



Summary of feedback to CS 37 and ASIC's response

In ASIC's consultation *Proposed update to ASIC's guidance on advertising financial products and services* ([CS 37](#)), we sought feedback on an updated draft Regulatory Guide 234 *Advertising financial products and services (including credit)* (draft RG 234).

We received 17 non-confidential submissions. We have summarised key feedback on draft RG 234 and our responses, including how we have addressed the feedback in the final Regulatory Guide 234 *Advertising financial products and services (including credit)* ([RG 234](#)) where relevant. This document is not intended to be a comprehensive summary of all feedback or all changes to the guidance.

Note: Non-confidential submissions are available on the [CS 37](#) landing page.

Section A: Overview

Feedback	ASIC's response	Reference in RG 234
Some respondents requested that guidance explicitly cover lead generation in superannuation advertising, with reference made to high-profile cases, such as the collapse of the Shield Master Fund and First Guardian Master Fund.	<p>We have updated our guidance to cover intermediaries, including lead generators.</p> <p>We are currently undertaking significant work in high-risk superannuation switching. This includes a review of licensees that use lead generation services and various investigations and court action in relation to the collapse of the Shield Master Fund and First Guardian Master Fund. The Australian Government is also consulting on various proposals on managed investment schemes, superannuation switching and the use of lead generation services.</p> <p>We are not proposing to include comprehensive guidance in RG 234 to cover these topics while the above work is underway. We will consider whether further updates to RG 234 may be needed in the future.</p>	RG 234.3
Some respondents sought further guidance on the use of artificial intelligence (AI) and AI marketing tools in advertising.	<p>We have updated our guidance to include:</p> <ul style="list-style-type: none">• clarification that the law and our guidance also apply to AI-generated advertising; and• discussion about disclosing the features, benefits and risks or limitations of using customer tools and tool capability, including AI-enabled tools	RG 234.5, RG 234.153, RG 234.200

Feedback	ASIC's response	Reference in RG 234
Some respondents queried what transition period would be applicable following the release of the updated RG 234.	There are no new policy positions or changes to advertising laws in the updated guidance. Therefore, there is no applicable transition period following the release of the updated RG 234.	Not applicable

Section B: When advertising may be misleading

Feedback	ASIC's response	Reference in RG 234
A respondent requested that we provide more recent examples in the 'warnings, disclaimers, qualifications, and fine print' section of RG 234, including on greenwashing.	We have added Example 12, which sets out ASIC's action against misleading greenwashing claims.	RG 234.25
A respondent requested that we distinguish between warnings required by law and general disclaimers.	We have expanded on our guidance to distinguish between warnings required by law and general disclaimers on headline claims.	RG 234.41
A respondent requested further guidance on where fees are advertised by a third party (such as a mortgage broker advertising a lender's fees) and may not have control of how the fees are described.	We have updated our guidance on how intermediaries should reflect features, fees and costs of third-party products and services in their advertising.	RG 234.42
A respondent requested that we revise the 'fees and costs' section by stating that headline fees should also include investment, administration and an estimate of transaction fees.	We have added examples of fees that should be included where they are referred to in an advertisement.	RG 234.44
Some respondents requested that we rearrange and consolidate some of the content under the headings 'Impact of fees and costs on advertised returns', 'Non-actual past performance figures' and 'calculation of past performance'.	We have moved: <ul style="list-style-type: none"> • RG 234.47 in draft RG 234 to sit before Example 35 and consolidated RG 234.45 in draft RG 234 to RG 234.47(e); • RG 234.111 in draft RG 234 to directly follow RG 234.115 (to now be RG 234.116); and • Example 46 in the draft RG 234 is now numbered Example 47 and sits under RG 234.119. 	RG 234.47, RG 234.116, RG 234.119

Feedback	ASIC's response	Reference in RG 234
A respondent sought clarification of how Example 24 in draft RG 234 (now Example 25 in RG 234) about qualification on a different webpage to the advertisement operates alongside the guidance on comparison rate warnings being able to be placed 'one click away' from an online banner advertisement.	The guidance at RG 234.61 on comparison rate warnings is specific to a particular mandatory warning required for comparison rates. The 'one click away' approach as discussed in RG 234.62 is not intended to be applied across all disclosures, warnings and qualifications for advertising. As discussed in Example 25 and at RG 234.34–234.36, warnings, disclaimers and qualifications should have sufficient prominence in the advertisement to balance any headline claims. Merely linking a consumer to another webpage will not be sufficient to correct a misleading or deceptive headline claim.	Not applicable
Several respondents sought clarification on whether it is permissible in advertising financial products that have existed for less than the standard performance period of five years to make comparisons against other products for an equivalent period.	We have added a clarification that when looking at performance periods of less than five years, the performance period used in the comparison should be the same or similar to that of the advertised product, subject to the other principles for comparisons. Additional performance or contextual factors may be needed to avoid the advertisement being misleading and when comparing the returns of similar products.	RG 234.95
A respondent requested guidance from Regulatory Guide 53 <i>The use of past performance in promotional material</i> (RG 53) on 'out-of-date' figures be added into RG 234.	We have updated our guidance to include content on out-of-date figures from RG 53.	RG 234.100– RG 234.104
Some respondents sought further guidance on the use of endorsements, including where the endorsement may have ceased and use of branding or logos.	We have updated our guidance on endorsements, including the use of branding and logos.	RG 234.128
A respondent requested further guidance drawn from case law on characteristics of 'ordinary and reasonable persons'.	We have added additional commentary on the characteristics of 'ordinary and reasonable persons' when assessing the impact of advertisements.	RG 234.133
A respondent requested that ASIC provide clarification on the use of the term 'mortgage broker'.	We have added a reference to the definition of mortgage broker in s15B of the <i>National Consumer Credit Protection Act 2009</i> (National Credit Act).	RG 234.155

Feedback	ASIC's response	Reference in RG 234
<p>A respondent requested ASIC update Example 63 in draft RG 234 (now Example 64 in RG 234) on limited range of products to reflect that, in practice, mortgage brokers consider a range of products as per the best interest duty, which is outlined in Regulatory Guide 273 <i>Mortgage brokers: Best interests duty</i> (RG 273)</p>	<p>Example 64 in RG 234 is not intended to represent good practice or standard practice of mortgage brokers, rather it is an example to illustrate non-compliance of the law and our guidance. We have made minor updates to this example to clarify what may be misleading, and we have also added a note to the statutory definition 'mortgage broker'.</p>	<p>Not applicable</p>

Section C: Media-specific guidance

Feedback	ASIC's response	Reference in RG 234
<p>Many respondents requested further guidance on the use of online 'click through' (or QR codes) for short-form advertisements, such as banners and tiles, and time sensitive advertisements, such as short video clips, particularly in context where there is limited space or time to include additional disclosures and information.</p>	<p>We have updated our guidance to include further information about the use of click through links and QR codes in different advertising mediums, including where there are physical limitations.</p>	<p>RG 234.157, RG 234.172– RG 234.174</p>
<p>Some respondents requested clarification on whether the following are covered by our guidance:</p> <ul style="list-style-type: none"> • streamed and digital audio platforms; • search engine advertising; and • in-app advertising (e.g. banking apps). 	<p>We have updated our guidance to also refer to these services.</p>	<p>RG 234.156, RG 234.170– RG 234.172</p>
<p>Some respondents requested further guidance on the required disclosures for billboards and outdoor advertising.</p>	<p>We have provided further guidance on considerations for outdoor advertising in Section B of RG 234.</p>	<p>RG 234.180– RG 234.182</p>
<p>Many respondents requested further good practice examples of 'what good looks like' in advertising, including and what types of disclaimers and advertising (particularly where there is limited space) would be deemed acceptable in different advertising mediums.</p>	<p>We have not included additional examples in the guidance based on 'good practice' or advertisements that are acceptable, as what is considered 'good practice' and 'acceptable' will depend on the circumstances of each advertisement and the underlying product or service being advertised.</p>	<p>Not applicable</p>

Appendices

Feedback	ASIC's response	Reference in RG 234
A respondent requested that the table containing the provisions on misleading and deceptive conduct in the <i>Corporations Act 2001</i> , National Credit Act and <i>Australian Securities and Investments Commission Act 2001</i> be reinstated in the guidance.	We have updated RG 234 to reinstate this table.	Table 3 in Appendix 1