



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 178

Advertising credit products and credit services: Additional good practice guidance

June 2012

About this paper

This consultation paper sets out ASIC's proposals for additional good practice guidance to help promoters of credit products and credit services comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.

The purpose of this paper is to seek the views of consumers, industry, and publishers on our proposed additional 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 5 June 2012 and is based on the Corporations Act and the National Credit 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 additional guidance on advertising of credit products and credit 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 C, 'Regulatory and financial impact', p. 18.

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 **6 August 2012** to:

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What will happen next?

Stage 1	5 June 2012	ASIC consultation paper released
Stage 2	6 August 2012	Comments due on the consultation paper
Stage 3	October 2012	Updated regulatory guide released

A Background to the proposals

Key points

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

In February 2012, we issued Regulatory Guide 234 *Advertising financial products and advice services: Good practice guidance* (RG 234), which contains good practice guidance to help promoters comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.

The guidance in RG 234 applies to all types of financial products including credit facilities.

We are now seeking feedback on our proposals for additional good practice guidance and examples for advertising credit products and credit services.

The proposals in this paper would supplement our guidance in RG 234.

Guidance on advertising financial products and advice services

- 1 ASIC seeks to promote confident and informed investors and financial consumers. This includes recognising how they make decisions, and ensuring communications about particular products and services facilitate effective decision-making. An important part of this is acknowledging the role that advertising plays in this process.
- 2 We released Regulatory Guide 234 *Advertising financial products and advice services: Good practice guidance* (RG 234) in February 2012. RG 234 sets out good practice guidance to help promoters comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.
- 3 We were prompted to issue RG 234 because we recognise that consumers are heavily influenced by advertisements for financial products and advice services when making financial decisions and seeking financial advice.

Who does our proposed guidance apply to?

- 4 The good practice guidance in RG 234 currently sets out ASIC's position on advertising generally and applies to all types of financial products, including:
 - (a) investment products;
 - (b) risk products;
 - (c) non-cash payment facilities; and
 - (d) credit facilities.

- 5 This is because references to ‘financial products’ in RG 234 mean financial products as defined in the *Australian Securities and Investments Commission Act 2001* (ASIC Act) including credit facilities: see s12BAA, ASIC Act.
- 6 As well as credit facilities under the ASIC Act, ASIC’s credit jurisdiction includes credit activities under the *National Consumer Credit Protection Act 2009* (National Credit Act). Credit activities include:
- (a) providing credit under a credit contract;
 - (b) providing a credit service (such as providing credit assistance to a consumer or acting as an intermediary);
 - (c) acting as a lessor under a consumer lease;
 - (d) acting as a mortgagee under a mortgage to which Sch 1 of the National Credit Act (National Credit Code) applies; and
 - (e) acting as a beneficiary of a guarantee to which the National Credit Code applies: s6, National Credit Act.
- 7 This consultation paper uses the term ‘credit products and credit services’ to refer broadly to both credit facilities under the ASIC Act and credit activities under the National Credit Act. Where this paper refers to ‘credit products’, this includes both credit contracts and consumer leases.

Additional good practice guidance for credit products and credit services

- 8 RG 234 focuses primarily on advertising of investment and risk products and financial advice services. In general, some of the common issues relating to misleading or deceptive advertising for these products and services also apply to credit products and credit services. However, there may be some differences. We propose to give additional guidance on specific issues relating to advertising of credit products and credit services to supplement our guidance in RG 234: see the draft updated version of RG 234 attached to this paper.
- 9 The additional good practice guidance proposed in this paper addresses concerns we have identified in advertisements for a wide range of credit products and services, including:
- (a) lending to consumers for personal, domestic or household purposes or for residential investment (this includes secured or unsecured loans, credit cards, payday lending, micro loans and reverse mortgages);
 - (b) small business lending;
 - (c) consumer leases;
 - (d) sale of goods by instalments and rent-to-buy arrangements; and
 - (e) assisting a consumer in relation to a credit product, including advertisements by mortgage or finance brokers and retailers advertising the availability of credit at point-of-sale.

Obligations of credit licensees under the National Credit Act

- 10 Advertising and formal disclosure documents (e.g. a credit guide or credit disclosure document) both have a role in ensuring consumers have the information they need to make their financial decisions.
- 11 The National Credit Act and the National Consumer Credit Protection Regulations 2010 (National Credit Regulations) set out detailed requirements for disclosure documents, including documents to be provided at a pre-contractual stage and at the time a contract is entered into. The proposals in this paper do not deal with a person's obligations in relation to credit disclosure documents.
- 12 In addition, the National Credit Act and National Credit Regulations set out some specific requirements for credit advertisements (e.g. the information relating to interest rates and comparison rates that must be included in advertisements in certain circumstances). Our proposals distinguish between those specific obligations required under the National Credit Act and our proposed additional guidance, which is intended to assist a promoter in complying with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.

B Additional good practice guidance for credit products and credit services

Key points

We propose to give additional good practice guidance and examples to address additional issues for advertising credit products and credit services.

Our proposed additional guidance and examples would cover these areas:

- providing a balanced message about the product or service;
- advertising of interest rates and comparison rates;
- the use of certain terms and phrases;
- advertising that implies product suitability; and
- advertising about the nature and scope of credit assistance.

The proposals in this paper supplement our current good practice guidance in RG 234.

Proposed additional guidance and examples

Proposal

B1 We propose to supplement our current good practice guidance in RG 234 with additional guidance and examples for advertising of credit products and credit services in the following areas:

- (a) advertising of benefits that do not provide a balanced message about the product or service (see proposal B2);
- (b) advertising of interest rates and comparison rates (see proposals B3 and B4);
- (c) advertising that uses certain terms and phrases (see proposal B5);
- (d) advertising that implies product suitability (see proposal B6); and
- (e) advertising about the nature and scope of credit assistance (see proposal B7).

Your feedback

B1Q1 Do you think good practice guidance and examples for advertising in these areas in addition to our current guidance in RG 234 is helpful? If not, why not?

B1Q2 Are there any other areas where you think additional guidance for advertising credit products and credit services is needed? If so, please describe them?

B1Q3 Are the proposed additional examples for credit products and credit services helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.

Rationale

- 13 RG 234 sets out good practice guidance to help promoters comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.
- 14 We have developed the proposals in this paper as additional guidance for promoters of credit products and credit services. The proposals in this paper are intended to supplement our current guidance in RG 234.

Balanced message about the product or service

Proposal

- B2** Our current guidance in RG 234 states that advertisements should give a balanced message about the returns, benefits and risks associated with the product: see draft updated RG 234 at RG 234.33–RG 234.46. We propose to provide additional examples to illustrate how our good practice guidance applies to advertising the features of credit products and credit services: see Examples 1, 4, 7, 10, 16, 22, 24–26 and 28.

Your feedback

- B2Q1 Does our current guidance in RG 234 address the key issues for advertising the features of a credit product or credit service? If not, what additional issues should our guidance address?
- B2Q2 Should our current guidance in this area be modified to better address particular credit products, credit services, media or other circumstances? If yes, please give details.
- B2Q3 Are the proposed examples helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.
- B2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.

Rationale

- 15 We acknowledge that some product features will be more attractive to consumers than others and that there is a greater temptation for promoters to focus on these features. However, advertisements should give a balanced message about the features, benefits and risks associated with the product: see draft updated RG 234 at RG 234.33. The proposed Example 1 illustrates how this guidance applies to credit products.

- 16 A common issue we see with advertising credit products is statements about benefits or features that may only be available in limited situations. We propose to provide additional Examples 4, 7, 10 and 16 to illustrate these issues.
- 17 Another common issue we see with advertising credit products is the promotion of attractive features without disclosure of fees that are payable to receive those features. We propose to provide additional Examples 22, 24–26 and 28 to illustrate this issue.
- 18 Some products pose particular risks to consumers due to the nature of the product and the typical customer. For example, reverse mortgages allow consumers to borrow against the equity in their own home, but pose risks to consumers, particularly through the compounding of interest over time and restrictions in the event of life changes. Advertisements should give a balanced message about the benefits and risks of a reverse mortgage. We propose to provide additional Example 11 to illustrate this issue.

Note: ASIC's MoneySmart website (www.moneysmart.gov.au) has information for consumers about reverse mortgages.

Interest rates

Proposal

- B3** Our current guidance in RG 234 states that, where a fee or cost is 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 updated RG 234 at RG 234.54–RG 234.57. We propose to provide additional guidance and examples for advertising interest rates: see draft updated RG 234 at RG 234.59–RG 234.61 and Examples 29–31.

Your feedback

- B3Q1 Does our proposed guidance address the key issues for advertising interest rates? If not, what additional issues should our guidance address?
- B3Q2 Should our proposed guidance in this area be modified to better address particular credit products, media or other circumstances? If yes, please give details.
- B3Q3 Are the proposed examples helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.
- B3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.

Rationale

- 19 Under the National Credit Code, an advertisement does not need to include an interest rate, but must do so if the advertisement states the amount of any repayment. The advertisement must also include references to any fees and charges: s150, National Credit Code.
- 20 Depending on the nature of a credit product, the cost to a consumer may involve a combination of interest charges and other fees and costs. In many cases, credit contracts are structured with an initial promotional period where a discount interest rate applies and/or other fees are waived, before the interest rate and fees revert to a higher level on an ongoing basis.
- 21 Where an advertisement refers to interest rates and/or fees and charges, it is important that the advertisement gives consumers a realistic impression of the overall costs. We propose to provide additional Examples 29–31 to illustrate these issues.
- 22 Another common issue we see with advertising is that key information is sometimes given less prominence than surrounding images in the advertisement. Images can create a particularly significant impression on consumers, potentially more significant than that created by written or spoken messages. 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: see draft updated RG 234 at RG 234.117. We propose to provide additional Example 51 in RG 234 to illustrate this issue.

Comparison rates

Proposal

- B4** Under the National Credit Code, where a credit advertisement contains an interest rate, it must also contain a comparison rate which is not less prominent than the interest rate. We propose to give guidance that a comparison rate is likely to be less prominent than the advertised interest rate where:
- (a) it is smaller in size or faded in colour when compared to the interest rate; or
 - (b) if an interest rate is published online, a consumer is required to click through or additionally do something (such as move their cursor over the interest rate) to view the comparison rate; or
 - (c) the location of the displayed comparison rate in the advertisement is such that it is easy for a consumer to overlook it, or it is not in close proximity to the displayed interest rate (e.g. if a multipage advertisement displays the comparison rate on one section of the promotional material and omits it from another section where an interest rate is displayed): see draft updated RG 234 at RG 234.62–RG 234.66 and Example 32.

Your feedback

- B4Q1 Does our proposed guidance address the key issues for advertising comparison rates? If not, what additional issues should our guidance address?
- B4Q2 Should our proposed guidance in this area be modified to better address particular media or other circumstances? If yes, please give details.
- B4Q3 Is the proposed example helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.
- B4Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.

Rationale

- 23 A comparison rate is a tool to help consumers identify the true cost of a loan. It is a rate which includes both the interest rate and fees and charges relating to a loan, reduced to a single percentage figure. An advertisement must contain a comparison rate if it contains an interest rate: s160, National Credit Code. The National Credit Code establishes the methodology for calculating the comparison rate for a loan. Advertising an incorrectly calculated comparison rate is likely to mislead consumers about the true cost of a loan. We propose to provide additional Example 32 to illustrate this issue.
- 24 An advertised comparison rate must be identified as a comparison rate and the comparison rate must not be less prominent in an advertisement than any interest rate or the amount of any repayment stated in the advertisement: s164, National Credit Code. We consider that the following examples would result in the comparison rate being less prominent than the advertised interest rate:
- (a) a comparison rate is smaller in size or faded in colour when compared to the interest rate; or
 - (b) an interest rate is published online and a consumer is required to click through or additionally do something (such as move their cursor over the interest rate) to view the comparison rate; or
 - (c) the displayed comparison rate is not in close proximity to the displayed interest rate.
- 25 A comparison rate in a credit advertisement must be accompanied by a warning about the accuracy of the comparison rate and that the comparison rate is accurate only for the example given in the advertisement: s163, National Credit Code and reg 99, National Credit Regulations. The warning is intended to make consumers aware that, while a comparison rate can be a useful tool for

comparing the cost of different loans, it is important to consider all of a loan's features and not just focus on the comparison rate.

- 26 While the comparison rate warning is important in informing consumers about the cost and features of a loan, we acknowledge that the rate itself will be of primary interest to consumers. Accordingly, the comparison rate warning need not be as prominent as the headline figure in the advertisement: see draft updated RG 234 at RG 234.53 for our guidance on warnings or notices required under the *Corporations Act 2001* (Corporations Act). However, the warning must be given in the same form as the comparison rate is given (i.e. in spoken or written form) unless the credit advertisement is on television, the internet or other electronic display medium: reg 99, National Credit Regulations.

Use of certain terms and phrases

Proposal

- B5** In RG 234, we give guidance on the use of certain terms and phrases where the way those terms and phrases are used is inconsistent with the ordinary meaning commonly recognised by consumers, or where they have strong connotations for consumers: see draft updated RG 234 at RG 234.86–RG 234.92. We propose to give additional guidance that care should be taken in using the terms:
- (a) 'independent', 'impartial' or 'unbiased' where the provider receives a commission or has some direct or indirect restriction on the service, or the licensee has a conflict of interest; or
 - (b) 'financial counsellor' and 'financial counselling' in relation to a service:
 - (i) that is not provided predominantly for the purposes of helping individuals who are in financial difficulty due to circumstances such as debt over-commitment, unemployment, sickness or family breakdown; or
 - (ii) where fees or charges are payable by the client; or
 - (iii) where remuneration (whether by way of commission or otherwise) is payable to the financial counselling agency in relation to any action by the client; or
 - (c) 'reverse mortgage', unless the product includes the set of features typically found in a reverse mortgage, such as a no negative equity guarantee: see draft updated RG 234 at RG 234.93–RG 234.95.

Your feedback

- B5Q1** Does our proposed guidance address the key issues on the use of certain terminology in credit advertisements? If not, what additional issues should our guidance address?
- B5Q2** Should our proposed guidance in this area be modified to better address particular credit products, credit services, media or other circumstances? If yes, please give details.

B5Q3 Would examples be helpful in providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.

B5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.

Rationale

27 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. Certain terms and phrases may also have a strong emotive pull on consumers and care should be taken in how those terms and phrases are used: see draft updated RG 234 at RG 234.86–RG 234.88.

28 Terms such as ‘independent’, ‘impartial’ or ‘unbiased’ may create a misleading impression about the relationship between the credit service provider and a third party. Care should be taken in using these terms.

Note 1: Section 923A of the Corporations Act restricts the use of the terms ‘independent’, ‘impartial’ and ‘unbiased’ in relation to the carrying on of a financial services business or the provision of a financial service.

Note 2: The Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 (Bill) includes a proposed ban on the use of the terms ‘independent’, ‘impartial’ or ‘unbiased’, except in certain circumstances.

29 The terms ‘financial counsellor’ and ‘financial counselling’ may create a misleading impression about the nature of the service offered to a consumer. Care should also be taken in using these terms.

Note 1: Financial counselling agencies are exempt from the requirement to hold a credit licence or Australian financial services (AFS) licence: see reg 20(5), National Credit Regulations and Class Order [CO 03/1063] *Licensing relief for financial counselling agencies*.

Note 2: The Bill includes a proposed ban on the use of the terms ‘financial counsellor’ and ‘financial counselling’ or similar, except in certain circumstances.

30 Reverse mortgages are a product type which is tailored to a very specific set of consumer objectives. An advertisement which used terms such as ‘reverse mortgage’ or ‘equity release’ would be misleading if the advertised product did not include the set of features typically found in a reverse mortgage, such as a no negative equity guarantee.

Note: The Bill proposes new obligations for persons who engage in credit activities for reverse mortgage contracts.

Product suitability

Proposal

B6 In RG 234, we give guidance that advertisements should not state or imply that a financial product is suitable for a particular class of consumers unless the promoter has actually assessed the suitability of that product for the particular consumers targeted by the advertisement: see draft updated RG 234 at RG 234.100–RG 234.102. We propose to give additional guidance that advertisements should not state or imply that a credit product is suitable for a particular class of consumers unless the credit provider (or credit assistance provider) or lessor has actually assessed the suitability of the credit product for the particular consumers targeted by the advertisement: see draft updated RG 234 at RG 234.103–RG 234.108 and Examples 44–45.

Your feedback

- B6Q1 Does our proposed guidance, together with our current guidance in RG 234, address the key issues for product suitability claims in credit advertisements? If not, what additional issues should our guidance address?
- B6Q2 Should our guidance in this area be modified to better address particular credit products, credit services, media or other circumstances? If yes, please give details.
- B6Q3 Are the proposed examples helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.
- B6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.

Rationale

- 31 In many cases, a close examination of the terms and conditions of the credit product is necessary to determine whether the product is suitable for a particular consumer. A common issue we see with credit advertising is that an advertisement will suggest that it is suitable for the advertisement's target audience. This can be done directly by the advertiser (e.g. through the use of terminology such as 'no credit check required'). It can also be implied (e.g. through the use of confusing or non-standard product descriptions that misrepresent the true nature of the product). We propose to provide additional Example 44 to illustrate our guidance on this issue.

Responsible lending

- 32 Credit licensees must comply with the responsible lending conduct obligations in Ch 3 of the National Credit Act. The key concept is that credit licensees must not enter into a credit contract with a consumer, suggest a

credit contract to a consumer or assist a consumer to apply for a credit contract if the credit contract is unsuitable for the consumer.

Note: Regulatory Guide 209 *Credit licensing: Responsible lending conduct* (RG 209) sets out our expectations for meeting the responsible lending obligations in the National Credit Act.

- 33 The assessment about suitability must be based on inquiries about a consumer's requirements and objectives and financial situation. If carried out appropriately, those inquiries may take some time, and in most cases are likely to include inquiries about a consumer's credit history. Credit licensees should carefully consider whether promotional claims about 'no-doc' type products, or 'instant' or very fast approval, or approval with 'no credit checks', are either misleading or reflect practices that do not comply with the responsible lending obligations.
- 34 Advertisements should not state or imply that a credit product is suitable for a particular class of consumers unless the credit provider (or credit assistance provider) has actually assessed the suitability of the product for the particular consumers targeted by the advertisement. For example, an advertisement for a credit product should not use terms such as 'guaranteed acceptance' or 'pre-approved', given the need to follow up a general promotional message like this with an individualised assessment process when an application is received.
- 35 In addition, even where a product may be suitable for an identified class of consumers, the advertisement should not imply that a more individualised assessment has been carried out (i.e. the advertisement should make clear that a consumer within that class may, but only may, qualify or find the product suitable): see draft updated RG 234 at RG 234.105–RG 234.108.
- 36 We propose to provide additional Example 45 to illustrate our guidance on this issue.

Nature and scope of credit assistance

Proposal

- B7 Our guidance in RG 234 states that advertisements should not create unrealistic expectations about what the service can achieve: see draft updated RG 234 at RG 234.122–RG 234.123. We propose to provide additional guidance and examples on advertising credit assistance: see draft updated RG 234 at RG 234.124–RG 234.125 and Examples 55–57.

Your feedback

- B7Q1 Does our proposed guidance address the key issues for advertising the nature and scope of credit assistance services? If not, what additional issues should our guidance address?

B7Q2 Should our proposed guidance in this area be modified to better address particular products, services, media or other circumstances? If yes, please give details.

B7Q3 Are the proposed examples helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.

B7Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.

Rationale

37 Similar to financial advice, credit assistance can be provided in a variety of different ways depending on the consumer's needs, the structure of the provider's business and its area of expertise.

38 A common issue we see in credit advertising is a lack of clarity about the scope of the service that will be provided to the consumer. We propose to provide additional Examples 55–57 to illustrate on our guidance on this issue.

C Regulatory and financial impact

- 39 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 comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct; and
 - (b) not unduly interfering with the marketing and sale of credit products and services.
- 40 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).
- 41 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.
- 42 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, including:
- (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>B1 We propose to supplement our current good practice guidance in RG 234 with additional guidance and examples for advertising of credit products and credit services in the following areas:</p> <ul style="list-style-type: none"> (a) advertising of benefits that do not provide a balanced message about the product or service (see proposal B2); (b) advertising of interest rates and comparison rates (see proposals B3 and B4); (c) advertising that uses certain terms and phrases (see proposal B5); (d) advertising that implies product suitability (see proposal B6); and (e) advertising about the nature and scope of credit assistance (see proposal B7). 	<p>B1Q1 Do you think good practice guidance and examples for advertising in these areas in addition to our current guidance in RG 234 is helpful? If not, why not?</p> <p>B1Q2 Are there any other areas where you think additional guidance for advertising credit products and credit services is needed? If so, please describe them?</p> <p>B1Q3 Are the proposed additional examples for credit products and credit services helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.</p>
<p>B2 Our current guidance in RG 234 states that advertisements should give a balanced message about the returns, benefits and risks associated with the product: see draft updated RG 234 at RG 234.33–RG 234.46. We propose to provide additional examples to illustrate how our good practice guidance applies to advertising the features of credit products and credit services: see Examples 1, 4, 7, 10, 16, 22, 24–26 and 28.</p>	<p>B2Q1 Does our current guidance in RG 234 address the key issues for advertising the features of a credit product or credit service? If not, what additional issues should our guidance address?</p> <p>B2Q2 Should our current guidance in this area be modified to better address particular credit products, credit services, media or other circumstances? If yes, please give details.</p> <p>B2Q3 Are the proposed examples helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.</p> <p>B2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.</p>

Proposal	Your feedback
<p>B3 Our current guidance in RG 234 states that, where a fee or cost is 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 updated RG 234 at RG 234.54–RG 234.57. We propose to provide additional guidance and examples for advertising interest rates: see draft updated RG 234 at RG 234.59–RG 234.61 and Examples 29–31.</p>	<p>B3Q1 Does our proposed guidance address the key issues for advertising interest rates? If not, what additional issues should our guidance address?</p> <p>B3Q2 Should our proposed guidance in this area be modified to better address particular credit products, media or other circumstances? If yes, please give details.</p> <p>B3Q3 Are the proposed examples helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.</p> <p>B3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.</p>
<p>B4 Under the National Credit Code, where a credit advertisement contains an interest rate, it must also contain a comparison rate which is not less prominent than the interest rate. We propose to give guidance that a comparison rate is likely to be less prominent than the advertised interest rate where:</p> <p>(a) it is smaller in size or faded in colour when compared to the interest rate; or</p> <p>(b) if an interest rate is published online, a consumer is required to click through or additionally do something (such as move their cursor over the interest rate) to view the comparison rate; or</p> <p>(c) the location of the displayed comparison rate in the advertisement is such that it is easy for a consumer to overlook it, or it is not in close proximity to the displayed interest rate (e.g. if a multipage advertisement displays the comparison rate on one section of the promotional material and omits it from another section where an interest rate is displayed): see draft updated RG 234 at RG 234.62–RG 234.66 and Example 32.</p>	<p>B4Q1 Does our proposed guidance address the key issues for advertising comparison rates? If not, what additional issues should our guidance address?</p> <p>B4Q2 Should our proposed guidance in this area be modified to better address particular media or other circumstances? If yes, please give details.</p> <p>B4Q3 Is the proposed example helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.</p> <p>B4Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.</p>

Proposal	Your feedback
<p>B5 In RG 234, we give guidance on the use of certain terms and phrases where the way those terms and phrases are used is inconsistent with the ordinary meaning commonly recognised by consumers, or where they have strong connotations for consumers: see draft updated RG 234 at RG 234.86–RG 234.92. We propose to give additional guidance that care should be taken in using the terms:</p> <p>(a) ‘independent’, ‘impartial’ or ‘unbiased’ where the provider receives a commission or has some direct or indirect restriction on the service, or the licensee has a conflict of interest; or</p> <p>(b) ‘financial counsellor’ and ‘financial counselling’ in relation to a service:</p> <p>(i) that is not provided predominantly for the purposes of helping individuals who are in financial difficulty due to circumstances such as debt over-commitment, unemployment, sickness or family breakdown; or</p> <p>(ii) where fees or charges are payable by the client; or</p> <p>(iii) where remuneration (whether by way of commission or otherwise) is payable to the financial counselling agency in relation to any action by the client; or</p> <p>(c) ‘reverse mortgage’, unless the product includes the set of features typically found in a reverse mortgage, such as a no negative equity guarantee: see draft updated RG 234 at RG 234.93–RG 234.95.</p>	<p>B5Q1 Does our proposed guidance address the key issues on the use of certain terminology in credit advertisements? If not, what additional issues should our guidance address?</p> <p>B5Q2 Should our proposed guidance in this area be modified to better address particular credit products, credit services, media or other circumstances? If yes, please give details.</p> <p>B5Q3 Would examples be helpful in providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.</p> <p>B5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.</p>

Proposal	Your feedback
<p>B6 In RG 234, we give guidance that advertisements should not state or imply that a financial product is suitable for a particular class of consumers unless the promoter has actually assessed the suitability of that product for the particular consumers targeted by the advertisement: see draft updated RG 234 at RG 234.102–RG 234.103. We propose to give additional guidance that advertisements should not state or imply that a credit product is suitable for a particular class of consumers unless the credit provider (or credit assistance provider) or lessor has actually assessed the suitability of the credit product for the particular consumers targeted by the advertisement: see draft updated RG 234 at RG 234.105–RG 234.108 and Examples 44–45.</p>	<p>B6Q1 Does our proposed guidance, together with our current guidance in RG 234, address the key issues for product suitability claims in credit advertisements? If not, what additional issues should our guidance address?</p> <p>B6Q2 Should our guidance in this area be modified to better address particular credit products, credit services, media or other circumstances? If yes, please give details.</p> <p>B6Q3 Are the proposed examples helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.</p> <p>B6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.</p>
<p>B7 Our guidance in RG 234 states that advertisements should not create unrealistic expectations about what the service can achieve: see draft updated RG 234 at RG 234.122–RG 234.123. We propose to provide additional guidance and examples on advertising credit assistance: see draft updated RG 234 at RG 234.124–RG 234.125 and Examples 55–57.</p>	<p>B7Q1 Does our proposed guidance address the key issues for advertising the nature and scope of credit assistance services? If not, what additional issues should our guidance address?</p> <p>B7Q2 Should our proposed guidance in this area be modified to better address particular products, services, media or other circumstances? If yes, please give details.</p> <p>B7Q3 Are the proposed examples helpful in providing a practical illustration of our good practice guidance? Should other examples be included? If yes, please provide us with appropriate examples.</p> <p>B7Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.</p>



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 234

Advertising financial products and services (including credit): Good practice guidance

June 2012

About this guide

This guide is for promoters of financial products ~~and~~ financial advice [services, credit products and credit](#) services, and publishers of advertising for these products and services.

It contains good practice guidance to help promoters comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct.

DRAFT

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 ~~regulatory guide~~[draft updated version](#) was issued in June 2012 and is based on legislation and regulations as at the date of issue.

Previous versions:

- [Superseded Regulatory Guide 234 Advertising of financial products and advice services: Good practice guidance, issued February 2012](#)

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 comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.

Our guidance applies to any communication intended to advertise financial products ~~or~~, financial advice services, credit products or credit 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 234.1 We recognise that advertising plays an important role in the financial services marketplace and credit marketplaces. We want to ensure that promoters give clear, accurate and balanced messages when promoting financial products ~~and~~, financial advice services, credit products and credit services.
- RG 234.2 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 may lead to poor financial decisions.
- RG 234.3 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 ~~financial~~ product or ~~advice~~ 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.

Purpose of this guide

RG 234.4 We have developed good practice guidance to help promoters comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct. Following our good practice guidance will also help raise standards in advertising more generally.

RG 234.5 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 234.6 We encourage promoters to create advertisements that not only meet the minimum requirement of not being misleading or deceptive but that also ~~that~~ help consumers make appropriate decisions. This includes whether to seek further information about the ~~financial~~ product or ~~advice~~ service.

Who theour guidance applies to

RG 234.7 Our good practice guidance is relevant to:

- (a) promoters of financial products ~~and~~ financial advice services, credit products and credit services. The promoter will sometimes be the product issuer or credit provider, but can also be a third party such as a financial adviser, credit service provider, distributor or agent; and
- (b) publishers of promotions about ~~financial~~ these products and ~~financial advice~~ services.

What theour guidance applies to

RG 234.8 ~~TheOur~~ good practice guidance applies to any communication whose purpose is to inform consumers about or promote financial products ~~or~~ financial advice services, credit products or credit services.

RG 234.9 It applies to 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, and 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) mobile phone messages (e.g. SMS, MMS, text messages);
- ~~(g)~~ (g) product brochures and promotional fact sheets;
- ~~(g)~~ (h) direct mail (e.g. by post, facsimile or email);
- ~~(h)~~ (i) telemarketing activities and audio messages for telephone callers on hold; and

~~(i)~~ presentations to groups of people, seminars and advertorials.

RG 234.10 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 234.11 ~~The~~Our 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~~including credit facilities: see s12BAA, ASIC Act.

RG 234.12 ~~This guide focuses primarily on advertising of investment and risk products and financial advice services. Different considerations apply for advertising of~~As well as credit products and services, so we plan to issue additional guidance for facilities under the ASIC Act, ASIC’s credit providers and jurisdiction includes credit service providers activities under the *National Consumer Credit Protection Act 2009* (National Credit Act). Credit activities include:

- ~~(a) The~~providing credit under a credit contract;
- ~~(b) providing a credit service (such as providing credit assistance to a consumer or acting as an intermediary);~~
- ~~(c) acting as a lessor under a consumer lease;~~
- ~~(d) acting as a mortgagee under a mortgage to which Sch 1 of the National Credit Act (National Credit Code) applies; and~~
- ~~(e) acting as a beneficiary of a guarantee to which the National Credit Code applies: s6, National Credit Act.~~

RG 234.13 This guide uses the term ‘credit products and credit services’ to refer broadly to both credit facilities under the ASIC Act and credit activities under the National Credit Act. Where this guide refers to ‘credit products’, this includes both credit contracts and leases.

RG 234.14 The National Credit Act and the National Consumer Credit Protection Regulations 2010 (National Credit Regulations) set out detailed requirements for disclosure documents, including documents to be provided at a pre-contractual stage and at the time a contract is entered into. Our guidance does not deal with a person’s obligations in relation to credit disclosure documents.

~~RG 234.13~~RG 234.15 Our good practice guidance also applies to advertising of 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 advice sector, the Future of Financial Advice package of reforms: see <http://futureofadvice.treasury.gov.au>. The Corporations Amendment (Future of Financial Advice) Bill 2011 and the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011, which give effect to these reforms, have been introduced into Parliament.

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-), [ASIC Act](#).

Good practice guidance

~~RG 234.14~~[RG 234.16](#) Table 1 contains an overview of ~~the~~[our](#) 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
Returns, features , benefits and risks	Advertisements for financial products and credit products should give a balanced message about the returns, features , benefits and risks associated with the product. Benefits should not be given undue prominence compared with risks.
Warnings, disclaimers, qualifications and fine print	Warnings, disclaimers and qualifications should not be inconsistent with other content in an advertisement, including any headline claims. Warnings, disclaimers and qualifications should have sufficient prominence to effectively convey key information to a reasonable member of the audience on first viewing of the advertisement. Consumers should not need to go to another website (or other page of the website) or document to correct a misleading impression.
Fees and costs	Where a fee or cost is 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	Comparisons should only be made between financial products that have sufficiently similar features or, where an advertisement compares different products, the differences should be made clear in the advertisement. Comparisons should only be made about returns if the information used is current, complete and accurate. If an advertisement discloses a rating, the rating used should be properly explained either in the advertisement itself or by including details of where an investor can obtain further information about the meaning of the rating and the rating scale.
Past performance and forecasts	Past performance information should be accompanied by a warning that past performance is not indicative of future performance. 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.
Use of certain terms and phrases	Terms and phrases should not be used in a particular way by industry where these are not consistent with the ordinary meaning commonly recognised by consumers (e.g. 'free', 'secure' and 'guaranteed'). Industry concepts or jargon should be avoided unless the promoter is confident that these terms will be understood by the audience.

Issue	Summary of guidance
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>
Consistency with disclosure documents	<p>Where an advertisement draws attention to specific product features, the advertisement should be consistent with information contained in any disclosure document (such as a PDS or prospectus) or contractscontract.</p>
Photographs, diagrams, images and examples	<p>Photographs and images should not contradict, detract from or reduce the prominence of any warnings, disclaimers or qualifications.</p> <p>Graphical presentations should not be ambiguous or overly complicated.</p>
Nature and scope of financial advice and credit assistance	<p>Advertisements for a financial advice service should not create unrealistic expectations about what the service can achieve.</p> <p>Advertisements about credit assistance should be clear about the scope of the service that will be provided to the customer.</p>

Media-specific guidance

[RG 234.15](#)[RG 234.17](#) In Section C, we give guidance on some media-specific issues for advertising financial products ~~and~~ financial advice services, [credit products and credit services](#). These are outlined in Table 2.

Table 2: Overview of media-specific guidance

Medium	Summary of guidance
Mass media	<p>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.</p> <p>Advertising should be clearly distinguished from normal program or editorial content.</p>
Audio advertisements	<p>Warnings, disclaimers and qualifications should be read at a speed that is comprehensible to an average listener.</p>
Film and video advertisements	<p>Information about risks and any warnings should be easily understood by an average viewer on the first viewing of an advertisement and not undermined by distracting sounds or images.</p>
Internet	<p>Promoters should consider the overall impression created by an internet banner advertisement when viewed by itself for the first time.</p> <p>Promoters should consider the appropriateness of using new media channels for advertising if content limitations mean there is insufficient space to provide balanced information.</p> <p>Consumers should be able to keep a record of an advertisement, including any disclaimers or warnings.</p>

Medium	Summary of guidance
Outdoor advertising	Promoters should take into account the conditions under which an 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 234.16](#)[RG 234.18](#) 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 234.17](#)[RG 234.19](#) 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);
- (d) Regulatory Guide 227 *Over-the-counter contracts for difference: Improving disclosure for retail investors* (RG 227);
- (e) Regulatory Guide 231 *Infrastructure entities: Improving disclosure for retail investors* (RG 231); and
- (f) Regulatory Guide 232 *Agribusiness managed investment schemes: Improving disclosure for retail investors* (RG 232).

Note 1: We plan to publish disclosure guidance on hedge funds in 2012: see our proposed guidance in Consultation Paper 147 *Hedge funds: Improving disclosure for retail investors* (CP 147) and [Consultation Paper 174 *Hedge funds: Improving disclosure—Further consultation*](#) (CP 174).

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

Other relevant guides

[RG 234.18](#)[RG 234.20](#) 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); and
- (f) Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228).

Industry guidance

~~RG 234.19~~[RG 234.21](#) Industry guidelines, standards and codes have a useful role to play in ensuring that advertisements are not misleading or deceptive. This is because consumers will generally expect promoters and publishers to comply with accepted industry guidelines.

~~RG 234.20~~[RG 234.22](#) We encourage industry bodies to develop and enforce guidelines, standards or codes that build on the principles of our good practice guidance and respond to the specific needs of the sector.

~~RG 234.21~~[RG 234.23](#) Our good practice guidance will also be relevant to sector-wide advertising undertaken by industry associations on behalf of members.

Our regulatory powers

~~RG 234.22~~[RG 234.24](#) 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 234.23~~[RG 234.25](#) Section D outlines our regulatory powers and explains how the *Corporations Act 2001* (Corporations Act), [National Credit 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 Australian financial services (AFS) licence [or credit licence](#) obligations.

~~RG 234.24~~[RG 234.26](#) 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 [credit licence](#) or varying its conditions: see RG 234.158.

~~RG 234.25~~[RG 234.27](#) The Corporations Act [and National Credit Code](#) also prohibits certain conduct, including unsolicited hawking of financial products to retail clients ~~and~~, advertising certain small-scale offerings of securities or financial products [and canvassing of credit at home](#): see RG 234.187–RG 234.191.

Publishers and media outlets

~~RG 234.26~~RG 234.28 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 234.27~~RG 234.29 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 234.28~~RG 234.30 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:

- returns, features, benefits and risks (see RG 234.33–RG 234.46);
- warnings, disclaimers, qualifications and fine print (see RG 234.47–RG 234.53);
- fees and costs (see RG 234.54–RG 234.66);
- comparisons (see RG 234.67–RG 234.81);
- past performance and forecasts (see RG 234.82–RG 234.85);
- the use of certain terms and phrases (see RG 234.86–RG 234.99);
- the advertisement’s target audience (see RG 234.100–RG 234.111);
- consistency with disclosure documents (see RG 234.112–RG 234.115);
- photographs, diagrams, images and examples (see RG 234.116–RG 234.121); and
- the nature and scope of financial advice and credit assistance (see RG 234.122–RG 234.125).

~~RG 234.29~~RG 234.31 Advertisements should give balanced information so that consumers can understand the nature of the financial product or advice service being advertised. Balance is important for ensuring that the overall effect of an advertisement creates realistic expectations about a product.

~~RG 234.30~~RG 234.32 TheOur good practice guidance will, however, be more relevant for advertisements that draw attention to specific product features rather than advertisements that promote general product awareness or brand recognition.

Returns, features, benefits and risks

~~RG 234.31~~RG 234.33 Advertisements for financial products and credit products should give a balanced message about the returns, features, benefits and risks associated with the product. 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.

Example 1: Lack of balance about high risk strategy

A credit provider promoted that consumers could pay off a 25-year mortgage in 10 years while maintaining their existing monthly repayment amount. Consumers could only potentially achieve this claim if they undertook a ‘strategy’ which included taking out a second loan to purchase a residential investment property. The ‘strategy’ relied on the value of the investment property appreciating at a high enough rate for consumers to

sell their investment property and pay off both loans (i.e. the existing home loan and investment loan). ASIC was concerned that the credit provider's advertising may mislead consumers as the claim relied on the past performance of the property market continuing into the future and was based on a number of assumptions which were not disclosed in the promotional material.

Returns and benefits

RG 234.32 RG 234.34 Where an advertisement states or implies that a particular benefit is likely, it should include a statement about the risks associated with obtaining that benefit, or about the product generally. Where appropriate, the advertisement should also include a clear explanation of the assumptions made in predicting the benefit.

Example 12: Qualifications affecting the potential return

Where a rate of return for a financial 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 23: Representations about potential benefits

An AFS 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 marketplace 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.

Example 4: Benefits only available in certain circumstances

A mortgage broker promoted that its home loan could help consumers pay off their home loan sooner, using an online calculator that demonstrated considerable savings over time. ASIC was concerned that the broker's promotional material did not inform consumers that they would need to make considerable additional repayments on their home loan over and above their monthly repayments to achieve the claims promoted. We obtained orders in the Federal Court against the mortgage broker, which included a declaration that the mortgage broker had contravened the ASIC Act, and orders restraining the broker from continuing to make these representations.

RG 234.33 RG 234.35 Claims about features of a ~~financial~~ product or ~~advice~~ service 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 35: No fees (but only in certain cases)

Unless there is clear and adequate qualification, 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.

Example 46: Omission of important fee information

Some savings accounts may not attract a fee called an 'annual fee' but instead attract a monthly fee that is cumulative and amounts 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 the misleading impression of the fees that will be payable, and create the impression of a benefit that the consumer would not actually obtain.

Example 7: Dealer finance not available on all purchases

Car dealers may advertise finance options at attractive interest rates. These advertisements are often targeted to consumers who may be credit-impaired or reliant on welfare benefits. These advertisements may be misleading if the attractive interest rate is not available to members of that target audience.

RG 234.34RG 234.36 If a ~~financial~~ 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 58: 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 234.35RG 234.37 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 234.36RG 234.38 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 69: Continued accuracy of advertising claims in the future

If an insurer advertises that its insurance is offered at the lowest cost available but, given the competitive nature of the market, the insurer can only be sure that its policies will be the cheapest for the next two weeks, it should 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 234.37](#)[RG 234.39](#) Where a ~~financial~~ product is advertised on the basis of a particular feature or benefit, 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.

Example 10: Bait advertising

A credit card was widely advertised as having a 'low ongoing rate' of 9.99% p.a., while warning consumers about the short-term nature of offers made by some competitors. ASIC raised concerns with the company promoting the card when two months later they introduced a higher interest rate (13.99% p.a.) for cash advances. We were concerned that consumers who responded to the earlier advertising may not have had the benefit of the credit card at the advertised price for a sufficient period of time.

[RG 234.38](#)[RG 234.40](#) Information about returns and benefits should be net of fees and costs to the greatest extent practicable. In addition, the effect that fees and costs may have on returns and benefits over time should be clearly stated, and not be hidden or difficult to understand.

[RG 234.39](#)[RG 234.41](#) 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 234.40](#)[RG 234.42](#) Information about the risks of a ~~financial~~ product should be clear, and not hidden or difficult to understand, and should be given sufficient prominence to information about returns and benefits. The tone of the advertisement should not undermine the importance of the risks.

Example 11: Lack of balance about benefits and risks

ASIC identified several misleading advertisements that made claims suggesting that reverse mortgages did not need to be repaid. The statements used in the advertisements included 'There are no repayments', '...no loan

repayments ever’ and ‘No need to make repayments!!’. Although reverse mortgages do not usually require the borrower to make regular repayments during the course of the loan, they must eventually be repaid. We raised these concerns with the promoters of the advertisements. In each case, the promoter took immediate steps to either withdraw or amend its advertising.

Example 712: 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 had bought the product after one or more of the statements were made to them.

Example 813: Advertising high-risk products

Contracts for difference (CFDs) are high-risk financial 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 in CFDs.

RG 234.41~~RG 234.43~~ The safety or security of a ~~financial~~ product should not be overstated. There are very few ~~financial~~ 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.

Example 14: Overstating the safety of the product

ASIC was concerned that products including margin loans were being marketed in print media, online and within a brochure using the line ‘Stress-free strategies to accelerate your wealth—A guide to borrowing to invest in shares.’ There are risks involved in gearing to invest in shares which would make it unlikely that any such strategy would be ‘stress-free’. We raised these concerns with the company who agreed to cease using the term ‘stress-free’.

RG 234.42~~RG 234.44~~ 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 234.43~~RG 234.45~~ Where a ~~financial~~ product poses significant risks that would not ordinarily be expected by a consumer, an advertisement should include a prominent warning about these risks.

Example 915: 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 in securities. The advertisement should therefore include a sufficiently prominent warning outlining these risks.

[RG 234.44](#)[RG 234.46](#) When a ~~financial~~ product, or a feature of a ~~financial~~ product, is introduced that makes the product significantly different from other similar products, the advertisement should give prominence to the different or innovative features if they would not ordinarily be expected by a consumer. This is particularly important if the product exposes a consumer to unusual risks.

Warnings, disclaimers, qualifications and fine print

[RG 234.45](#)[RG 234.47](#) We recognise that an advertisement will not always include in its headline claim all information about the ~~financial~~ product that is relevant to the consumer's decision. However, the more that a qualification is required to balance the information contained in the headline claim, the more prominently placed the qualification should be. The headline claim must not itself be misleading.

Example 16: Benefits not available to all customers

If a home loan provider promotes an attractive interest rate discount that is only available to a consumer who takes out a large loan, any restrictions on availability of the interest rate discount should be prominently displayed so consumers seeking smaller loans will understand that they cannot access the discount. Sometimes interest rate discounts are tiered (i.e. different interest rate discounts apply to different amounts borrowed and the discount will usually increase with larger loans), with the home loan provider promoting the most attractive discount.

In such cases, ASIC does not consider the home loan provider can rely on a statement such as 'up to X%' to describe the discount if in fact it is only available in limited circumstances and this is not prominently disclosed. The use of qualifying phrases such as 'up to' or 'from' should generally be approached with caution, as the overall impression created by an advertisement may still be that the maximum benefit is more widely or readily available than is in fact the case.

[RG 234.46](#)[RG 234.48](#) If warnings, disclaimers and qualifications are required, they should not be inconsistent with other content in the advertisement, including any headline claims. They should also 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, contained within a dense block of text, only

shown on television or a computer screen for a brief period, or placed where there is distracting content shown simultaneously.

[RG 234.47](#)[RG 234.49](#) Statements referring the consumer to another website or webpage, or a document such as a PDS, prospectus or contract, will not be sufficient to correct a misleading or deceptive headline claim: see *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2011] FCA 1254.

Example 4017: 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 that the advertisements created the impression that the initiative to remove monthly service fees applied automatically to existing account holders when this was not the case. We accept that financial services providers do, from time to time, offer special promotions that only apply to new customers. It is important, however, that advertising clearly states 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 4118: 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 4219: Qualification on a different webpage to the 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 features of a product, this should be balanced in the same banner with information about the restrictions. Including a reference to another page on the website where the consumer can find out information about the ~~risks~~restrictions is unlikely to correct a misleading impression. We wrote to the insurance industry to outline our concerns.

[RG 234.48](#)[RG 234.50](#) 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 1320: Disclaimers in a different form to 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 be in the same language.

[RG 234.49](#)[RG 234.51](#) 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 234.50](#)[RG 234.52](#) 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 1421: 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 simply 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 dominant message to consumers. We wrote to the insurance industry to outline our concerns about this type of advertising.

[RG 234.51](#)[RG 234.53](#) Some warnings or notices are required to be included in an advertisement under various provisions of the Corporations Act or other laws rather than because they qualify a headline claim. In these cases, the warning does not necessarily need to be as prominent as the headline claim.

Note 1: The particular provision requiring the warning may set out specific content or format requirements for the warning.- [See RG 234.66 for guidance on the comparison rate warning required by the National Credit Act.](#)

Note 2: [A credit licensee must include their credit licence number in any printed advertisement: s52, National Credit Act; reg 13, National Credit Regulations.](#)

Fees and costs

[RG 234.52](#)[RG 234.54](#) Where a fee or cost is 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 22: Waived fees

There is an important distinction between the absence of a fee, and a fee that exists but is not charged in certain circumstances. A promoter should not make a claim of 'no fees' (including '\$0' or 'fee-free') where fees apply to the product but are waived if the consumer meets certain qualifying criteria.

Example 23: 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.

Example 24: Omission of details about a novel feature

Advertisements for a credit card promoted a single annual percentage rate. In fact, while that rate applied for purchases, a different and higher rate applied to cash advances. At the time, differential pricing based on the type of transaction was relatively new for credit cards, and in that context, ASIC was particularly concerned that the advertisements failed to refer to the multiple rates.

[RG 234.53](#)[RG 234.55](#) An advertisement should not state that there is only one fee if there are other costs associated with the ~~financial~~ product that consumers will incur. Promoters should not assume that clients will 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 25: 'Free' claims where fees or costs are payable

Some promotions state that transactions are 'free' on an account where the account is in fact subject to account-keeping or monthly fees. While it is true that there is no additional charge for a particular transaction, there is nevertheless a cost to use the account. The word 'free' conveys a strong impression and should not be used where there is any charge to use the product.

Example 26: Omission of applicable fees

Advertising material for a credit card claimed that the card had no annual fee and 'that means it costs you nothing to have it'. In fact, new cardholders would incur a \$25 establishment fee. ASIC contacted the organisation promoting the credit card and they agreed to refund the \$25 fee to approximately 2,500 customers.

Example 27: Distinction between fees and costs

A superannuation fund advertised that its members would 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 234.56 Where an advertisement promotes attractive features of a product, the advertisement should also disclose any fees that are payable to receive those features.

Example 28: Fees payable to receive benefits

Home loan packages may offer consumers savings on fees and other discounts, in some cases across a range of products. A consumer usually has to pay an annual fee to access the benefits of a home loan package. Advertisements for these packages, or offers including the discounted prices that are available as part of a package, should not promote no or low fees without adequate disclosure of the annual package fee.

RG 234.54RG 234.57 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 the possible returns advertised;
- (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](#), [5](#), [6](#) and [25](#)[41](#) for further examples relating to fees and costs.

Fees for financial advice services

RG 234.55RG 234.58 Where an advertisement makes a claim about the fees or costs associated with a financial advice 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 financial products they are placed in (e.g. where adviser commissions are derived from product fees and these are not rebated back to the consumer), or through an administration fee incorporating fees or costs associated with a financial advice service.

Note: The Future of Financial Advice reforms (see Note 1 at RG 234.15) 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.~~

Interest rates

RG 234.59 Under the National Credit Code, an advertisement for a credit product does not need to include an interest rate, but must do so if the advertisement states the amount of any repayment. The advertisement must also include references to any fees and charges: s150, National Credit Code.

RG 234.60 Depending on the nature of a credit product, the cost to a consumer may involve a combination of interest charges and other fees and costs. In many cases, credit contracts are structured with an initial promotional period where a discount interest rate applies and/or other fees are waived, before the interest rate and fees revert to a higher level on an ongoing basis.

RG 234.61 Where an advertisement refers to interest rates and/or fees and charges, it is important that the advertisement gives consumers a realistic impression of the overall costs.

Example 29: Significant fees in addition to interest charges

A micro lender should not promote a short term loan with low or 0% interest rates in a manner that suggests a low overall cost, if a consumer will incur significant fees or other charges.

Example 30: Discount interest rate

Many advertisements state that a discount interest rate will apply for a short time at the beginning of a loan (e.g. a honeymoon rate or interest-free period). The advertisement should also state, in an equally prominent manner, how long the discount rate will apply to the loan and what the interest rate will revert to at the end of the discount period (e.g. ‘After 6 months, the applicable rate will be our standard variable rate, currently 12.99% p.a.’).

Example 31: Comparison involving discounted interest rate

An industry association promoted the average savings consumers could achieve if they obtained a home loan from one of its members instead of from its competitors. The savings were calculated based on a sample of members and included some lower-rate, non-standard home loan products. Further, the industry association calculated the savings based on a cost comparison made shortly after an official increase in the cash rate, at a time when competitors' rates had increased in line with the cash rate but shortly before the members used in the sample followed suit.

ASIC was concerned that consumers were at risk of being misled about the nature of the savings in the advertisement as the industry association had not clearly and prominently disclosed the types of interest rates used in the comparison, or that it was based on only a sample of members. Further, we considered that the industry association may not have used an appropriate point-in-time selection to calculate savings. We contacted the association, which agreed that future advertisements would clearly disclose the types of rates used and the selective nature of any comparison.

Comparison rates

RG 234.62 A comparison rate is a tool to help consumers identify the true cost of a loan. It is a rate which includes both the interest rate and fees and charges relating to a loan, reduced to a single percentage figure. An advertisement must contain a comparison rate if it contains an interest rate: s160, National Credit Code.

Note: An advertisement is not required to include an interest rate, but must do so if it states the amount of any repayment: s150, National Credit Code.

RG 234.63 The National Credit Code establishes the methodology for calculating the comparison rate for a loan. Advertising an incorrectly calculated comparison rate is likely to mislead consumers about the true cost of a loan.

Example 32: Incorrect calculation of comparison rate

A bank advertised a discounted interest rate for a home loan which consumers could only access as part of a home loan package. To access the home loan package, consumers must pay an annual fee. The bank failed to include this fee when calculating the advertised comparison rate. ASIC was concerned that the comparison rate understated the true cost of the loan. We took action and the bank agreed to use a correctly calculated comparison rate in its advertising.

RG 234.64 An advertised comparison rate must be identified as a comparison rate and the comparison rate must not be less prominent in an advertisement than any interest rate or the amount of any repayment stated in the advertisement: s164, National Credit Code. We consider that the following examples would result in the comparison rate being less prominent than the advertised interest rate:

- (a) a comparison rate is smaller in size or faded in colour when compared to the interest rate; or

- (b) an interest rate is published online and a consumer is required to click through or additionally do something (such as move their cursor over the interest rate) to view the comparison rate; or
- (c) the location of the displayed comparison rate in the advertisement is such that it is easy for a consumer to overlook it, or it is not in close proximity to the displayed interest rate (e.g. if a multipage advertisement displays the comparison rate on one section of the promotional material and omits it from another section where an interest rate is displayed).

RG 234.65 A comparison rate in an advertisement must be accompanied by a warning about the accuracy of the comparison rate and that the comparison rate is accurate only for the example given in the advertisement: s163, National Credit Code; reg 99, National Credit Regulations. The warning is intended to make consumers aware that, while a comparison rate can be a useful tool for comparing the cost of different loans, it is important to consider all of a loan's features and not just focus on the comparison rate.

RG 234.66 While the comparison rate warning reminds consumers to look at both the cost and features of a loan, we acknowledge that the rate itself will be of primary interest. Accordingly, the comparison rate warning need not be as prominent as the headline figure in the advertisement. However, the warning must be given in the same form as the comparison rate is given (i.e. in spoken or written form) unless the credit advertisement is on television, the internet or other electronic display medium: reg 99, National Credit Regulations.

Note: See RG 234.53 for our guidance on warnings or notices required under the Corporations Act.

Comparisons

Comparisons between products

RG 234.56RG 234.67 When comparing financial products in an advertisement, the products should have sufficiently similar features to make the comparison relevant and not misleading.

Example 1733: 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 156.110.

~~RG 234.57~~RG 234.68 Where only one particular feature of a ~~financial~~ product is highlighted, a comparison may be misleading if it ignores other key features.

Example 1834: 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 234.58~~RG 234.69 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 234.59~~RG 234.70 Where a comparison has been made over a short period, any limitations of such a comparison should be clearly disclosed.

~~RG 234.60~~RG 234.71 When comparing the performance of an investment with a financial product or a 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 234.61~~RG 234.72 Any comparison of benefits and returns should be accurate and balanced and have a reasonable basis.

~~RG 234.62~~RG 234.73 The facts on which any comparison or contrast of returns is based should be verified, and any relevant assumptions disclosed.

~~RG 234.63~~RG 234.74 An advertisement should not present a comparison in a way that would create a misleading impression of the ~~financial~~ 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 1935: Selective 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 financial 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 234.64~~RG 234.75 Ratings can be used by consumers to compare different ~~financial~~ products.

[RG 234.65](#)[RG 234.76](#) Ratings may include both credit ratings issued by credit rating agencies as well as ratings, recommendations and opinions produced by financial product research houses.

[RG 234.66](#)[RG 234.77](#) Credit ratings should generally only be advertised to retail clients if the rating is issued by a credit rating agency that is authorised under its AFS licence to provide financial advice to retail clients.

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

[RG 234.67](#)[RG 234.78](#) The impression of the product created by the rating should accurately reflect the rating. The rating used in an advertisement should be properly explained either in the advertisement itself or by including details of where an investor can obtain further information about the meaning of the rating and the rating scale.

[RG 234.68](#)[RG 234.79](#) 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 [in a financial product](#) or take up a credit product.

[RG 234.69](#)[RG 234.80](#) Only current ratings should be used. If the ratings are likely to change, the promoter should consider inserting a qualifying statement: see also [RG 234.37](#)–[RG 234.38](#).

Awards

[RG 234.70](#)[RG 234.81](#) Where awards received are included in an advertisement for a [financial](#) 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 2036: 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 234.71](#)[RG 234.82](#) 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 2437: 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 'performing' created the impression that substantially the same returns achieved in the past would continue to 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 financial product. The managed investment scheme withdrew its advertisement in response to our concerns.

[RG 234.72](#)[RG 234.83](#) 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 234.73](#)[RG 234.84](#) 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 234.74](#)[RG 234.85](#) 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 234.75](#)[RG 234.86](#) 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 234.76](#)[RG 234.87](#) 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 2238: Using words in a different context to 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 234.77](#)[RG 234.88](#) Inappropriately using terms and phrases can:

- (a) create expectations that cannot be met;
- (b) indicate a certain level of security that does not exist; and
- (c) indicate different levels of protection and different levels of risk.

Example [2339](#): 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 'secured' 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 [2440](#): 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~~ASIC 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 234.78](#)[RG 234.89](#) Industry concepts or jargon may not be well understood by many consumers and 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 ~~financial~~ products themselves.

Example [2541](#): 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 Use of certain terminology

[RG 234.79](#)[RG 234.90](#) Advertisements must not use certain terminology where usage of that terminology is restricted by law.

~~RG 234.80~~ RG 234.91 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 234.81~~ RG 234.92 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 financial 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 at RG 234.15) include a proposed ban on conflicted remuneration structures, such as commissions and volume payments.

RG 234.93 Similarly, terms such as ‘independent’, ‘impartial’ or ‘unbiased’ may create a misleading impression about the relationship between a credit service provider and a third party. Care should be taken in using these terms where the provider receives a commission or has some direct or indirect restriction on the service, or the licensee has a conflict of interest.

Note: The Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 (Bill) includes a proposed ban on the use of the terms ‘independent’, ‘impartial’ or ‘unbiased’, except in certain circumstances.

RG 234.94 The terms ‘financial counsellor’ and ‘financial counselling’ may create a misleading impression about the nature of the service offered to a consumer. Care should be taken in using these terms in relation to a service:

- (a) that is not provided predominantly for the purposes of helping individuals who are in financial difficulty due to circumstances such as debt over-commitment, unemployment, sickness or family breakdown; or
- (b) where fees or charges are payable by the client; or
- (c) where remuneration (whether by way of commission or otherwise) is payable to the financial counselling agency in relation to any action by the client.

Note 1: Financial counselling agencies are exempt from the requirement to hold a credit licence or AFS licence: see reg 20(5), National Credit Regulations, and Class Order [CO 03/1063] *Licensing relief for financial counselling agencies.*

Note 2: The Bill includes a proposed ban on the use of the terms ‘financial counsellor’ and ‘financial counselling’ or similar, except in certain circumstances.

RG 234.95 Reverse mortgages are a product type which is tailored to a very specific set of consumer objectives. An advertisement which used the term ‘reverse mortgage’ would be misleading if the advertised product did not include the set of features typically found in a reverse mortgage, such as a no negative equity guarantee.

Note: The Bill proposes new obligations for persons who engage in credit activities for reverse mortgage contracts.

Endorsements and testimonials

RG 234.82RG 234.96 Advertising should not falsely represent that a ~~financial~~ product or ~~financial~~ 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) in advertisements to help consumers understand the ~~financial~~ products or ~~advice~~ services offered.

Example 2642: 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 234.83RG 234.97 Testimonials from individuals should be attributed to them and should be authentic.

RG 234.84RG 234.98 Celebrity endorsement of a ~~financial~~ 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 234.85RG 234.99 Any testimonials or messages from well-known identities, celebrities or media commentators should be truthful and only contain reasonably held, informed opinions about the ~~financial~~ product or ~~advice~~ service being advertised.

Example 2743: Celebrity testimonials

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

Target audience

RG 234.86RG 234.100 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 234.87RG 234.101 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 234.88RG 234.102 Advertisements should not state or imply that a ~~financial~~ product is suitable for a particular class of consumers unless the ~~issuer~~promoter has actually assessed the suitability of the product for the particular consumers targeted by the advertisement.

RG 234.103 Suitability may sometimes be stated directly by the advertiser (e.g. through the use of terminology such as 'no credit check required'). It can also be implied (e.g. through the use of confusing or non-standard product descriptions that misrepresent the true nature of the product).

Example 44: Misrepresenting the nature of the product

An advertisement by a motor vehicle dealer may promote the availability of 'finance' for consumers seeking to purchase a vehicle. The advertisement should not state or imply that the finance will be appropriate for a person seeking to purchase a vehicle if the finance promoted, or the option that delivers an advertised price or payment amount, is in fact a lease.

RG 234.89RG 234.104 Where the features or complexity of a ~~financial~~ product are such that it 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 234.127.

Responsible lending

RG 234.105 Credit licensees must comply with the responsible lending conduct obligations in Ch 3 of the National Credit Act. The key concept is that credit licensees must not enter into a credit contract with a consumer, suggest a credit contract to a consumer or assist a consumer to apply for a credit contract if the credit contract is unsuitable for the consumer.

Note: Regulatory Guide 209 Credit licensing: Responsible lending conduct (RG 209) sets out ASIC's expectations for meeting the responsible lending obligations in the National Credit Act.

RG 234.106 The assessment about suitability must be based on inquiries about a consumer's requirements and objectives and financial situation. If carried out appropriately, those inquiries may take some time, and in most cases are likely to include inquiries about a consumer's credit history. Credit licensees should carefully

consider whether promotional claims about ‘no-doc’ type products, or ‘instant’ or very fast approval, or approval with ‘no credit checks’, are either misleading or reflect practices that do not comply with the responsible lending obligations.

RG 234.107 Advertisements should not state or imply that a credit product is suitable for a particular class of consumers unless the credit provider (or credit assistance provider) has actually assessed the suitability of the product for the particular consumers targeted by the advertisement. For example, an advertisement for a credit product should not use terms such as ‘guaranteed acceptance’ or ‘pre-approved’, given the need to follow up a general promotional message like this with an individualised assessment process when an application is received.

RG 234.108 In addition, even where a product may be suitable for an identified class of consumers, the advertisement should not imply that a more individualised assessment has been carried out (i.e. the advertisement should make clear that a consumer within that class may, but only may, qualify or find the product suitable).

Example 45: Unsolicited credit limit increase

New laws commencing on 1 July 2012 prohibit credit card issuers from sending unsolicited invitations for credit limit increases to their customers unless the customer has consented. A credit provider sent messages to customers via its internet banking platform notifying them of the changes to the law for credit limit increase invitations. The credit provider asked customers to provide their consent to continue to receive credit limit increase invitations.

ASIC formed the view that the messages were misleading—that is, they suggested that if customers did not complete the electronic consent in response to the message, they would lose the chance to receive credit limit increase offers and would miss out on opportunities to access extra funds should they need them. We also formed the view that the messages created a misleading impression that customers needed to act urgently, which may have led customers to respond without properly considering their options.

We accepted an enforceable undertaking from the credit provider that it would not rely on the consents obtained from customers and would contact each customer who consented, correcting any misleading impression and informing them of their rights.

Note: See National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011.

Distribution channels

RG 234.90RG 234.109 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, broker or intermediary. Advertisements should not rely on a third party to fill in any gaps to correct a misleading impression created in the advertisement itself.

Complexity

~~RG 234.91~~ RG 234.110 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 ~~financial~~ 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 234.92~~ RG 234.111 The more complex the ~~financial~~ product, the less likely it can be advertised in limited space (e.g. internet banner advertisements, signs in public venues, 30-second television commercials) without being misleading.

Example 2846: Audience for complex products

An advertisement for a complex financial 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 234.93~~ RG 234.112 Where an advertisement draws attention to specific features of a ~~financial~~ product, statements in advertisements should be consistent with the features of the advertised product and the disclosures in any corresponding disclosure documents (~~such as e.g.~~ a PDS, FSG or prospectus) or contracts.

~~RG 234.94~~ RG 234.113 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 234.14.

Example 2947: 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 3048: 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 34:49 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 was not potentially deceptive or misleading.

[RG 234.95](#)[RG 234.114](#) 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 3250: 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.

[RG 234.96](#)[RG 234.115](#) An advertisement [for a financial product](#) 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 234.97](#)[RG 234.116](#) 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 234.117](#) 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.

Example 51: Contradictory placement of images and text

[Many retail catalogues advertise that a consumer can take out an interest-free loan to purchase products from the retailer \(e.g. whitegoods and furniture\). Where the interest-free loan is only available for a minimum purchase amount \(e.g. \\$500\), the advertisement should not include the interest-free option in the context of images of cheaper items which, if purchased in isolation, would not be available interest-free. The message conveyed by the image may be too strong, even if the advertisement has fine print stating which products qualify for the interest-free loan.](#)

~~RG 234.98~~ RG 234.118 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 ~~financial~~ product or ~~advice~~ service.

~~RG 234.99~~ RG 234.119 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 3352: Misleading image—Age of audience

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

Example 3453: 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 234.100~~ RG 234.120 Tables, diagrams, graphs, charts and maps can help present information in a way that is easy for consumers to absorb, provided that 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 234.101~~ RG 234.121 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 the presentation of past performance in promotional material, see RG 53.15.

Nature and scope of financial advice and credit assistance

Financial advice

~~RG 234.102~~ RG 234.122 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 financial product for a consumer, the adviser will consider all relevant financial 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 is 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 234.103~~ RG 234.123 An advertisement should not create a misleading impression about the nature and extent of a financial adviser’s experience and qualifications.

Example 3554: Financial adviser’s experience

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

Credit assistance

RG 234.124 Similarly, credit assistance can be provided in a variety of different ways depending on the consumer’s needs, the structure of the provider’s business and its area of expertise.

RG 234.125 An advertisement should be clear about the scope of the service that will be provided to the consumer.

Example 55: Limited range of products

A mortgage broker may have access to loans from a large number of lenders. However, in practice, the mortgage broker generally only considers one or two main lenders when making a recommendation to a client. In this case, it may be misleading if the mortgage broker advertises that ‘a wide range of lenders is available’. Similarly, a credit assistance provider should not promote that they are a ‘broker’ if they are only affiliated with one credit lender (and therefore, consumers who use the provider’s services will only ever be assisted to take out a loan with that lender).

Example 56: Misleading impression about the nature of the service

A credit assistance provider offering debt consolidation or credit repair services should not advertise itself as a financial counsellor.

Example 57: Misleading advertising about the outcome of the service

A finance broker or debt negotiator should not advertise that their services will result in a consumer becoming 'debt-free' if in fact what they can provide is a consolidation loan or structured repayments for existing loans.

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 and magazines (see RG 234.126–RG 234.136);
- internet advertising (see RG 234.137–RG 234.143); and
- outdoor advertising (see RG 234.144–RG 234.146).

Mass media

[RG 234.104](#)[RG 234.126](#) 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 234.105](#)[RG 234.127](#) Mass media has the 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 234.100.

Distinguishing advertising and program content

[RG 234.106](#)[RG 234.128](#) 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 234.107](#)[RG 234.129](#) 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 3658: 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 comments 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.

[RG 234.108](#)[RG 234.130](#) 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 3759: 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 the advertisement is accompanied by a clear and prominent statement that it is advertising content.

Audio advertisements

[RG 234.109](#)[RG 234.131](#) 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 234.110](#)[RG 234.132](#) 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 234.111](#)[RG 234.133](#) 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. Similarly, our guidance also applies to advertising through podcasts.

Film and video advertisements

[RG 234.112](#)[RG 234.134](#) 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 234.113](#)[RG 234.135](#) 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 234.48.

[RG 234.114](#)[RG 234.136](#) 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 234.115](#)[RG 234.137](#) 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 234.116](#)[RG 234.138](#) Internet banner advertising is often relatively short. Promoters should consider the overall impression created by the banner when viewed by itself for the first time.

[RG 234.117](#)[RG 234.139](#) The physical limitations of a particular medium are not a reason for producing an advertisement that might mislead: see also [RG 234.111](#) and *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2011] FCA 1254.

Example 3860: Internet banner advertising

If a banner advertisement on a webpage includes a strong headline claim about the potential returns available from a financial 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 234.118](#)[RG 234.140](#) Social networking and microblogging services such as Twitter allow promoters to deliver short advertisements directly to consumers. As with other forms of advertising, promoters should consider the overall impression created by the advertisement when viewed for the first time. 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 234.119](#)[RG 234.141](#) Promoters and consumers should be able to keep a record of an advertisement, including any disclaimers or warnings. This will provide support should any future dispute arise about the advertisement.

[RG 234.120](#)[RG 234.142](#) 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.

[RG 234.121](#)[RG 234.143](#) As use of the internet for advertising continues to grow, consumers' expectations and experiences in the online environment are evolving. We

may adjust our guidance as we develop further regulatory experience and as internet advertising comes under further scrutiny by the courts.

Outdoor advertising

~~RG 234.122~~[RG 234.144](#) 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 because 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 234.123~~[RG 234.145](#) Promoters should take into account the conditions in which an outdoor advertisement will be viewed when considering whether the overall impression of the advertisement is misleading or deceptive.

~~RG 234.124~~[RG 234.146](#) Outdoor advertising may be better suited to promoting brand or product recognition, rather than conveying more complex information about a ~~financial~~ 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, [National Credit Act](#) and/or the ASIC Act and result in ASIC taking action against the promoter. Promoters who hold an AFS licence [or credit licence](#) also risk breaching their obligation to comply with financial services [and credit](#) 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 234.125](#)[RG 234.147](#) 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, [National Credit Act](#) or ASIC Act: see Table 3.

[RG 234.126](#)[RG 234.148](#) 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"> • Imprisonment (maximum 10 years) • Fine • Compensation (s1041I) • Injunction (s1324) • Other orders <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"> • Imprisonment (maximum 10 years) • Fine • Compensation (s1041I) • Injunction (s1324) • Other orders <p>Note: References are to the Corporations Act.</p>

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"> • Compensation (s1041I) • Injunction (s1324) • Other orders <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"> • Compensation (s12GM, ASIC Act) • Injunction (s1324, Corporations Act; s12GD, ASIC Act) • Other orders
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"> • Injunction (s12GD) • Order requiring adverse publicity (s12GLB) • Other orders (s12GLA and 12GM) • Compensation (s12GM and 12GNB) <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"> • Fine (s12GB) • Pecuniary penalty (s12GBA) • Injunction (s12GD) • Order requiring adverse publicity (s12GLB) • Other orders (s12GLA and 12GM) • Compensation (s12GM and 12GNB) • Infringement notice (s12GX) <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"> • Fine (s12GB) • Pecuniary penalty (s12GBA) • Injunction (s12GD) • Order requiring adverse publicity (s12GLB) • Other orders (s12GLA and 12GM) • Compensation (s12GM and 12GNB) • Infringement notice (s12GX) <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"> • Fine (s12GB) • Pecuniary penalty (s12GBA) • Injunction (s12GD) • Order requiring adverse publicity (s12GLB) • Other orders (s12GLA and 12GM) • Compensation (s12GM and 12GNB) • Infringement notice (s12GX) <p>Note: References are to the ASIC Act.</p>

Description of conduct	Reference	Penalties and other remedies
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"> • Fine (s12GB) • Pecuniary penalty (s12GBA) • Injunction (s12GD) • Order requiring adverse publicity (s12GLB) • Other orders (s12GLA and 12GM) • Compensation (s12GM and 12GNB) <p>Note: References are to the ASIC Act.</p>
<u>In the course of engaging in a credit activity, giving information or a document to another person if the giver knows, or is reckless as to whether, the information or document is false in a material particular or materially misleading.</u>	<u>s33, National Credit Act</u>	<ul style="list-style-type: none"> • <u>Imprisonment (maximum 2 years)</u> • <u>Fine</u> • <u>Pecuniary penalty (s167)</u> • <u>Injunction (s177)</u> • <u>Order requiring adverse publicity (s182)</u> • <u>Compensation (s178)</u> • <u>Other orders (s179)</u> <p>Note: References are to the National Credit Act.</p>
<u>Making a false or misleading representation in relation to a matter that is material to entry into a credit contract or a related transaction or in attempting to induce another person to enter into a credit contract or related transaction. Contravention of this provision is an offence.</u>	<u>s154, National Credit Code</u>	<ul style="list-style-type: none"> • <u>Fine</u> • <u>Injunction (s177)</u> • <u>Order requiring adverse publicity (s182)</u> <p>Note: References are to the National Credit Act.</p>

Additional obligation for AFS licensees and credit licensees

RG 234.127RG 234.149 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).

RG 234.150 Our good practice guidance may also help promoters who hold a credit licence to meet their obligation to comply with credit laws: s47(1)(d), National Credit Act.

Note: For more guidance on this obligation, see Section C of Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205).

How we will assess advertising

~~RG 234.128~~[RG 234.151](#) When determining whether an advertisement is misleading or deceptive, 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 234.129~~[RG 234.152](#) For the advertising of financial products and credit products, the following questions will help determine whether an advertisement is likely to create unrealistic expectations, and whether it is 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 234.130~~[RG 234.153](#) For advertising relating to a financial advice service or credit assistance service, the following questions will help determine whether an advertisement is likely to create unrealistic expectations:

- (a) Does the advertisement create realistic impressions about what the financial advice or credit assistance is likely to achieve, cover or address?
- (b) Are the limitations of the advice or assistance 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 or assistance?
- (d) If the advertisement makes any claims about the impartiality of the service, does it accurately describe any relevant relationship?

~~RG 234.134~~[RG 234.154](#) 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~~[For further](#) information about [the disclosure requirements](#) ~~is available in, see~~ [RG 168 and RG 228](#).

~~RG 234.132~~[RG 234.155](#) 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 using media that is likely to date quickly (e.g. new media such as Twitter).

Determining what is misleading or deceptive

~~RG 234.133~~[RG 234.156](#) 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 [or contract](#) to undo the effect of a misleading advertisement.
- (h) Silence can be misleading or deceptive when it is reasonable for a consumer to expect disclosure of important information—silence on important details can render a statement misleading, even though it is factually correct.

~~RG 234.134~~[RG 234.157](#) The above principles on misleading or deceptive advertising will generally apply regardless of the media used.

How we deal with contraventions

~~RG 234.135~~[RG 234.158](#) The law provides us with a number of regulatory options for dealing with breaches of the misleading or deceptive conduct provisions of the Corporations Act ~~and the~~ [National Credit Act or ASIC Act](#), or the AFS [licensee or credit](#) licensee obligations:

- (a) exercising our information gathering powers before considering regulatory action (see RG 234.161–RG 234.162);
- (b) seeking an injunction to stop the advertisement (see RG 234.163);
- (c) issuing a stop order on related disclosure documents (see RG 234.164–RG 234.166);
- (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 234.167);
- (e) seeking an order to redress loss or damage suffered by non-party consumers (see RG 234.168);
- (f) accepting an enforceable undertaking (see RG 234.169);
- (g) applying for punitive orders requiring the publication of corrections or adverse publicity about the offending promoter (see RG 234.170–RG 234.172);
- (h) issuing an infringement notice (see RG 234.173);
- (i) issuing a public warning notice (see RG 234.174);
- (j) seeking a civil penalty (see RG 234.175–RG 234.176);
- (k) applying for a community service order or probation order (see RG 234.177–RG 234.178);
- (l) seeking criminal charges (see RG 234.179–RG 234.180);
- (m) suspending or cancelling a promoter’s AFS licence or [credit licence](#) or varying its [licence](#) conditions (see RG 234.182–RG 234.183); and
- (n) making a banning order (see RG 234.184–RG 234.186).

~~RG 234.136~~[RG 234.159](#) The type of regulatory response will depend on the particular provision that has been breached and the seriousness of the contravention and its consequences.

Note: Penalties can be high. For example, see *Australian Competition and Consumer Commission v Singtel Optus Pty Ltd (No 4)* [2011] FCA 761.

[RG 234.160](#) Our policy on how we undertake investigations and enforcement activity is set out in the following publications:

- (a) [Information Sheet 151 ASIC’s approach to enforcement \(INFO 151\)](#). This discusses how we approach enforcement and why we respond to different breaches of the law in different ways.
- (b) [Information Sheet 152 Public comment \(INFO 152\)](#) explains when we may comment publicly on investigations and enforcement actions.
- (c) [Regulatory Guide 100 Enforceable undertakings \(RG 100\)](#) outlines what an enforceable undertaking is and when we will consider accepting one.

Gathering information

[RG 234.137](#)[RG 234.161](#) Under the ASIC Act, ASIC can compulsorily obtain information about dealings in financial products ([including credit facilities](#)) and the provision of financial services: Pt 3, ASIC Act. [ASIC also has information gathering powers under Ch 6 of the National Credit Act.](#)

[RG 234.138](#)[RG 234.162](#) 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 234.139](#)[RG 234.163](#) 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 234.140](#)[RG 234.164](#) 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 234.141](#)[RG 234.165](#) 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 234.142](#)[RG 234.166](#) 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 234.143](#)[RG 234.167](#) 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.

[RG 234.144](#)[RG 234.168](#) We can also seek an order for redress in situations where a class of consumers has been affected by the contravening conduct. The court may not award damages but could make a variety of other orders to redress, prevent or reduce the loss or damaged suffered, or likely to be suffered, by

non-party consumers, such as declaring a contract void, or ordering a refund of money or return of property: s12GNB, ASIC Act.

Enforceable undertakings, publishing corrections and adverse publicity

[RG 234.145](#)[RG 234.169](#) 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 financial product was offered to avoid any detriment to consumers who relied on the misleading advertising.

[RG 234.146](#)[RG 234.170](#) 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 234.147](#)[RG 234.171](#) 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~~[its](#) own expense, an advertisement publicising the fact that ~~they have~~[it has](#) breached the law, along with details of any remedial action ~~they have~~[it has](#) been required to undertake: s12GLB, ASIC Act.

[RG 234.148](#)[RG 234.172](#) 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 \(RG 47\)](#)[INFO 152](#).

Issuing an infringement notice

[RG 234.149](#)[RG 234.173](#) 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 234.150~~ [RG 234.174](#) 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.

Civil penalties

~~RG 234.151~~ [RG 234.175](#) We may seek a civil pecuniary penalty or a disqualification order for a contravention of the consumer protection provisions relating to unfair practices in the ASIC Act (except misleading or deceptive conduct: s12DA, ASIC Act). In determining the appropriate pecuniary penalty, the court must have regard to all relevant matters, including:

- (a) the nature and extent of the act or omission and any loss or damage suffered;
- (b) the circumstances; and
- (c) past misconduct: s12GBA, ASIC Act.

~~RG 234.152~~ [RG 234.176](#) A disqualification order may be ordered for a period the court considers appropriate if certain thresholds are proved to the court's satisfaction: s12GLD, ASIC Act.

Community service or probation orders

~~RG 234.153~~ [RG 234.177](#) 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 234.154~~ [RG 234.178](#) 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 234.155~~RG 234.179 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 234.156~~RG 234.180 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.

~~RG 234.181~~ Similar provisions apply under the National Credit Code in relation to potential criminal action where a promoter makes a false or misleading representation: s154, National Credit Code. If found guilty, a promoter can face a fine of 50 penalty units.

AFS ~~l~~licence disqualification or additional conditions

~~RG 234.157~~RG 234.182 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 AFS licence or imposing additional licence conditions: s915C(1) and 914A(1).

Note 1: For more information on our administrative powers, see Regulatory Guide 98 *Licensing: Administrative action against financial services providers* (RG 98).

Note 2: The Future of Financial Advice reforms propose allowing ASIC to cancel or suspend a licence if we have reason to believe that the licensee is likely to contravene its obligations.

~~RG 234.183~~ Similarly, if we have reason to believe that a credit licensee has contravened, or is likely to contravene, its conduct obligations, we may suspend or cancel the credit licence, or impose or vary the licence conditions: s45 and 55, National Credit Act.

Note: For more information on our administrative powers, see Regulatory Guide 218 *Licensing: Administrative action against persons engaging in credit activities* (RG 218).

Making a banning order

~~RG 234.158~~RG 234.184 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 234.159~~ RG 234.185 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.

RG 234.186 Similarly, we may make a banning order against a person if they have contravened, or we have reason to believe they are likely to contravene, any credit law: s80, National Credit Act. A banning order is a written order that prohibits a person from engaging in any credit activities, or specified credit activities in specified circumstances or capacities: s81, National Credit Act.

Prohibited conduct

~~RG 234.160~~ RG 234.187 The Corporations Act ~~prohibits~~ and National Credit Code prohibit 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 234.161~~ RG 234.188 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 [Regulatory Guide 38 *The hawking provisions*](#) (RG 38).

Ch 6D and Pt 7.9 advertising restrictions

~~RG 234.162~~ RG 234.189 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 234.163~~ RG 234.190 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.

Canvassing of credit at home

RG 234.191 The National Credit Code prohibits a credit provider from visiting (personally or in the person of an employee or agent) a place of residence for the purpose of inducing a person who resides there to apply for or obtain credit, except by prior arrangement by the credit provider with a person who resides there: s156, National Credit Code.

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~~, [financial advice services](#), [credit products](#) and [credit](#) services to:

- understand their responsibilities when publishing advertisements; and
- refuse to publish, or cease publishing, an advertisement if we tell them the advertisement is the subject of regulatory action.

Publishers' responsibility

[RG 234.164](#)[RG 234.192](#) 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 234.165](#)[RG 234.193](#) This guide will help publishers minimise the legal and reputational risks that flow from the publication of advertising that contravenes provisions of the Corporations Act and ASIC Act. We believe that the guidance in Sections B and C assists publishers in understanding the type of conduct that is good practice.

[RG 234.166](#)[RG 234.194](#) 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 234.167](#)[RG 234.195](#) 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~~[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 234.168~~[RG 234.196](#) Sponsored content and paid commentary fall within the scope of advertisements covered by our good practice guidance: see RG 234.128–RG 234.130. Where a publication includes sponsored content, we will look closely to make sure that the content is accurate and balanced.

~~RG 234.169~~[RG 234.197](#) Sponsored content is where ~~features~~[feature articles](#) are written about ~~financial~~ products (or a class of ~~financial~~ products) or ~~financial advice~~ services in exchange for advertising revenue but appear as editorial or program content, regardless of the medium.

Aggregators and comparison sites

~~RG 234.170~~[RG 234.198](#) 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 234.171~~[RG 234.199](#) 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 234.172~~[RG 234.200](#) A warning should be included if not all providers are included in the comparison.

~~RG 234.173~~[RG 234.201](#) Advertisements on aggregator sites should be clearly disclosed as such to prevent consumers being misled about the ranking of the product.

~~RG 234.174~~[RG 234.202](#) 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
ADI	Authorised deposit-taking institution—has the meaning given in s5 of the National Credit Act
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 Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Bill	Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011
CFD	Contract for difference
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
[CO 03/1063] (for example)	An ASIC class order (in this example numbered 03/1063)
consumer lease	A consumer lease to which the National Credit Code applies Note: See s169–171 of the National Credit Code.
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)
credit activity (or activities)	Has the meaning given in s6 of the National Credit Act
credit assistance	Has the meaning given in s8 of the National Credit Act
credit contract	Has the meaning given in s4 of the National Credit Code
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act

Term	Meaning in this document
<u>credit product</u>	<u>Includes credit contracts and consumer leases</u>
<u>credit products and credit services (collectively)</u>	<u>Refer broadly to both credit facilities under the ASIC Act and credit activities under the National Credit Act</u>
<u>credit service</u>	<u>Has the meaning given in s7 of the National Credit Act</u>
financial advice service	<p>A service that provides recommendations or statements of opinion that:</p> <ul style="list-style-type: none"> • are intended to influence a consumer making a decision about a financial product; or • could reasonably be regarded as being intended to have such an influence <p>Note: See s12BAB(5) of the ASIC Act for the exact definition.</p>
financial product	<p>Generally a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>
Financial Services Guide (FSG)	<p>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> <p>Note: See s761A of the Corporations Act for the exact definition.</p>
Future of Financial Advice reforms	<p>A package of proposed reforms to the regulation of financial advice issued by the Australian Government in response to the PJC reports <u>report by the Parliamentary Joint Committee on Corporations and Financial Services, <i>Inquiry into financial products and services in Australia</i>, November 2009:</u> http://futureofadvice.treasury.gov.au</p>
INFO 140 (for example)	An ASIC information sheet (in this example, numbered 140)
MoneySmart	ASIC's website for consumers and investors: www.moneysmart.gov.au
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
<u>National Credit Code</u>	<u>National Credit Code at Sch 1 of the National Credit Act</u>
<u>National Credit Regulations</u>	<u>National Consumer Credit Protection Regulations 2010</u>
Product Disclosure Statement (PDS)	<p>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</p> <p>Note: See s761A for the exact definition.</p>

Term	Meaning in this document
<u>reg 20(5) (for example)</u>	<u>A regulation of the National Credit Regulations (in this example numbered 20(5))</u>
RG 45 (for example)	An ASIC regulatory guide (in this example numbered 45)
s1012G <u>s769C</u> (for example)	A section of the Corporations Act (in this example numbered <u>4012G769C</u>), unless otherwise specified.

Related information

Headnotes

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

[Class orders](#)

[\[CO 03/1063\] Licensing relief for financial counselling agencies](#)

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 100 Enforceable undertakings](#)

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 205 Credit licensing: General conduct obligations](#)

[RG 209 Credit licensing: Responsible lending conduct](#)

[RG 218 Licensing: Administrative action against persons engaging in credit activities](#)

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

RG 228 *Prospectuses: Effective disclosure for retail investors*

RG 231 *Infrastructure entities: Improving disclosure for retail investors*

RG 232 *Agribusiness managed investment schemes: 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

[Consumer Credit and Corporations Legislation Amendment \(Enhancements\) Bill 2011](#)

Corporations Act, Ch 6D, [Pt 7.9](#), 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

[Corporations Amendment \(Future of Financial Advice\) Bill 2011;](#)
[Corporations Amendment \(Further Future of Financial Advice Measures\) Bill 2011](#)

National Credit Act, [Chs 3 and 6, Sch 1, s6–8, 33, 35, 45, 47\(1\)\(d\), 52, 55, 80–81, 167, 177–179, 182;](#) National Credit Code, [s4, 150, 154, 160, 163–164, 169–171;](#) National Credit Regulations, [regs 13, 20\(5\), 99](#)

[National Consumer Credit Protection Amendment \(Home Loans and Credit Cards\) Act 2011](#)

Cases

Australian Competition and Consumer Commission v Singtel Optus Pty Ltd (No 4) [2011] FCA 761

Australian Competition and Consumer Commission v TPG Internet Pty Ltd [2011] FCA 1254

Consultation papers and reports

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

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

[CP 174 Hedge funds: Improving disclosure—Further consultation](#)

[CP 178 Advertising credit products and credit services: Additional 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*

[INFO 151 ASIC's approach to enforcement](#)

[INFO 152 Public comment](#)

Other information

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