Submission to Australian Securities and Investments Commission
Re Consultation Paper 178
Advertising credit products and credit services: Additional good practice guidance
Monday 6th August, 2012

General Comments

The National Financial Services Federation (NFSF) is pleased to provide feedback on the proposed additional good practice guidance, Consultation Paper 178, for Advertising credit products and credit services.

The NFSF's comments will be limited in scope to only those issues and areas which impact upon our members in the industry providing small amount credit contracts (SACCs) and medium amount credit contracts (MACCs). Parts of Consultation Paper 178 refer to terms such as micro lender, payday lending, and micro loans. However, these terms are not defined in the NCCP Act (2009). Therefore, for the purpose of our reply, NFSF will refer to SACCs and MACCs when discussing credit products in the industry.

Proposal	Feedback Questions	NFSF Reply to Questions
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).	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	B1Q1 **YES**: In general, the NFSF supports the proposals for additional good practice guidance for credit products and credit services in so far as they affect NFSF members. Having more guidance and more specific examples will serve to clarify issues and situations where members may have been unsure as to specific requirements for good practice. B1Q2 **YES**: There are other areas where NFSF members would benefit from having more specific areas for good practice guidance. These areas are discussed in more detail in the answers to follow but, in general, these areas relate to: credit products which are not based on interest but are based on fixed fees or fees and charges; and continuing credit products. Furthermore, NFSF believes that some guidance would be beneficial in the situations where a lender may make direct contact with potential customers as a way of advertising their products through the use of phone calls, emails or text messages or even a call to a person's residence. A warning as to what level of contact constitutes harassment would be helpful. B1Q3 **YES**: The proposed additional examples for credit

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	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.	products and credit services are helpful but other more specific examples may also benefit NFSF members in good practice guidance. These more specific examples are discussed in other answers but, in general, these examples relate to: credit products which are not based on interest but are based on fixed fees or fees and charges; and continuing credit products.
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.	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	B2Q1 **YES**: The proposed changes to the good practice guidance in RG 234 appear to satisfactorily address key issues for advertising the features of particular credit products or credit services. B2Q2 **YES**: Some further modification may be beneficial. Some lenders in the Industry may be tempted to advertise features of their loans as being 'instant', 'no credit checks', or similar wording but the applicants will be rigorously vetted before allocation of a loan. Such advertisements may be misleading if the reality is that loans are only given subject to the applicant satisfying more restrictive customer profile criteria than implied in the advertisement. This means that the target audience of such an advertisement may either be precluded from the benefits of those loan features or possibly charged a higher rate. Also some difficulties in portraying a 'balanced message' may be inherent in the type of advertisement chosen. For example, banner ads and website content may be unable to contain more information (e.g., comparison interest rate and warning) without cluttering the advertisement to the point of being unreadable and therefore confusing. B2Q3 **YES**: The proposed examples are helpful but could benefit by the addition of a further example which would complement Example 7 (dealer finance not

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	provide us with appropriate examples.	available on all purchases). A further example may be beneficial for both consumer protection and clarity of issue if an example is included to cover SACCs and MACCs which are not related to motor vehicle purchase. Also, advertising may be targeted by declaring 'pensioners welcome' or credit impaired welcome' when the reality is that applicants may be very rigorously vetted so that very few, if any, of this targeted audience is successful in receiving a loan. A complementary example for Example 10 (Bait advertising) would be useful to address this issue as well. A further example could give guidance if a lender advertises that interest rates will be 0% and then in fine print or a warning declares that the interest rate will be something different in certain circumstances.
	B2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details	B2Q4 **NO**: There appears to be no particular problem that could result from following the good practice guidance especially if complementary examples as discussed in B2Q4 are included. However, monitoring website advertising may be problematic as qualifying criteria for successful loan applicants may be on separate pages to where the original bait advertising statements are made.
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.	B3Q1 Does our proposed guidance address the key issues for advertising interest rates? If not, what additional issues should our guidance address?	B3Q1 Proposal B3 presents a mixed message as to what it is intended to achieve. The introduction to Proposal B3 talks about fees and costs but the proposed additional guidance talks about interest rates. NFSF members may structure their business model (or shortly be obliged to structure their business model through amendments to NCCP Act) to only work with fees and charges and not interest rates. The guidance and examples under the fees and costs heading (RG234.54 to RG234.58) are not sufficiently clear for a lender in the Industry using only fees and charges. For

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		example, will it be compulsory for such a lender to advertise its fees and charges or only in the situation where repayments are stated in the advertisement?
	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.	B3Q2 **YES**: It appears that insufficient guidance and examples exist for the situation where a SACC or MACC lender promotes credit products that operate through fees and charges only rather than interest rates. Furthermore, Example 29 needs more clarity. As it stands, it could be argued that Example 29 only relates to 'a micro lender' who advertises 'low or 0% interest' which 'suggests a low overall cost' when the reality is that '*significant* fees or other charges' will be incurred, i.e., this becomes problematic as to the definition of 'significant'. However, a more direct approach could be worded to say "if you charge a set fee rather than interest then you should not advertise that it's a no interest loan".
	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.	B3Q3 **NO**: The proposed examples do not sufficiently cover the credit products likely to be provided as a SACC or MACC. These loans are possibly provided on a fees and charges base only. Example 29 comes closest to pertaining to NFSF members. However, an example is needed to give more clarity. For example, if a lender only charges 'fees and charges' and does not state any interest rate or repayment amount, it appears (from application of S150 National Credit Code) that those fees and charges do not need to be stated in the advertisement. But what would be the situation if the lender chose to advertise fees and charges? Are there any particular rules, e.g., will possible default fees have to be stated and will this need to be specific or by reference through (say) an asterisk or similar to direct the audience to that information?

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	B3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.	B3Q4 **YES**: Unless an example is given that provides more clarity to a lender who charges only 'fees and charges' and there is no interest attached to the product, it may be difficult for a such a lender to work through all of the examples and S150 of the National Credit Code to determine acceptable treatment of advertising their credit product.
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.	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.	B4Q1 The proposed guidance may address the key issues for advertising <u>interest</u> comparison rates but it does not address specifically the issue of advertising credit products which earn revenue from <u>fees and charges only</u> and not interest. If a lender with such a product chooses to advertise such fees and charges will they be obliged to also advertise a comparison interest rate and will they be obliged to advertise default fees as well and if so, what is an acceptable manner? Furthermore, the true cost of a SACC or MACC product is not reflected in any annualised percentage rate. Therefore, trying to set up a comparison between a credit product based on only fees and charges with a credit product which is based on interest will not give a logical comparison especially as the term of the loan repayment time increases, e.g., a loan for $300 for 5 weeks is not comparable (as to true cost) to a loan for $1,000 for 52 weeks. B4Q2 **YES**: The guidance would provide greater clarity if credit products based on only fees and charges are discussed specifically and examples provided. Also, NFSF is concerned about the apparent need for an interest rate and comparison rate to be accompanied by a warning (RG 234.65) and that this is interpreted to mean that it should be on the same page. The concern is that this 'same page' requirement would make banner ads and websites almost unworkable. The quality of

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		information would be severely degraded in these situations to the point of not being able to convey meaningful and useful information to consumers. A more acceptable and workable requirement would be for the warning to be shown on a separate page as long as there is a clear click-through link between the warning and the comparison rate such as through a reference or asterisk which would be placed as close to the comparison rate as possible. The following are some suggested references: 'Warning about comparison rates' 'More important information' 'Important information about interest rates'
	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.	B4Q3 **YES**: The proposed examples appear to be helpful in providing good practice guidance and examples for advertising <u>interest</u> comparison rates. However, the guidance could be enhanced with discussion on advertising of credit products based on only <u>fees and charges</u>.
	B4Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.	B4Q4 **YES**: The apparent need to show a warning about the comparison interest rate on the same page as the comparison rate would pose significant problems in the use of banner ads and on websites. Forcing the warning on the same page as the comparison rate would make the information very difficult for consumers to read and understand. NFSF proposes that the warning would be adequately, and more beneficially, provided to consumers if, beside the comparison rate, a click-through reference link were provided to the warning. See suggestions for these reference links in B4Q2. Also, it appears that amendments to the NCCP Act (2009) may compel lenders in the SACC and MACC industry to provide loan applicants with, or provide

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		access to, information about availability of low or no-interest loans (LILS and NILS). NFSF is concerned that dissemination of this information through its members may create a 'misleading impression' (similar to the discussion in RG 234.74) in the minds of applicants that they will be successful in gaining a loan through LILS and NILS when the reality is that very few applicants, or the purpose for the loan, are eligible under these schemes. (Relevance RG23474)
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.	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.	B5Q1 **NO**: NFSF is concerned that, with its members being compelled to bring availability of loan schemes described as LILS or NILS to the attention of applicants, that applicants may view this service as a type of advertisement by the member. Once directed to the information on these schemes, the applicant may also view the information provided by the distributors of information and credit products under the LILS and NILS schemes as a type of advertisement for those credit products. NFSF is concerned that problems will arise as the terms and conditions of such loan schemes are restrictive and prescriptive. With reference to RG 234.87 where 'some terms and phrases have such a strong connotation for consumers' these particular applicants may view the information about these schemes as a guarantee that they will be given a loan under those schemes. This will arise as the information will be found on the Government's MoneySmart website and websites of financial counsellors and consumer advocates all of which are seen to have been developed for the consumer's benefit and protection. B5Q2 **YES**: Lenders in the SACC and MACC industry would benefit from more clarity around the use of terms such as fixed-fee, charges, default fees, one low fee, etc and how these costs may differ from costs based on interest rates.

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	B5Q3 Would examples be helpful in providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.	B5Q23 **YES**: Examples are always helpful to better illustrate the rationale behind good practice guidance. A further example similar to the Example 41 for superannuation funds would be helpful in determining how to deal with credit products that are based only on fees and charges and no interest.
	B5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.	B5Q4 **YES**: Promulgation of information about LILS and NILS schemes may create false expectations in the minds of certain applicants that they will be entitled to apply for, and be successful in their application for, such loans. NFSF has found from past experience that such loan schemes, although put together with the best intentions of helping financially vulnerable people, are so restrictive and prescriptive that very few applicants are successful for such loans.
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.	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?	B6Q1 **YES**: However, NFSF believes that more, and clearer, information could be given in the guidance as to inappropriate use of terminology to a target audience where a credit product is unsuitable for that target audience. For example, RG 234.103 gives the words “no credit checks required” as a situation where suitability of a credit product may be stated directly by the advertiser. It appears to be that this statement is intended to be a situation where the terminology is inappropriate because the promoter has not ‘actually assessed the suitability of the product for the particular consumers targeted by the advertisement’ (RG 234.102). However, the first sentence in RG234.103 can be read in a positive sense in that it appears to give a situation which is an acceptable way to state suitability. This first sentence should be re-written to provide more clarity that use of terminology such as ‘no credit check required’ is an inappropriate use of

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		terminology which implies suitability. More examples of inappropriate terminology should also be given, such as, 'pre-approved', 'guaranteed', 'instant', pensioners welcome', 'credit impaired welcome', and 'no application denied'.
	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.	B6Q2 **YES**: The guidance would benefit NFSF members by giving more guidance and examples particularly targeted to SACC and MACC lenders. Advertising such products through websites could be particularly problematic for NFSF lenders as it may be easy to create an impression on the home page or landing page of lenders' websites that any Australian over the age of 18 is eligible for loans from that lender only to find that, as the prospective borrower drills down through the website page layers, more and more qualifying criteria are revealed. In this manner, it may also be possible to gloss over Responsible Lending Obligations under the NCCP Act. The NFSF is also concerned that in the circumstances where lenders are compelled to distribute information about the availability of such schemes as LILS and NILS, the prospective borrowers so directed may form the opinion that those LILS and NILS loans are being put forward as suitable for them. In the experience of NFSF members and figures provided by some LILS and NILS schemes, very few applicants are successful in getting such loans. Therefore, dissemination of this information may provide a false impression that loans through such schemes are suitable for the applicants directed towards those schemes.
	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.	B6Q3 **YES**: The proposed examples appear to be helpful in providing further good practice guidance. However, NFSF is of the opinion that better wording and/or further examples could be included to provide more clarity to NFSF members in the SACC and MACC

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	B6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.	industry. B6Q4 **YES**: NFSF is of the opinion that (a) the first sentence in RG234.103 can be read in an unintended positive sense in that it appears to give a situation which is an acceptable way to state suitability; and (b) more guidance and examples particularly targeted to SACC and MACC lenders should be given to provide clarity to its members.
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.	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.	B7Q1 **NO**: NFSF has identified another possible issue regarding credit assistance in the SACC and MACC industry. It is proposed that shortly, credit assistants and credit providers will be compelled to provide information to prospective borrowers regarding the availability of LILS and NILS loan schemes. NFSF is concerned that the act of providing this information or access to this information may indicate to prospective borrowers that they will automatically be eligible for such loans. This would create unrealistic expectations in the minds of prospective borrowers that NILS and LILs are a real alternative option. From past experience, NFSF knows that such loans are restrictive and prescriptive and very few applicants are successful. NFSF would welcome an explanation in the guidance to the effect that such information is provided on an educative basis only. B7Q2 **YES**: NFSF is concerned that a service which credit assistants (and credit providers) will be compelled to give regarding information about LILS and NILS schemes may be misinterpreted by prospective borrowers that they will automatically be eligible for a loan under those schemes when those schemes are very restrictive and prescriptive in their nature. Also, further clarity would be helpful in a situation when a

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		credit assistance provider advertises that they have loans when in fact they are not operating as the lender.
	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.	B7Q3 **YES**: The proposed examples appear to be helpful but could be supplemented by addition of guidance concerning LILS and NILS information dissemination as discussed in B7Q1 and B7Q2. And a further example could be added about the treatment of a situation where a credit assistance provider advertises that they have loans when they are not operating as the lender.
	B7Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please give details.	B7Q4 **NO**: There does not appear to be any practical difficulties that would result from following the good practice guidance.