> <p>D5Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.</p> <p>D5Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.</p> <p>D5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>
<p><b>D6</b> We propose that promoters should take into account the conditions under which an outdoor advertisement will be viewed (e.g. from a distance or from a moving vehicle) when considering whether the overall impression of the advertisement is misleading or deceptive: see draft RG 000.122–RG 000.123.</p>	<p>D6Q1 Does our proposed guidance address the key issues in relation to outdoor advertising? If not, what additional issues should our guidance address?</p> <p>D6Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.</p> <p>D6Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.</p> <p>D6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.</p>



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 000

# Advertising financial products and advice services

August 2011

### **About this guide**

This guide is for promoters of financial products and financial advice services, and publishers of advertising for these products and services.

It contains good practice guidance to assist promoters and publishers in presenting advertisements that are accurate and balanced and that help consumers make decisions that are appropriate for them.



### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This draft regulatory guide was issued in August 2011 and is based on legislation and regulations as at the date of issue.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

Consumers are heavily influenced by advertisements for financial products and advice services when making financial decisions and seeking financial advice.

We have developed good practice guidance to help promoters and publishers present advertisements that are accurate and balanced and that help consumers make decisions that are appropriate for them.

While our guidance covers issues of good practice in advertising, it may also help promoters and publishers comply with their legal obligations to not make false or misleading statements or engage in false or misleading conduct.

Our guidance applies to any communication intended to advertise financial products or financial advice services.

We encourage industry bodies to develop guidelines, standards or codes that build on our good practice guidance and respond to the specific needs of the sector.

While the primary responsibility for advertising material rests with the organisation placing the advertisement, publishers and media outlets may also have some responsibility for content.

### The role of advertising

- RG 000.1 We recognise that advertising plays an important role in the financial services marketplace. We want to ensure that promoters give clear, accurate and balanced messages when promoting financial products and financial advice services.
- RG 000.2 Consumers are heavily influenced by advertisements for financial products and financial advice services. Advertisements that do not fairly represent the financial product or its key features and risks, or the nature and scope of the advice service, can be misleading and create unrealistic expectations that can lead to poor financial decisions.
- RG 000.3 Advertisements are designed to attract consumers and be easily understood. This has consequences for both promoters and consumers. For promoters, there is a temptation to focus on the benefits or advantages of the product or service and to give less prominence to unattractive features. For consumers, there is a temptation to make decisions on the basis of advertisements alone and not to seek further information, even though advertisements necessarily only contain limited information about the product or service.

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## Purpose of this guide

- RG 000.4 We have developed good practice guidance for the advertising of financial products and financial advice services. The objective of our guidance is to help promoters and publishers present advertisements that are accurate, balanced and help consumers make appropriate decisions.
- RG 000.5 While our guidance covers issues of good practice in advertising, it may also help promoters and publishers comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct. Of course, whether a particular statement is misleading or deceptive will depend on all the circumstances of the particular case.

Note: This guide also identifies some examples where we have raised concerns about misleading or deceptive conduct in the past.

- RG 000.6 We encourage promoters to create advertisements that not only meet the minimum requirement of not being misleading or deceptive, but also that help consumers make appropriate decisions.
- RG 000.7 Advertisements for financial products and financial advice services should be accurate, and balanced in the overall impression they give. Balance is important for ensuring that the overall effect of an advertisement is not likely to lead to unrealistic expectations about a product or advice service, and so that the advertisement is easy to understand.

## Who the guidance applies to

- RG 000.8 Our good practice guidance is relevant to:
- (a) promoters of financial products and financial advice services. The promoter will sometimes be the product issuer, but can also be a third party such as a financial adviser, distributor or agent; and
  - (b) publishers of promotions about financial products and financial advice services.

## What the guidance applies to

- RG 000.9 The good practice guidance applies to any communication whose purpose is to inform consumers about or promote financial products or financial advice services
- RG 000.10 It applies to this advertising communicated through any medium in any form, including:
- (a) magazines and newspapers;
  - (b) radio and television;

- (c) outdoor advertising, including billboards, signs at public venues, transit advertising;
- (d) the internet, including webpages, banner advertisements, video streaming (e.g. YouTube) and social networking and microblogging (e.g. Twitter);
- (e) social media and internet discussion sites;
- (f) product brochures and promotional fact sheets;
- (g) direct mail (e.g. by post, facsimile or email);
- (h) telemarketing activities and audio messages for telephone callers on hold; and
- (i) presentations to groups of people, seminars and advertorials.

RG 000.11 Advertising does not generally include statements in a regulated disclosure document, such as a prospectus, Product Disclosure Statement (PDS) or Financial Services Guide (FSG).

RG 000.12 The good practice guidance applies to all types of financial products, including:

- (a) investment products;
- (b) risk products;
- (c) non-cash payment facilities; and
- (d) credit facilities.

Note: References to 'financial products' in this guide mean financial products as defined in the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and therefore include credit facilities: see s12BAA, ASIC Act.

RG 000.13 This guide focuses primarily on advertising of investment and risk products and financial advice services. Different considerations apply for advertising of credit products and services, so we plan to issue additional guidance for credit providers and providers of credit services under the *National Consumer Credit Protection Act 2009* (National Credit Act).

RG 000.14 The good practice guidance also applies to both general and personal financial product advice. It is intended for all sectors of the industry, including product designers, advisers, and publishers of advertising.

Note 1: The Government has announced reforms to the financial planning sector, the Future of Financial Advice package of reforms: see <http://futureofadvice.treasury.gov.au>.

Note 2: References to 'financial advice services' in this guide mean the provision of financial product advice as defined in the ASIC Act: see s12BAB(5).

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## Good practice guidance

RG 000.15 Table 1 contains an overview of the good practice guidance, for advertising in all media, outlined in more detail in Section B.

**Table 1: Overview of good practice guidance**

Issue	Summary of guidance
Nature of the product	Advertisements for financial products should clearly explain the nature of the advertised product.
Returns, benefits and risks	Advertisements for financial products should give a balanced message about the returns, benefits and risks associated with the product. Benefits should not be given undue prominence compared with risks.
Warnings, disclaimers, qualifications and fine print	<p>Warnings, disclaimers and qualifications should not be inconsistent with other content in an advertisement, including any headline claims, and should have a proportionate level of prominence to the claims to which they refer.</p> <p>Advertisements should be self-contained—that is, consumers should not need to access a warning, disclaimer or qualification contained in another website (or other page of the website) or document.</p>
Fees and costs	Where fees or costs are referred to in an advertisement, it should give a realistic impression of the overall level of fees and costs a consumer is likely to pay, including any indirect fees or costs.
Comparisons	<p>Comparisons should only be made between financial products that have sufficiently similar features.</p> <p>Comparisons should only be made about returns if the information used is current, complete and accurate.</p> <p>If an advertisement discloses a rating, the rating used should be properly explained, including the rating scale and where an investor can obtain further information about the rating.</p>
Past performance and forecasts	<p>Past performance information should be accompanied by a warning that past performance is not indicative of future performance.</p> <p>Forecasts about the future performance of a financial product should be based on reasonable assumptions and should also state that the forecasts are not guaranteed to occur.</p>
Use of certain terms and phrases	<p>Terms and phrases should not be used in a particular way by industry where that is not consistent with the ordinary meaning commonly recognised by consumers (e.g. 'free', 'secure' and 'guaranteed').</p> <p>Industry concepts or jargon should be avoided, unless the promoter is confident that those terms will be understood by the audience.</p>
Target audience	<p>Advertisements should be capable of being clearly understood by the audience that might reasonably be expected to see the advertisements.</p> <p>Advertisements should not state or imply that a financial product is suitable for particular types of consumers unless the promoter has assessed that the product is suitable for that class.</p> <p>Advertisements for complex products that are only appropriate for a limited group of people should not be targeted at a wider audience.</p>

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Issue	Summary of guidance
Consistency with disclosure documents	Advertising content should be consistent with information contained in any disclosure document (such as a PDS or prospectus) or contracts.
Photographs, diagrams, images and examples	Photographs and images should be relevant and not contradict, detract from or reduce the prominence of any warnings, disclaimers or qualifications. Graphical presentations should not be ambiguous or overly complicated.
Nature and scope of advice	Advertisements for a financial advice service should not create unrealistic expectations about what the service can achieve.

### Media-specific guidance

RG 000.16 In Section C, we give guidance on some media-specific issues for financial product and financial advice services advertising. These are outlined in Table 2.

**Table 2: Overview of media-specific guidance**

Medium	Summary of guidance
Mass media	Promoters should consider the actual audience that is likely to see the advertisement and whether the advertisement is accurate, balanced and helpful for that audience. Advertising should be clearly distinguished from normal program or editorial content.
Audio advertisements	Warnings, disclaimers and qualifications should be read at a speed that is comprehensible to an average listener.
Film and video advertisements	Information about risks and any warnings should be easy to understand by an average viewer on the first viewing of an advertisement and not undermined by distracting sounds or images.
Internet	Internet advertisements should be self-contained. Consumers should not need to click through from an online advertisement to additional information to ensure they are not misled. Promoters should consider the appropriateness of using new media channels for advertising if content limitations mean there is insufficient space to provide balanced information. Consumers should be able to keep a record of an advertisement (e.g. by printing it), including any disclaimers or warnings.
Outdoor advertising	Promoters should take into account the conditions under which the advertisement will be viewed (e.g. from a distance or from a moving vehicle) when considering whether the overall impression of the advertisement is misleading or deceptive.

### Product-specific guidance

RG 000.17 Some financial products, due to their risk or nature, require further specific guidance. This guide should be read in conjunction with other product-specific advertising guidance we have given.

- RG 000.18 Advertising guidance for particular financial products can be found in:
- (a) Regulatory Guide 45 *Mortgage schemes: Improving disclosure for retail investors* (RG 45);
  - (b) Regulatory Guide 46 *Unlisted property schemes: Improving disclosure for retail investors* (RG 46);
  - (c) Regulatory Guide 156 *Advertising of debentures and unsecured notes* (RG 156); and
  - (d) Regulatory Guide 227 *Over-the-counter contracts for difference: Improving disclosure for retail investors* (RG 227).

Please also refer to our proposed guidance in:

- (a) Consultation Paper 133 *Agribusiness managed investment schemes: Improving disclosure for retail investors* (CP 133); and
- (b) Consultation Paper 134 *Infrastructure entities: Improving disclosure for retail investors* (CP 134).

Note 1: We plan to publish disclosure guidance on hedge funds by the end of 2011: see our proposed guidance in Consultation Paper 147 *Hedge funds: Improving disclosure for retail investors* (CP 147).

Note 2: We may publish further relevant guidance on the ASIC website at [www.asic.gov.au/rg](http://www.asic.gov.au/rg).

### Other relevant guides

- RG 000.19 The following regulatory guides may also be useful in the preparation of advertising material:
- (a) Regulatory Guide 53 *The use of past performance in promotional material* (RG 53);
  - (b) Regulatory Guide 158 *Advertising and publicity for offers of securities* (RG 158);
  - (c) Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168);
  - (d) Regulatory Guide 170 *Prospective financial information* (RG 170);
  - (e) Regulatory Guide 173 *Disclosure for on-sale of securities and other financial products* (RG 173);
  - (f) the draft regulatory guide attached to Consultation Paper 155 *Prospectus disclosure: Improving disclosure for retail investors* (CP 155).

### Industry guidance

- RG 000.20 Industry guidelines, standards and codes have a useful role to play in ensuring that advertisements are accurate and balanced and help consumers make appropriate decisions. This is because consumers will generally expect promoters and publishers to comply with accepted industry guidelines.

- RG 000.21 We encourage industry bodies to develop guidelines, standards or codes that build on the principles of our good practice guidance and respond to the specific needs of the sector.
- RG 000.22 Our good practice guidance will also be relevant to sector-wide advertising undertaken by industry associations on behalf of members.

## Our regulatory powers

- RG 000.23 We may take a greater interest in advertisements that do not meet our good practice guidance when considering whether to make further inquiries or to exercise our regulatory powers.
- RG 000.24 Section D outlines our regulatory powers and explains how the *Corporations Act 2001* (Corporations Act) and the ASIC Act apply and what action ASIC can take on:
- (a) misleading or deceptive statements or conduct; and
  - (b) failure to comply with AFS licence obligations.
- RG 000.25 We have a range of powers we can exercise, including:
- (a) information gathering powers, such as issuing a substantiation notice;
  - (b) issuing a stop order or seeking an injunction to stop continued advertising or to stop an associated disclosure document;
  - (c) issuing a public warning notice; and
  - (d) cancelling a promoter's AFS licence or varying its conditions: see RG 000.134.
- RG 000.26 The Corporations Act also prohibits certain conduct, including unsolicited hawking of financial products to retail clients and advertising certain small scale offerings of securities or financial products: see RG 000.156–RG 000.159.

## Publishers and media outlets

- RG 000.27 Publishers have a role in promoting financial products and financial advice services. Some of these products and services may be directly promoted in the media, through advertising and by media commentators.
- RG 000.28 While the primary responsibility for advertising material rests with the organisation placing the advertisement, a media outlet may also have some responsibility for its content: see Section E.

## Consumer testing

- RG 000.29 Where promoters undertake consumer testing of an advertisement, we encourage them to test whether the advertisement:
- (a) is accurate and balanced; and
  - (b) does not create a misleading or deceptive impression in the mind of an ordinary and reasonable member of the advertisement's audience.



## B Good practice guidance

### Key points

The good practice guidance in this section covers:

- the nature of the product (see RG 000.30–RG 000.31);
- returns, benefits and risks (see RG 000.32–RG 000.46);
- warnings, disclaimers, qualifications and fine print (see RG 000.47–RG 000.51);
- fees and costs (see RG 000.52–RG 000.55);
- comparisons (see RG 000.56–RG 000.71);
- past performance and forecasts (see RG 000.72–RG 000.75);
- use of certain terms and phrases (see RG 000.76–RG 000.86);
- the advertisement’s target audience (see RG 000.87–RG 000.93);
- consistency with disclosure documents (see RG 000.94–RG 000.97);
- photographs, diagrams, images and examples (see RG 000.98–RG 000.102); and
- the nature and scope of advice (see RG 000.103–RG 000.104).

### Nature of the product

RG 000.30 Advertisements for financial products should clearly explain the nature of the advertised product, in terms likely to be understood by the audience that is likely to see the advertisement.

RG 000.31 Advertisements should be complete so that consumers can assess the merits of the financial product or service being advertised.

### Returns, benefits and risks

RG 000.32 Advertisements for financial products should give a balanced message about the returns, benefits and risks associated with the product. Statements about returns, benefits and risks should be given appropriate prominence so that consumers can readily find all relevant information about the product.

RG 000.33 Advertisements should not overstate the potential benefits (e.g. investment returns) or create unrealistic expectations by giving undue prominence to the benefits compared with the risks.

## Returns and benefits

- RG 000.34 Where an advertisement states or implies that a particular benefit is likely, it should include a statement about the overall risk associated with the product, or a clear explanation of the assumptions made in predicting the benefit.

### Example 1: Qualifications affecting the potential return

Where a rate of return for a product is market-linked and the product is advertised as having an expected rate of return, the advertisement should also state that the expected returns may not arise and that the client's balance may even fall.

### Example 2: Representations about potential benefits

A financial services licensee promoted itself through its website, publications and seminars as a specialised derivatives dealer. It represented that investors could participate in the lucrative options trading market place with minimum effort in the knowledge that a professional options trader was assisting them to manage all aspects of their trading. The advertisement claimed that by using the licensee's time-tested risk management method, consumers could earn superior returns in a high-risk market.

ASIC raised concerns that these representations were misleading and deceptive as they overstated the ability of a consumer to obtain the results claimed. We obtained an injunction restraining the licensee from making further advertisements.

- RG 000.35 Claims about product or service features should only be made if a consumer can reasonably expect those features to be available to them. An advertisement should not present a one-sided view of a product's key features to overstate the benefits associated with the product.

### Example 3: No fees (but only in certain cases)

An advertisement should not promote an online savings account as allowing consumers to earn a high rate of interest 'with no fees' when, in practice, the account that does not attract fees cannot be operated as a stand-alone account but must instead be linked to another account that does attract fees, unless there is clear and adequate qualification.

### Example 4: Omission of important fee information

Some savings accounts may not attract a fee called an 'annual fee' but instead attract a monthly fee which is cumulative in amount to an annual fee. An advertisement for such an account should not claim that the account attracts 'no annual fee' without clearly stating that a monthly fee is payable instead. It may give a consumer a misleading impression of the fees that will be payable, and create the impression of a benefit that the consumer would not actually obtain.

- RG 000.36 If a product offers certain benefits that are mutually exclusive (i.e. they cannot be taken up simultaneously), this should be made clear in the advertisement.

#### Example 5: Mutually-exclusive benefits

While an introductory offer for a credit card might offer both a low interest rate for six months on a balance transfer and an interest-free period on purchases, if those benefits are not available concurrently, this should be made clear in any advertising that refers to both.

- RG 000.37 An advertisement should not contain an open-ended promise about a benefit if it is likely that circumstances will change so that the promise will become misleading. It is important to remember that an advertisement may create a lasting impression in consumers' minds. If circumstances change, merely withdrawing the advertisement may not alter the fact that certain expectations have been created, and the advertisement may have an effect that is misleading.

- RG 000.38 Where an advertisement contains a promise about a benefit that may not be available if circumstances change, the advertisement should be qualified by a prominent statement that alerts the consumer to the fact that circumstances may change.

#### Example 6: Continued accuracy of advertising claims in the future

If an insurer advertised that its insurance was offered at the lowest cost available but, given the competitive nature of the market, the insurer could only be sure that its policies were the cheapest for the next two weeks, it should also clearly note the strong probability of change. This is because advertisements may create a lasting impression in consumers' minds, and, in this case, the impression would quickly become incorrect.

- RG 000.39 Where a product is advertised on the basis of a particular feature or benefit, then that feature or benefit should remain available for a reasonable period, given the nature of the market and the nature of the advertisement: s12DG, ASIC Act.
- RG 000.40 Information about returns should be net of fees and costs to the greatest extent practicable. In addition, the effect that fees and costs may have on returns over time should be clearly stated, and not hidden or difficult to understand.
- RG 000.41 If returns are calculated in a foreign currency, this should be drawn to the consumer's attention. If returns are calculated in a foreign currency and returns in Australian dollars would be significantly different, the advertisement should show the impact of exchange rate variations on returns in both Australian dollars and the foreign currency.

## Risks

- RG 000.42 Information about the risk of a financial product should be clear, not hidden or difficult to understand, and be given sufficient prominence to information about returns and benefits. The tone of the advertisement should not undermine the importance of the risks.

### Example 7: Understating potential risks relative to benefits

ASIC became aware of an options trader who marketed and sold options trading software. Marketing material included statements such as 'Options trading is easy' and 'Returns of 5–10% per month and 60–120% per year can consistently be achieved'. We accepted an enforceable undertaking under which the company agreed to permanently refrain from using these phrases in connection with options trading. The company also agreed to provide a refund to people who bought the product after one or more of the statements were made to them.

### Example 8: Advertising high-risk products

Contracts for difference (CFDs) are high-risk products with the potential to expose investors to large losses. An advertisement for CFDs should not include prominent headline claims such as 'Build personal wealth with low-risk trading strategies' and 'Safely harness the leverage power of CFDs' because this does not accurately reflect the risks of trading CFDs.

- RG 000.43 The safety or security of a financial product should not be overstated. There are very few products that can claim that they are fully insured or guaranteed.

Note: The Financial Claims Scheme (FCS) established by the Australian Government in October 2008 protects depositors in authorised deposit-taking institutions (ADIs) such as banks, building societies and credit unions. It does not apply to investment products offered by an ADI.

- RG 000.44 Where a financial product has a high level of risk or special risk factors that would not be apparent to the audience, an advertisement for that product should clearly disclose the nature of these risks.

- RG 000.45 Where a product poses significant risks that would not ordinarily be expected by a consumer, an advertisement should include a prominent warning about these risks.

### Example 9: Prominent warning of unexpected risks

Trading in CFDs involves the risk of losing substantially more than the initial investment, and CFD investors do not own or have any rights to underlying assets. These are risks that might not be expected by consumers used to trading securities. The advertisement should therefore include a sufficiently prominent warning outlining these risks.

- RG 000.46 When a product, or a feature of a product, is introduced that makes the product significantly different from other similar products, the advertisement should give prominence to the different or innovative features.

## Warnings, disclaimers, qualifications and fine print

- RG 000.47 We recognise that not all relevant information can be included in headline claims. However, the more that a qualification is required to complete or balance the information contained in the headline claim, the more prominently placed the qualification should be. The headline claim must not itself be misleading (i.e. the headline claim should itself be balanced).
- RG 000.48 If warnings, disclaimers, and qualifications are required they should:
- (a) not be inconsistent with other content in the advertisement, including any headline claims;
  - (b) have sufficient prominence to effectively convey key information to a reasonable member of the audience on first viewing of the advertisement. Information is less likely to be noticed and understood if it is in fine print, within a dense text block, only shown on television or a computer screen for a brief period or placed where there is distracting simultaneous content;
  - (c) be contained within the advertisement. Statements referring the consumer to another website or webpage, or a document such as a PDS, prospectus or contract, are unlikely to be sufficient.

### Example 10: Benefits only available to new customers

A bank advertised an account as being free of monthly account-keeping fees for customers depositing at least \$2,000 per month. ASIC was concerned the advertisements created the impression the initiative to remove monthly service fees applied automatically to existing account holders, when that was not the case. We accept that financial service providers do, from time to time, offer special promotions that only apply to new customers. It is important, however, that advertising clearly says whether an offer is available to existing customers (and if so, how). The bank agreed to take a number of steps to ensure that its existing customers had not been misled, including writing to all of them.

### Example 11: Qualifications and warnings to be included in an advertisement

If the headline claim for a superannuation fund that members 'pay a low administration fee of \$104 per annum' is prominently qualified by a statement that 'other fees and charges apply—refer to our PDS', consumers will immediately be aware that the administration fee does not represent the only cost. On the other hand, if the headline claim is qualified only by a statement suggesting that consumers 'refer to our PDS', consumers will have no reason to suspect that other costs will be incurred.

**Example 12: Qualification on a different webpage than advertisement**

In a review of advertising for general insurance products, ASIC identified some online advertisements for offers and discounts which appeared unqualified but were in fact subject to conditions such as age restrictions and absence of at fault claims. Our concerns were that, where a banner advertisement on a webpage includes information about the potential returns available from a product, this should be balanced with information about the risks in the same banner. Including a reference to another page on the website where the consumer can find out information about the risks is unlikely to correct a misleading impression. We wrote to the insurance industry to outline our concerns.

- RG 000.49 If warnings, disclaimers or qualifications are included in an advertisement, they should be in a form similar to the main body of the advertisement so that the consumer can understand the warning, disclaimer or qualification.

**Example 13: Disclaimers in a different form than the main advertisement**

If the main body of an advertisement for a financial product is in a language other than English, any warnings, disclaimers or qualifications should also be in the same language.

- RG 000.50 If a qualification is required, it must be published at the same time as the original message. Subsequent qualifying disclosures will not be effective as the misleading impression will already have been created.
- RG 000.51 Qualifications should not be used to change the meaning of a headline statement. Some headline claims are so strong that any separate qualification will not correct any misleading impression.

**Example 14: Claims too strong to be adequately qualified**

An insurer advertised the option to pay an insurance premium on a monthly basis using terminology such as 'Cut your car insurance into 12 easy monthly payments'. ASIC raised concerns that this could give the impression that the annual premium is just split into 12 payments, whereas the total of the 12 monthly payments was in fact more than the price the consumer would pay if they opted to pay annually. Even if the advertisement included fine print stating that the sum of 12 monthly premiums is more than the option to pay an annual premium, the strength of the headline claim would be significantly greater than that of the fine print and would convey a stronger message to consumers. We wrote to the insurance industry to outline our concerns about this type of advertising.

## Fees and costs

RG 000.52 Where fees or costs are referred to in an advertisement, it should give a realistic impression of the overall level of fees and costs a consumer is likely to pay. When a headline claim about a fee or cost is used in an advertisement, any exclusions or qualifications should be contained within the headline claim or be clearly and prominently noted within the advertisement.

### Example 15: Exclusions and qualifications

Some basic deposit products may allow consumers a certain number of free transactions per month, after which an 'excess transaction' fee applies. An advertisement for such a product should not claim that it is 'fee free' without qualifying that headline claim with necessary information about the way fees are applied.

RG 000.53 An advertisement should not state that there is only one fee if there are other costs associated with the product that consumers will incur. Promoters should not assume that clients would understand the distinction between 'fees' and 'costs'. If an advertisement refers to the fees that apply, it will generally need to positively state whether or not other costs apply.

### Example 16: Distinction between fees and costs

A superannuation fund advertised that its members will pay 'one low fee', but did not mention that other costs, called 'costs' or 'charges', would also apply. ASIC raised concerns that these representations may mislead consumers. In response, the superannuation fund made appropriate changes to its promotional material.

RG 000.54 The effect that the fees and costs may have on returns for a financial product should be clearly stated in an advertisement. For example:

- (a) returns should be net of fees and costs to the greatest extent practicable;
- (b) where the fee level is variable, the maximum fee should be deducted from possible returns in the advertisement;
- (c) where it would be impractical to deduct some fees or costs, the existence of undeducted fees and costs should be prominently disclosed;
- (d) where practicable, the size of undeducted fees and costs should be disclosed;
- (e) where a product is offered with multiple fee options, any advertised returns should make clear which fee option they relate to; and
- (f) where a scenario is given for a specific investment period, entry and exit fees should be deducted.

Note: See also Examples 3, 4, and 25 for further examples relating to fees and costs.

## Fees for financial advice services

- RG 000.55 Where an advertisement makes a claim about the fees or costs associated with a financial service, this should be easily understood, and any qualification clearly and prominently noted in the advertisement. An advertisement should not suggest that an advice service is ‘free’ or ‘low cost’ if, in fact, the consumer would pay for the service indirectly through the fees and costs of any products they are placed in (e.g. where adviser commissions are derived from product fees, and these are not rebated back to the consumer).

Note: The Future of Financial Advice reforms (see Note 1 under RG 000.14) include a prospective ban on conflicted remuneration structures, such as commissions and volume-based payments, for the distribution and advice of retail investment products, including managed investments, superannuation and margin loans.

## Comparisons

### Comparisons between products

- RG 000.56 When comparing products in an advertisement, products should have sufficiently similar features to make the comparison relevant and not misleading.

#### Example 17: Comparison of dissimilar products

Debentures involve significantly higher risk than bank term deposits. It is not good practice for an advertisement for a debenture to make a statement such as ‘Is your money earning 6.3% per annum in a bank term deposit?’, or to encourage the consumer to ‘Invest with us and receive 9.75% per annum instead’, as this would not be an appropriate comparison. These two products have very different risks and are not sufficiently similar to allow for such a comparison.

Note: An advertisement for a debenture should not state that the product is, or compares favourably to, a bank deposit: see RG 156.10.

- RG 000.57 Where only one particular feature of a product is highlighted, a comparison may be misleading if it ignores other key features.

#### Example 18: Comparison that ignores other features

An insurance policy that offers a reduced premium but has an increased excess should not be compared with another policy on the basis of the premium but without considering the excess on each policy.

- RG 000.58 Where a comparison is made showing differences in outcome over time, it is important to ensure not only that the differences are accurate and relevant but also that they will remain consistent for a reasonable period of time.

- RG 000.59 Where a comparison has been made over a short period, any limitations of such a comparison should be clearly disclosed.



- RG 000.60 When comparing the performance of an investment with any benchmark or investment that is different in terms of investment objectives, fees, types of investments made, or countries or markets covered, the differences should be clearly disclosed. However, disclosure may not always be sufficient to correct any misleading impression, if the comparison is simply inappropriate and unreasonable.

### Comparison of benefits and returns

- RG 000.61 Any comparison of benefits and returns should be accurate and balanced and have a reasonable basis.
- RG 000.62 The facts on which any comparison or contrast of returns is made should be verified, and any relevant assumptions disclosed.
- RG 000.63 An advertisement should not present a comparison in a way that would create a misleading impression of the product. In particular, the use of strong terms such as 'high' and 'low' to compare particular benefits or returns may be misleading if these kinds of benefits or returns are only likely to occur if certain conditions are in place, and this is not explained.

#### Example 19: Selected comparison of savings

Without proper disclosure, an advertisement should not claim that a consumer is able to achieve a 'high' level of saving by switching from another product provider if, in fact, the average amount saved is actually low (e.g. if the 'high' level of saving could only be obtained if a consumer was currently with an unusually expensive provider).

### Ratings

- RG 000.64 Ratings can be used by consumers to compare different financial products.
- RG 000.65 Ratings can include both credit ratings issued by credit rating agencies as well as ratings, recommendations and opinions produced by financial product research houses.
- RG 000.66 An advertisement may only disclose a credit rating if the rating is issued by a credit rating agency that is authorised under its AFS licence to issue credit ratings to retail and wholesale clients and if the advertisement is part of:
- (a) advertising of deposit products, securities or other financial products to retail clients; or
  - (b) a page of a publicly available website frequented by depositors or other retail clients (such as the homepage or personal banking webpage).

Note: For more information, see Information Sheet 99 *Disclosure of credit ratings in Australia* (INFO 99).

- RG 000.67 The impression of the product created by the rating should accurately reflect the rating and be consistent with the product offering.
- RG 000.68 The rating used in an advertisement should be properly explained. The explanation should include the meaning of the rating. Promoters should also consider including:
- (a) information about the rating scale; and
  - (b) where an investor can obtain further information about the rating.
- RG 000.69 Where ratings are used, the advertisement should also state that ratings are only one factor to be taken into account when deciding whether to invest or take up a credit product.
- RG 000.70 Only current ratings should be used. If the ratings are likely to change, the promoter should consider inserting a qualifying statement: see also RG 000.37–RG 000.38.

### Awards

- RG 000.71 Where awards received are included in an advertisement for a product, the grantor of the award should be clearly identified and the award explained, including the currency of the award. An advertisement should make it clear if an award is granted by someone related to the promoter.

#### Example 20: Disclosing awards

If an advertisement includes a statement such as 'Best Investment Product of the Year Award', it should include an explanation of who granted this award and any relationship with the product issuer.

## Past performance and forecasts

### Past performance

- RG 000.72 An advertisement for a financial product with information about past performance should draw attention (unambiguously and without reservation) to the fact that the past performance is not indicative of future performance.

#### Example 21: Implying that past performance will continue

A managed investment scheme published an advertisement stating that it was 'the best performing of all funds sold in Australia over 15 years'. ASIC raised concerns that the use of the word 'perform' created the impression that substantially the same returns achieved in the past would be achieved in the future, and this may not necessarily be the case. We were also concerned that the advertisement focused on the past performance of the fund as the sole or dominant method of selecting an investment, rather than also presenting other information to assist an investor in deciding whether or not to invest in this particular product. The managed investment scheme withdrew its advertisement in response to our concerns.

- RG 000.73 We have provided detailed guidance on the use of past performance information in promotional material in RG 53. RG 53 also includes guidance on how particular types of performance information should be used.

### Forecasts

- RG 000.74 Information about future performance should only be used in advertising where it is relevant and there are reasonable grounds to provide the information. If a person makes a representation about any future matter for a financial product, but does not have any reasonable grounds for making the representation, the representation is taken to be misleading: s769C.
- RG 000.75 It should be clear from any advertisement that forecasts about future performance may not occur. For detailed guidance on the use of forecasts, particularly in the context of financial products, see RG 170.

### Use of certain terms and phrases

- RG 000.76 Care should be taken when using certain terms and phrases in an advertisement, particularly where the way those terms and phrases are used is not consistent with the ordinary meaning commonly recognised by consumers (e.g. 'free', 'secure' and 'guaranteed').
- RG 000.77 Some terms and phrases have such a strong connotation for consumers that they should only be used in advertising with great care. While literally correct, it may be inappropriate to use them in consumer advertising.

#### Example 22: Using words in a different context than their ordinary meaning

A bank advertised an account as an 'everyday savings account'. However, ASIC was concerned that, under the restrictive terms and conditions, the product would not have the degree of flexibility implied by the term 'everyday savings', and would, in fact, be more suitable for long-term savings. The bank agreed to review its advertising.

- RG 000.78 Inappropriately using terms and phrases can:
- (a) create expectations that cannot be assured;
  - (b) indicate a certain level of security that does not exist;
  - (c) indicate different levels of protection and different levels of risk.

**Example 23: Inappropriate use of certain terms and phrases**

A debenture issuer used phrases such as 'Invest with certainty!' and 'The rate you choose is secured for the term of your investment'. ASIC was concerned that the use of words like 'certainty' and 'secure' materially overstated the safety of investing in debentures to vulnerable investors. We accepted an enforceable undertaking from the issuer to stop the potentially misleading advertising.

**Example 24: Using certain terms and phrases to understate risks**

An options trader marketed share trading software using statements such as 'Writing covered calls is the same as share rental or renting real estate'. We raised concerns that these words could convey a misleading or deceptive impression by comparing a more risky product (options trading) with a commonly understood investment that has lower risks (real property investment). We accepted an enforceable undertaking under which the company agreed to permanently refrain from using these, or similar, terms in connection with options trading.

**Technical language and industry jargon**

- RG 000.79 Industry concepts or jargon should be avoided, unless the advertisement is unlikely to be seen by any consumers outside a defined group and the promoter can be confident that those consumers are familiar with the subject matter. It should not be assumed that consumers will understand concepts used within a particular industry or even understand the products themselves.

**Example 25: Industry jargon**

ASIC became aware that some superannuation funds were advertising that consumers would be charged 'only one low fee', where in fact other costs such as transaction costs would apply. While industry might understand a distinction between fees and costs, it should not be assumed that consumers would be aware of such a distinction. We issued a report warning funds against such advertising.

**Restricted terminology**

- RG 000.80 Advertisements should not use certain terminology where usage of that terminology is restricted by law.
- RG 000.81 The Corporations Act restricts the use of certain terminology in certain situations, including:
- (a) the terms 'independent', 'impartial' or 'unbiased' in circumstances where a person (or the person's employer) receives a commission, volume bonus, or other benefit that may reasonably be expected to influence the person (s923A); and

- (b) the terms ‘stockbroker’, ‘sharebroker’, ‘insurance broker’, ‘general insurance broker’, and ‘life insurance broker’, in circumstances where a person is not authorised by conditions on an AFS licence to use those terms (s923B).

RG 000.82 An advertisement should not claim that a financial advice service is an ‘independent service’, or describe an advice service or adviser in language that implies independence if this is not the case—for example, because all or part of the adviser’s remuneration is derived from the products they recommend, or because there is a relationship between the adviser and a particular product issuer.

Note: The Future of Financial Advice reforms (see Note 1 under RG 000.14) include a proposed ban on conflicted remuneration structures, such as commissions and volume payments.

## Endorsements and testimonials

RG 000.83 Advertising should not falsely represent that a product or product issuer has an endorsement or approval that it does not actually have. We will be particularly concerned where advertisements claim endorsement or approval by ASIC.

Note: Promoters can refer to ASIC’s MoneySmart website ([www.moneysmart.gov.au](http://www.moneysmart.gov.au)) in advertisements to help consumers understand the products or services offered.

### Example 26: Claimed community endorsement

An organisation published promotional material for a financial product being sold to Aboriginal and Torres Strait Islander consumers using images, designs and colours that suggest affiliation or endorsement by the community. There was, in fact, no such affiliation or endorsement. ASIC took action against the organisation and it agreed to stop using the Aboriginal flag on any marketing materials and include a disclaimer on all material that it is not associated with Aboriginal or government organisations.

RG 000.84 Testimonials from individuals should be attributed to them and should be authentic.

RG 000.85 Celebrity endorsement of a product is likely to be seen by consumers as a badge of approval and the message is more likely to be accepted on its face and trusted.

RG 000.86 Any testimonials or messages from well-known identities, celebrities or media commentators should be truthful and only contain reasonably held, informed opinions about the product or service being advertised.

### Example 27: Celebrity testimonials

A celebrity should not claim that they are satisfied with a particular product and that they would recommend it to anyone if they actually know very little about the product they are endorsing.

## Target audience

- RG 000.87 Promoters should consider the characteristics of the actual audience that is likely to see the advertisement (e.g. their financial literacy, knowledge, demographics) and whether the advertisement provides adequate information for that audience.
- RG 000.88 The promoter's target audience for an advertisement might be different from the actual audience that sees the advertisement. However, the actual audience must be taken into account.
- RG 000.89 Advertisements should not state or imply that a financial product is suitable for a particular class of consumers unless the issuer has actually assessed the suitability of the product for particular consumers targeted by the advertisement.
- RG 000.90 Where the features or complexity of a financial product are such that they will only be appropriate for a limited group of people, promoters should do their best to ensure that the advertisement only targets that group and not a wider audience: see also RG 000.106.

## Distribution channels

- RG 000.91 Particular care should be taken when presenting advertisements for financial products that can be acquired directly from the issuer rather than through a financial adviser. Advertisements should be self-contained and should not rely on a third party to fill in any gaps to correct a misleading impression created in the advertisement itself.

## Complexity

- RG 000.92 Care should be taken to ensure that the advertisement is sufficiently simple and capable of being understood by the audience likely to see it. The more complex a product (either in terms of the structure of the product or the ability of consumers to understand the risks posed by the product), the more important it is for an advertisement to be simple and clear to avoid creating a misleading impression.
- RG 000.93 The more complex the product, the less likely it can be advertised in limited space (e.g. internet banner advertisement, signs in public venues, 30-second television commercials) without being misleading.

### Example 28: Audience for complex products

An advertisement for a complex product might be appropriate for the readers of a specialist publication, but would not be appropriate for general newspaper readers or television viewers.

## Consistency with disclosure documents

- RG 000.94 Statements in advertisements should be consistent with the features of the advertised product and the disclosures in any corresponding disclosure documents (such as a PDS, FSG or prospectus) or contracts.
- RG 000.95 Promoters should take into account any key disclosures in the corresponding disclosure document. This is particularly the case where disclosures are prescribed or required: see RG 000.19.

### Example 29: Terms of credit card contract

Where the contract for a credit card includes a standard clause allowing the credit card provider to unilaterally raise the interest rate at any time, the promotional campaign for the card should not contain a 'guarantee' that the interest rate will stay low.

### Example 30: Limitations of insurance policy

An advertisement for insurance used phrases such as 'guaranteed acceptance' and 'no exceptions', although the policy in fact had significant exceptions. ASIC took action on the basis that an advertisement should not imply that clients will definitely be paid in certain situations if the policy's terms contain limits on when claims will be paid out. The insurer agreed to pay out all benefits where a claim had been rejected due to the exclusions not mentioned in the advertisement.

### Example 31: Claims in advertising material not reflected in PDS

An issuer of capital protected products and structured products produced marketing material claiming that the units provided investors with a tax deductible interest expense. However, this claim was not substantiated in the PDS, which encouraged potential investors to seek their own independent advice about the deductibility of interest and borrowing expenses. ASIC imposed licence conditions on the product issuer requiring, among other things, the appointment of a legal firm to monitor certain advertising and marketing material to ensure that it is not potentially deceptive or misleading.

- RG 000.96 In ensuring consistency with a disclosure document, promoters should be aware that a statement in the disclosure document may become misleading when it is taken out of context in an advertisement. An advertisement should not include or rely on context or additional material that is not included in the disclosure document.

### Example 32: Information taken out of context

It may be appropriate to describe a debenture as 'guaranteed' in a prospectus where sufficient information is given about the nature of the guarantee, any limitations to it and its likely efficacy. However, it is not good practice to use the term 'guaranteed' in an advertisement if the advertisement does not also provide such context or explanation.

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- RG 000.97 An advertisement should indicate that a consumer should consider the PDS or prospectus in deciding whether to acquire the product, and indicate where the PDS or prospectus can be obtained: s734 and 1018A.

## Photographs, diagrams, images and examples

- RG 000.98 Images in advertising (e.g. in print and television advertising) can create a particularly significant impression on consumers, potentially more significant than that created by written or spoken messages.
- RG 000.99 If the effect of an image is to contradict, detract from or reduce the prominence of qualifying statements, this may make the advertisement more likely to mislead. The use of imagery associated with success, wealth, safety and security may particularly distract consumers from any contrasting messages about the risks and drawbacks of a particular product or service.
- RG 000.100 Images should only be included where they are relevant to the product being advertised. Images should not be used where they are likely to misrepresent the nature, stage or scale of the product or the issuer's business. This is the case whether or not the photograph has a disclaimer.

### Example 33: Misleading image—Age of audience

The price of funeral insurance typically depends on the age of the consumer. An advertisement which states a low price that is only available to younger customers should not include photographs of people outside the age range for whom the low price is available.

### Example 34: Misleading image—Stage of development

An advertisement for a prospectus for a mining exploration company should not include images that suggest the business is at a more advanced stage than it actually is—for example, images of a working mine, where the business is still at the exploration stage.

- RG 000.101 Tables, diagrams, graphs, charts and maps can help present information in a way that is easy for consumers to absorb, provided they are not used in a misleading way. Promoters should:
- (a) present tables, diagrams and other illustrative charts in the simplest way possible, providing clear captions and including key assumptions;
  - (b) provide keys for more complex diagrams and graphs; and
  - (c) select scales, time periods and other inputs that fairly represent the information and do not give skewed outputs. Where graphs or maps are used to compare information, the same scale should be used, or the document should explain that the same scale has not been used and the reasons for this.



- RG 000.102 Examples and case studies present information in a way that consumers can more easily relate to and understand (e.g. to illustrate how formulae work). Examples should be provided on a consistent basis. They should be accompanied by a clear explanation about the purpose for which they are included and the assumptions on which they are based. If an example is used to show an increase or upward change, an example showing a decrease or downward change should also be included (and vice versa).

Note: For more information on presentation of past performance in promotional material, see RG 53.15.

## Nature and scope of advice

- RG 000.103 An advertisement for a financial advice service should not create unrealistic expectations about what the service can achieve. In particular, advertisements should make clear any relevant limitations on the breadth of services offered. An advertisement should not suggest that, in recommending a product for a consumer, the adviser will consider all relevant products across the market if this is not the case. It also should not describe an advice service as offering ‘full financial plans’ or ‘comprehensive financial advice’ if the adviser was only able to advise on a narrow range of issues or financial products.

Note: The Future of Financial Advice reforms propose expanding the availability of low-cost ‘simple advice’ to improve access to and affordability of financial advice.

- RG 000.104 An advertisement should not create a misleading impression about the nature and extent of a financial adviser’s experience and qualifications.

### Example 35: Financial adviser’s experience

Where a financial adviser has gained experience in a different industry sector than the sector that is the subject of an advertisement, the advertisement should be clear about where the adviser has gained their experience.

## C Media-specific guidance

### Key points

We have provided good practice guidance to help promoters develop advertisements for certain media, including:

- mass media, such as radio, television, newspapers, magazines and internet (see RG 000.105–RG 000.121); and
- outdoor advertising (see RG 000.122–RG 000.123).

### Mass media

- RG 000.105 Mass media refers to media channels used for mass communication, such as radio, television, newspapers, magazines and the internet. Mass media advertising can take the form of audio, video, images, text, or a combination of all four.
- RG 000.106 Mass media has capacity to reach a wide audience, often beyond the promoter's target market. Promoters should consider the characteristics of the actual audience that is likely to see the advertisement (e.g. their financial literacy, knowledge, demographics) and whether the advertisement is accurate, balanced and helpful for that audience: see RG 000.87.

### Distinguishing advertising and program content

- RG 000.107 Due to the nature of some mass media, there is some potential for uncertainty to arise about whether content is paid advertising, or normal program or editorial content. Consumers may not employ the same critical analysis of program content as they do for advertising and other commercial messages they are exposed to.
- RG 000.108 Where the form of an advertisement is similar to surrounding program content (e.g. a live read by a radio announcer or an advertorial lift out in a newspaper), there is potential for consumer confusion if a clear distinction is not drawn between the advertising and the program content. A clear demarcation between advertising and program content should be made so that the distinction is readily apparent to consumers. Advertisements should not be presented as news programs or other programs.

### Example 36: Paid commentary

Where a radio presenter has a commercial agreement with a particular promoter, this should be clearly disclosed on-air before the presenter reads any scripted advertising, makes comment about the promoter's products or interviews any person related to the promoter.

Note: The Commercial Radio Australia *Codes of Practice & Guidelines* provides that advertisements must not be presented as news programs or other programs:  
[www.acma.gov.au/WEB/STANDARD/pc=IND\\_REG\\_CODES\\_BCAST](http://www.acma.gov.au/WEB/STANDARD/pc=IND_REG_CODES_BCAST).

- RG 000.109 This is particularly the case where the advertising material is presented in a ‘high trust’ environment or context where a consumer would not ordinarily expect to see paid advertising, such as social media and blogs.

#### Example 37: Blogs

If a blog includes both paid advertising and news content about financial products, the advertising should be presented in a manner that sets it apart from the news content, unless an advertisement is accompanied by a clear and prominent statement that it is advertising content.

## Audio advertisements

- RG 000.110 The general principles about ease of understanding apply to all media, but may be particularly challenging for audio advertisements (e.g. radio) because, unlike video or print advertising, warnings and disclaimers cannot be run at the same time as the headline message or main body of the advertisement.
- RG 000.111 Where warnings or disclaimers are used in audio advertisements, they should be read at a speed that is easy for an average listener to understand.
- RG 000.112 Telemarketing and messages on hold are also forms of advertising. Statements made over the telephone about a financial product or financial advice service are subject to the same regulation as advertisements in other media.

## Film and video advertisements

- RG 000.113 The combination of images and sound in film and video advertisements can make it particularly easy for consumers to be distracted from important information such as information about risks.
- RG 000.114 Where warnings or disclaimers are used in film and video advertisements, they should be prominent despite the distractions. An average viewer should easily understand any disclaimer or conditions on the first viewing of an advertisement: see RG 000.48.
- RG 000.115 Our guidance on film and video advertisements applies regardless of the distribution medium. This includes video delivered via the internet (e.g. YouTube) as well as television advertisements.

## Internet advertising

- RG 000.116 Internet advertising can take a variety of forms, including webpages, banner advertisements, video streaming (e.g. YouTube), social networking and microblogging (e.g. Twitter) and internet discussion sites.
- RG 000.117 Internet banner advertising is often relatively short and consumers can quickly access additional information. Despite this, internet advertisements should be self-contained. Any important disclaimers or warnings should be on the same page as the advertisement: see RG 000.47–RG 000.64. Consumers should not need to click through from an online advertisement to additional information to ensure they are not misled, as it is likely that many consumers will only view the advertisement.
- RG 000.118 If a promoter is unable to design a self-contained banner advertisement, the promoter should reconsider their desired message and whether to publish the advertisement using a different medium. The physical limitations of a particular medium are not a reason for producing an advertisement that might mislead: see also RG 000.93.

### Example 38: Internet banner advertising

If a banner advertisement on a webpage includes a strong headline claim about the potential returns available from a product, it should balance this with information about the risks. The stronger the headline claim, the more important it is for the risk information to be included in the advertisement itself and not included in a reference to another page where the consumer can find out information about the risks.

- RG 000.119 Social networking and microblogging services such as Twitter allow promoters to deliver short advertisements directly to consumers. As with other forms of advertising, these advertisements should be self-contained and balanced in their overall impression of the risks and returns associated with the product. Promoters should carefully consider the appropriateness of some new media channels if content limitations mean that there is insufficient space to provide balanced information.
- RG 000.120 Promoters and consumers should be able to keep a record of an advertisement (e.g. by printing it), including any disclaimers or warnings. This will provide support should any future dispute arise about the advertisement.
- RG 000.121 Some internet sites provide lengthy disclaimers that scroll quickly. Similar to the issues with radio and television, any information should be comprehensible to an average consumer on the first viewing of the advertisement.

## Outdoor advertising

- RG 000.122 Outdoor advertising includes media such as billboards, posters, signs in public venues and aerial displays. These media pose challenges in communicating an accurate and balanced message as the advertisements are often not able to be scrutinised closely by a consumer, for example if viewed from a distance or from a moving vehicle.
- RG 000.123 Promoters should take into account the conditions under which an outdoor advertisement will be viewed when considering whether the overall impression of the advertisement is misleading or deceptive. Outdoor advertising may be better suited to promoting brand or product recognition, rather than conveying more complex information about a product.

## D Our regulatory powers

### Key points

The good practice guidance in Sections B and C of this guide may help promoters and publishers comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.

Such statements or conduct could contravene the Corporations Act and the ASIC Act and result in ASIC taking action against the promoter. Promoters who hold an AFS licence also risk breaching their obligation to comply with financial services laws.

When assessing whether an advertisement is misleading or deceptive, we will consider a range of factors that contribute to the overall impression of the advertisement.

The law provides ASIC and financial consumers and investors with a range of remedies. The Corporations Act also directly prohibits certain types of advertising.

### Misleading or deceptive conduct

RG 000.124 The good practice guidance in Sections B and C may help promoters and publishers to avoid making false or misleading statements or engaging in misleading or deceptive conduct in contravention of the Corporations Act or ASIC Act: see Table 3.

RG 000.125 We may take a greater interest in advertisements that do not meet our good practice guidance when considering whether to make further inquiries or to exercise our regulatory powers.

**Table 3: Legislative provisions on misleading or deceptive advertising**

Description of conduct	Reference	Penalties and other remedies
Making statements that are materially false or materially misleading and are likely to induce consumers to apply for financial products in circumstances where the promoter does not care whether the statement is true or false, or knows, or ought reasonably to have known, that the statement is false. Contravention of this provision is an offence.	s1041E, Corporations Act	<ul style="list-style-type: none"> <li>• Imprisonment (maximum 10 years)</li> <li>• Fine</li> <li>• Compensation (s1041I)</li> <li>• Injunction (s1324)</li> <li>• Other orders</li> </ul> <p>Note: References are to the Corporations Act.</p>
Inducing a person to deal in financial products by publishing a statement that is misleading, false or deceptive or by dishonestly concealing facts.	s1041F, Corporations Act	<ul style="list-style-type: none"> <li>• Imprisonment (maximum 10 years)</li> <li>• Fine</li> <li>• Compensation (s1041I)</li> <li>• Injunction (s1324)</li> <li>• Other orders</li> </ul> <p>Note: References are to the Corporations Act.</p>

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Description of conduct	Reference	Penalties and other remedies
Engaging in conduct in relation to a financial product or a financial service that is misleading or deceptive or is likely to mislead or deceive. Contravention is not an offence, but may lead to civil liability under s1041I.	s1041H, Corporations Act	<ul style="list-style-type: none"> <li>• Compensation (s1041I)</li> <li>• Injunction (s1324)</li> <li>• Other orders</li> </ul> <p>Note: References are to the Corporations Act.</p>
Making representations about future matters without reasonable grounds.	s769C, Corporations Act; s12BB, ASIC Act	<ul style="list-style-type: none"> <li>• Compensation (s12GM, ASIC Act)</li> <li>• Injunction (s1324, Corporations Act; s12GD, ASIC Act)</li> <li>• Other orders</li> </ul>
In trade or commerce, engaging in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive. Contravention of this provision is not an offence.	s12DA, ASIC Act	<ul style="list-style-type: none"> <li>• Injunction (s12GD)</li> <li>• Order requiring adverse publicity (s12GLB)</li> <li>• Other orders (s12GLA and 12GM)</li> <li>• Compensation (s12GM)</li> </ul> <p>Note: References are to the ASIC Act.</p>
In trade or commerce, making false or misleading representations. Contravention of this provision is an offence.	s12DB, ASIC Act	<ul style="list-style-type: none"> <li>• Fine (s12GB)</li> <li>• Pecuniary penalty (s12GBA)</li> <li>• Injunction (s12GD)</li> <li>• Order requiring adverse publicity (s12GLB)</li> <li>• Other orders (s12GLA and 12GM)</li> <li>• Compensation (s12GM)</li> <li>• Infringement notice (s12GX)</li> </ul> <p>Note: References are to the ASIC Act.</p>
In trade or commerce making false representations or engaging in conduct that is misleading, in relation to financial products that involve interests in land. Contravention of this provision is an offence.	s12DC, ASIC Act	<ul style="list-style-type: none"> <li>• Fine (s12GB)</li> <li>• Pecuniary penalty (s12GBA)</li> <li>• Injunction (s12GD)</li> <li>• Order requiring adverse publicity (s12GLB)</li> <li>• Other orders (s12GLA and 12GM)</li> <li>• Compensation (s12GM)</li> <li>• Infringement notice (s12GX)</li> </ul> <p>Note: References are to the ASIC Act.</p>
Engaging in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any financial services. This provision is a strict liability offence.	s12DF, ASIC Act	<ul style="list-style-type: none"> <li>• Fine (s12GB)</li> <li>• Pecuniary penalty (s12GBA)</li> <li>• Injunction (s12GD)</li> <li>• Order requiring adverse publicity (s12GLB)</li> <li>• Other orders (s12GLA and 12GM)</li> <li>• Compensation (s12GM)</li> <li>• Infringement notice (s12GX)</li> </ul> <p>Note: References are to the ASIC Act.</p>
In trade and commerce, engaging in any 'bait' advertising. Contravention of this provision is an offence.	s12DG, ASIC Act	<ul style="list-style-type: none"> <li>• Fine (s12GB)</li> <li>• Pecuniary penalty (s12GBA)</li> <li>• Injunction (s12GD)</li> <li>• Order requiring adverse publicity (s12GLB)</li> <li>• Other orders (s12GLA and 12GM)</li> <li>• Compensation (s12GM)</li> </ul> <p>Note: References are to the ASIC Act.</p>

## Additional obligation for AFS licensees

RG 000.126 Our good practice guidance may also help promoters who hold an AFS licence to meet their obligation to comply with financial services laws: s912A(1)(c).

Note: For more guidance on this obligation, see Section C of Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104).

## How we will assess advertising

RG 000.127 When determining whether an advertisement is accurate and balanced, the overall impression given by the advertisement is very important. In assessing the overall impression, the following factors are relevant:

- (a) the subject of the advertisement;
- (b) the content of the advertisement;
- (c) the format of the advertisement;
- (d) the audience that will view the advertisement;
- (e) the media used to communicate the information; and
- (f) the likely effect of the advertisement.

RG 000.128 For the advertising of financial products, the following questions will help determine if an advertisement is balanced, is not likely to create unrealistic expectations, and is therefore easy to understand:

- (a) If the advertisement is about a particular product or product feature, does the advertisement clearly and accurately describe it?
- (b) Does the advertisement provide a balanced and clear view of what the product is likely to deliver?
- (c) Are the risks, fees and other drawbacks of the product clearly described and presented?
- (d) Is the product capable of being advertised in a simple and clear way or is it too complex?

RG 000.129 For advertising relating to a financial advice service, the following questions will help determine if an advertisement is balanced and is not likely to create unrealistic expectations:

- (a) Does the advertisement create realistic impressions about what the advice is likely to achieve, cover or address?
- (b) Are the limitations of the advice clearly identified including the basis upon which it will be given?
- (c) If the advertisement refers to costs, does the advertising give a realistic impression of the cost of the advice?
- (d) If the advertisement makes any claims about the impartiality of the service, does it accurately describe any relevant relationship?



RG 000.130 All advertisements should be consistent with information provided in any related disclosure document.

Note: Advertising or other promotional material for a financial product must refer to the relevant PDS or prospectus: s734 and 1018A. Further information about disclosure requirements is available in RG 168 and CP 155.

RG 000.131 Information in advertisements should be current. Advertisers should be vigilant to ensure that advertisements are withdrawn if they are no longer up to date. Particular care should be taken for advertisements which use media which is likely to date quickly (e.g. new media such as Twitter).

### **Determining what is misleading or deceptive**

RG 000.132 In determining whether an advertisement is misleading or deceptive, the following legal principles generally apply:

- (a) There is no requirement that the promoter intended to mislead consumers—the relevant question is whether the advertisement is in fact misleading or likely to mislead.
- (b) It is not necessary to show that consumers have actually been misled—the law prohibits conduct that is likely to mislead.
- (c) The relevant test is the reaction of an ordinary and reasonable member of the advertisement's audience—normally anyone who is neither unusually astute nor unusually gullible.
- (d) The audience is not the audience that the promoter would like, but the audience the advertisement actually reaches.
- (e) Consumers cannot be expected to study or revisit an advertisement—the most important consideration is the overall impression created by the advertisement when viewed for the first time.
- (f) Qualifications of a headline claim must be clear and prominent—some headline claims are so strong that any separate qualification will not correct any misleading impression.
- (g) If an advertisement is misleading, then it cannot be cured—a promoter cannot rely on an accurate disclosure document to undo the effect of a misleading advertisement.
- (h) Silence can be misleading or deceptive when important details a consumer should know are not conveyed to them—silence on important details can render a statement misleading, even though it is factually correct.

RG 000.133 The above principles on misleading or deceptive advertising will generally apply regardless of the media used.

## How we deal with contraventions

- RG 000.134 The law provides us with a number of regulatory options for dealing with breaches of the misleading or deceptive conduct provisions or the AFS licensee obligations:
- (a) exercising our information gathering powers before considering regulatory action (see RG 000.136–RG 000.137);
  - (b) seeking an injunction to stop the advertisement (see RG 000.138);
  - (c) issuing a stop order on related disclosure documents (see RG 000.139–RG 000.141);
  - (d) initiating a compensation claim by seeking the return of an investor’s money or compensation for any extra loss as a result of being misled (see RG 000.142);
  - (e) applying for punitive orders requiring the publication of corrections or adverse publicity about the offending promoter (see RG 000.143–RG 000.146);
  - (f) issuing an infringement notice (see RG 000.147);
  - (g) issuing a public warning notice (see RG 000.148);
  - (h) applying for a community service order or probation order (see RG 000.149–RG 000.150);
  - (i) seeking criminal charges (see RG 000.151–RG 000.152);
  - (j) suspending or cancelling a promoter’s AFS licence or varying its conditions (see RG 000.153); and
  - (k) making a banning order (see RG 000.154–RG 000.155).
- RG 000.135 The type of regulatory response will depend on the particular provision that has been breached and the severity of the contravention.

### Gathering information

- RG 000.136 Under the ASIC Act, ASIC can compulsorily obtain information about dealings in financial products and the provision of financial services: Pt 3, ASIC Act.
- RG 000.137 We may also issue a substantiation notice requiring a promoter to provide information and/or documents that can substantiate a claim or representation in an advertisement: s12GY, ASIC Act.

Note: For more information on substantiation notices, see Information Sheet 140 *Australian Consumer Law substantiation notices: Your rights* (INFO 140).

## Stopping the advertisement

RG 000.138 We have the power to seek an injunction against a promoter for advertising that constitutes misleading or deceptive conduct: s1324, Corporations Act; s12GD, ASIC Act. While we might first initiate discussion with the promoter before seeking an injunction, there may be situations where it is necessary for us to take immediate action to limit potential damage.

## Issuing a stop order

RG 000.139 We can issue a stop order on an advertisement or disclosure document, such as a prospectus or PDS, if we find that:

- (a) some information that would affect a consumer's decision is misleading or missing from the document; or
- (b) there are new circumstances that a consumer needs to know about.

RG 000.140 If we consider that an advertisement is misleading consumers, we may make an interim stop order on the advertisement, or on the related prospectus or PDS, which can last for 21 days: s739(3) and 1020E(3).

RG 000.141 We must hold a hearing before issuing a final stop order. At the hearing, any interested parties are given an opportunity to tell us whether we should issue the stop order: s739(2) and 1020E.

## Consumer compensation

RG 000.142 We can initiate a compensation claim on behalf of any person that has suffered loss, or is likely to suffer loss, as a result of a misleading advertisement: s12GM, ASIC Act.

## Enforceable undertakings, publishing corrections and adverse publicity

RG 000.143 ASIC may accept a written undertaking about a matter over which we have a function or power under the ASIC Act: s93AA, ASIC Act. Enforceable undertakings are undertakings given to us (and accepted by us) that are enforceable in a court. They are generally accepted by us as an alternative to civil or administrative action where there has been a contravention of the legislation we administer. Consequently, we would expect the terms of the undertaking to offer similar remedies to those we might obtain if we had taken civil or administrative action. In the context of advertising, we may accept an undertaking to, for example, offer refunds to those consumers who were misled by the advertising, issue corrective advertising, or amend the terms and conditions under which a product was offered to avoid any detriment to consumers who relied on the misleading advertising.

- RG 000.144 We can seek orders from the court to force promoters to disclose extra information to relevant parties or publish, at a promoter's expense, a corrected advertisement: s12GLA, ASIC Act.
- RG 000.145 Additionally, we can make an application to the court for punitive orders requiring adverse publicity compelling a promoter to disclose to third parties or publish, at their own expense, an advertisement publicising the fact that they have breached the law, along with details of any remedial action they have been required to undertake: s12GLB, ASIC Act.
- RG 000.146 We will also make public, via an ASIC media release, details of actions we take against a promoter for misleading or deceptive advertising.

Note: For more information on our policy relating to media announcements, see Regulatory Guide 47 *Public comment* (RG 47).

### Issuing an infringement notice

- RG 000.147 We have a statutory power to issue an infringement notice under the consumer protection provisions of the ASIC Act if we believe certain provisions of that Act have been contravened: s12GXA, ASIC Act. These include provisions dealing with:
- (a) unconscionable conduct;
  - (b) false or misleading representations;
  - (c) 'bait' advertising;
  - (d) failure to respond to a substantiation notice; and
  - (e) giving false or misleading information in response to a substantiation notice.

Note: For more information on infringement notices, see Information Sheet 139 *Australian Consumer Law infringement notices: Your rights* (INFO 139).

### Public warning notices

- RG 000.148 We may issue a public warning notice if:
- (a) we have reasonable grounds to suspect that a promoter may have contravened a consumer protection provision of the ASIC Act;
  - (b) we are satisfied that consumers have suffered, or are likely to suffer, detriment as a result of the conduct; and
  - (c) we are satisfied that it is in the public interest to issue the notice: s12GLC, ASIC Act.

## Community service or probation orders

- RG 000.149 We can make an application to the court recommending a community service order that may include:
- (a) an order requiring a promoter who has made false representations to make available a training video that explains advertising obligations under the ASIC Act; or
  - (b) an order requiring a promoter who has engaged in misleading or deceptive conduct in relation to a financial product to carry out a community awareness program to address the needs of consumers when purchasing a financial product: s12GLA, ASIC Act.
- RG 000.150 Additionally, to ensure a promoter does not engage in the behaviour again, we can seek an application for a probation order that can include:
- (a) directing a promoter to establish a compliance program for their employees to ensure awareness of the promoter's responsibilities and obligations;
  - (b) directing a promoter to establish an education and training program for their staff; or
  - (c) directing a promoter to revise the internal operations of the business that led to them engaging in the contravening conduct: s12GLA, ASIC Act.

## Criminal charges

- RG 000.151 We have the power to refer a matter to the Commonwealth Director of Public Prosecutions for potential criminal action where a promoter makes false or misleading statements: s1041E.
- RG 000.152 If found guilty, a promoter can face a fine of 4500 penalty units or imprisonment for ten years, or both. In the case of a body corporate, the fine can be up to ten times that amount: s1312.

## AFS licence disqualification or additional conditions

- RG 000.153 If we have reason to believe that an AFS licensee or one of their authorised representatives is not complying with their obligations, we may take administrative action, which could include suspending or cancelling the licence or imposing additional licence conditions: s915C(1) and 914A(1).

Note: For more information on our administrative powers, see Regulatory Guide 98 *Licensing: Administrative action against financial services providers* (RG 98).

## Making a banning order

- RG 000.154 We may also make a banning order against a person if we have reason to believe that they have not complied with, or will not comply with, their obligations as an AFS licensee under s912A, or with a financial services law:

s920A. A banning order is a written order by us that prohibits the banned person from providing financial services, whether as an AFS licensee or as a representative of such a licensee: s920B.

- RG 000.155 We can make an order that either prevents a person from providing all financial services or from providing specified financial services, in specified circumstances. A banning order may be permanent or for a specified period.

## Prohibited conduct

- RG 000.156 The Corporations Act prohibits certain kinds of conduct. Provisions dealing with this include the hawking prohibitions and the advertising restrictions in Ch 6D and Pt 7.9.

### Hawking prohibitions

- RG 000.157 The Corporations Act prohibits a person from offering financial products for issue or sale in the course of, or because of, an unsolicited meeting or telephone call with a retail client. These hawking prohibitions aim to prevent pressure selling of financial products to retail clients (such as badgering and boiler-room practices). The hawking prohibitions cover:

- (a) securities (e.g. shares and debentures: s736);
- (b) managed investments (e.g. units in trusts: s992AA); and
- (c) other financial products (e.g. superannuation, life and general insurance, derivatives and deposit products: s992A).

Note: For detailed guidance on the type of conduct covered by the hawking prohibitions, see RG 38.

### Ch 6D and Pt 7.9 advertising restrictions

- RG 000.158 The Corporations Act regulates the advertisement of offers of securities and financial products. There is an outright prohibition on any advertising or publicity for an offer of securities or financial products where:

- (a) an offer of securities does not require disclosure because it falls within the small-scale offering exemption in s708(1) (s734); or
- (b) an offer of financial products falls within the small-scale offering exemption in s1012E (s1018B).

- RG 000.159 For an offer of securities, where disclosure is required, advertising or publicity is prohibited unless the rules in s734(4)–(7) are followed, including that any advertising and publicity released before a disclosure document is released indicates when and where the disclosure document will be available. Similarly, s1018A requires that advertising or other promotional material for a financial product must refer to the PDS.

## E Publishers and media outlets

### Key points

Publishers may also bear some responsibility for the content of an advertisement.

We encourage publishers and media outlets who deal with advertisements for financial products and advice services to:

- be aware that advertisements need to be accurate and balanced and help consumers make decisions that are appropriate for them; and
- refuse to publish, or cease publishing, advertisements that do not meet these criteria.

### Publishers' responsibility

- RG 000.160 While the primary responsibility for advertising material rests with the organisation placing the advertisement, the publisher may also have some responsibility for the content of an advertisement. However, it is a defence to a prosecution if the publisher received the advertisement for publication in the ordinary course of their publishing business and did not know, and had no reason to believe, that its publication would amount to an offence: s1044A, Corporations Act; s12GI(4), ASIC Act.
- RG 000.161 This guide will help publishers minimise the legal and reputational risks that flow from the publication of advertising that contravenes provisions of the Corporations and ASIC Acts. We believe that the guidance in Sections B and C assists publishers in understanding the type of conduct that is good practice.
- RG 000.162 We also expect publishers to cease publishing an advertisement if we inform them that it is currently subject to a stop order or public warning notice. We will assist publishers by making this information available.
- RG 000.163 Where a publisher contributes to the content of an advertisement (e.g. in writing advertorials) or otherwise has an active involvement in the promotion of a financial product or advice service (e.g. through co-branding, or where a media personality uses their influence to promote a product), we regard the publisher to be in the same position as the promoter in terms of their responsibility to take into account the good practice guidance in Sections B and C. We consider that this level of active involvement may mean that the defence for publishers in s1044A is unlikely to apply.

## Sponsored content

- RG 000.164 Sponsored content and paid commentary falls within the scope of advertisements covered by our good practice guidance: see RG 000.107–RG 000.109. Where a publication includes sponsored content, we will look closely to make sure that the content is accurate and balanced.
- RG 000.165 Sponsored content is where features are written about financial products (or a class of financial products) or financial services in exchange for advertising dollars but appear as editorial or program content, regardless of the medium.

## Aggregators and comparison sites

- RG 000.166 Comparison sites or aggregators provide comparisons between multiple providers for different financial products (e.g. credit cards or insurance), commonly ranking them in order based on cost or interest rate. If the site includes awards or ratings for certain products, the basis for such should be clearly disclosed.
- RG 000.167 Aggregators should disclose any links to the providers of the products that are being compared, including commissions, referral fees, payments for inclusion in comparisons and/or payments for ‘featured’ products.
- RG 000.168 A warning should be included if not all providers are included in the comparison.
- RG 000.169 Advertisements on aggregator sites should be clearly disclosed as such to prevent consumers being misled about the ranking of the product.
- RG 000.170 Unless it is not the case, the aggregator should include a warning that financial products compared do not compare all features that may be relevant to the consumer (e.g. flood cover for home insurance).



## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CFD	Contract for difference
CP 155 (for example)	An ASIC consultation paper (in this example numbered 155)
financial advice service	A service that provides recommendations or statements of opinion that: <ul style="list-style-type: none"> <li>• are intended to influence a consumer making a decision about a financial product; or</li> <li>• could reasonably be regarded as being intended to have such an influence</li> </ul> <p>Note: See s12BAB(5) of the ASIC Act for the exact definition.</p>
financial product	Generally a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C);</li> <li>• makes non-cash payments (see s763D)</li> </ul> <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>
Financial Services Guide (FSG)	A document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Pt 7.7 of the Corporations Act <p>Note: See s761A of the Corporations Act for the exact definition.</p>

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Term	Meaning in this document
Future of Financial Advice reforms	A package of proposed reforms to the regulation of financial advice issued by the Australian Government in response to the PJC report <i>Inquiry into financial products and services in Australia</i> , November 2009: <a href="http://futureofadvice.treasury.gov.au">http://futureofadvice.treasury.gov.au</a>
INFO 140 (for example)	An ASIC information sheet (in this example, numbered 140)
MoneySmart	ASIC's consumer website: <a href="http://www.moneysmart.gov.au">www.moneysmart.gov.au</a>
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
RG 45 (for example)	An ASIC regulatory guide (in this example numbered 45)
s1012G (for example)	A section of the Corporations Act (in this example numbered 1012G), unless otherwise specified.

## Related information

### Headnotes

advertising, Australian financial services (AFS) licence, financial advice service, financial product, Future of Financial Advice reforms, good practice guidance, misleading or deceptive conduct, Product Disclosure Statement (PDS), promoter, publisher

### Regulatory guides

RG 38 *The hawking provisions*

RG 45 *Mortgage schemes: Improving disclosure for retail investors*

RG 46 *Unlisted property schemes: Improving disclosure for retail investors*

RG 47 *Public comment*

RG 53 *The use of past performance in promotional material*

RG 98 *Licensing: Administrative action against financial services providers*

RG 104 *Licensing: Meeting the general obligations*

RG 156 *Advertising of debentures and unsecured notes*

RG 158 *Advertising and publicity for offers of securities*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 170 *Prospective financial information*

RG 173 *Disclosure for on-sale of securities and other financial products*

RG 200 *Advice to super fund members*

RG 227 *Over-the-counter contracts for difference: Improving disclosure for retail investors*

### Legislation

ASIC Act, s12BAB(5), 12BB, 12DA, 12DB, 12DC, 12DF, 12DG, 12GB, 12GD, 12GI(4) 12GLA, 12GLB, 12GLC, 12GM, 12GY, 12GXA, 93AA

Corporations Act, Ch 6D, s708(1), 734, 734(4)–(7), 736, 739(2), 739(3), 769C, 912(1)(c), 912A(1)(a), 914A(1), 915C(1), 920A, 920B, 923A, 992A, 992AA, Pt 7.9, 1012G, 1018A, 1018B, 1020E, 1020E(3), 1041E, 1041H, 1041I, 1044A, 1312, 1324

National Credit Act

## **Consultation papers and reports**

CP 133 *Agribusiness managed investment schemes: Improving disclosure for retail investors*

CP 134 *Infrastructure entities: Improving disclosure for retail investors*

CP 147 *Hedge funds: Improving disclosure for retail investors*

CP 155 *Prospectus disclosure: Improving disclosure for retail investors*

CP 167 *Advertising financial products and advice services: Good practice guidance*

REP 121 *Australian consumers: At a glance*

REP 126 *Understanding investors in the unlisted unrated debenture (UUD) market*

REP 229 *Australian National Financial Literacy Strategy*

REP 230 *Financial literacy and behavioural change*

## **Information sheets**

INFO 99 *Disclosure of credit ratings in Australia*

INFO 139 *Australian Consumer Law infringement notices: Your rights*

INFO 140 *Australian Consumer Law substantiation notices: Your rights*

## **Other information**

Australian Competition and Consumer Commission, *Advertising and selling*, <http://www.accc.gov.au/content/index.phtml/itemId/303213>