

Submission to ASIC Consultation Paper 37

Proposed update to RG 234: Advertising financial products and services

From: WT Financial Group Limited (ASX: WTL)

To: Australian Securities and Investments Commission

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About WT Financial Group

WT Financial Group Limited (ASX: WTL) is an Australian financial services company operating four financial advice licensees: Wealth Today Pty Ltd, Sentry Advice Pty Ltd, Synchron Advice Pty Ltd, and Millennium3 Financial Services Pty Ltd. Together, these licensees support approximately 400 privately-owned financial advice practices operating as authorised representatives across Australia.

Our authorised representatives provide wealth management, retirement planning, and personal risk insurance services to retail clients. We also operate a business-to-consumer financial services division and publish over 100 financial literacy handbooks for consumers.

As an AFS licensee supervising a large network of authorised representatives, we have a direct interest in ensuring that advertising guidance is clear, practical, and capable of consistent application across the financial advice profession.

Executive Summary

WT Financial Group welcomes the opportunity to respond to Consultation Paper 37 (CS 37) regarding the proposed update to Regulatory Guide 234.

We support ASIC's objectives to:

- Update RG 234 with guidance reflecting enforcement actions since 2012
- Consolidate RG 53 (past performance) into RG 234 for ease of reference
- Simplify and streamline existing guidance

We support the majority of the proposed changes, which represent sensible updates to reflect current law, recent case authority, and evolving advertising practices including social media.

We raise concerns about the "actual audience" test as articulated in the draft, which we consider creates regulatory uncertainty and may be impractical to apply, particularly in digital advertising environments.

We request clarification on several matters, including substantiation requirements for advice services and practical guidance on compliant social media use by licensed advisers.

Responses to Proposed Changes

1. Structural Changes (Section A)

Position: Support

We support the structural changes to RG 234, including the shortened title, removal of duplicative content, reorganisation of appendices, and simplified scope definitions. These are sensible administrative improvements that do not alter substantive compliance requirements.

We note that RG 234.3 confirms the guide applies to promoters including "a third party such as a financial adviser acting on behalf of a principal". This confirmation is helpful for financial advisers and their licensees.

2. Returns, Features, Benefits and Risks

Position: Support with comments

We support the updated guidance and new enforcement examples (Examples 5–7, 10–11) which illustrate ASIC's expectations regarding substantiation of claims and delivery of advertised benefits.

Comment: Substantiation for advice services

We request ASIC provide guidance on what constitutes adequate substantiation for claims made about financial advice services, as distinct from financial products.

Product performance can be objectively measured and compared. However, outcomes from financial advice services are more difficult to quantify—they depend on individual client circumstances, goals, timeframes, and factors outside the adviser's control.

For example, if an advice practice advertises that it helps clients "achieve their retirement goals" or "build wealth", what evidence is required to substantiate such claims? We request ASIC clarify:

- Whether qualitative claims about advice services require the same level of substantiation as quantitative claims about product performance
- What records advisers should maintain to support claims about service outcomes
- Whether client testimonials or case studies (appropriately anonymised and consented) may constitute substantiation

3. Warnings, Disclaimers, Qualifications and Fine Print

Position: Support

We support the amended Example 25 (disclaimers in a different language) and the updated guidance at RG 234.35–36. The principle that referring consumers to a PDS or other document will not correct a misleading headline claim is appropriately grounded in established case authority.

4. Fees and Costs

Position: Support

We support the guidance on fees and costs, including new Example 30 and the incorporation of Examples 34–35 from RG 53. The guidance at RG 234.48 regarding fees for financial advice services remains appropriate and aligns with the conflicted remuneration ban.

5. Past Performance and Forecasts (RG 53 Incorporation)

Position: Support with comments

We support the consolidation of RG 53 into RG 234. Having all advertising guidance in a single regulatory guide will improve accessibility and reduce the risk of inconsistent application.

Comment 1: Confirmation of no substantive change

We request ASIC confirm that existing marketing materials compliant with RG 53 will remain compliant under the consolidated RG 234, with no need to update materials beyond updating references to the guide itself.

This confirmation would provide assurance to licensees and advisers across the profession that the consolidation exercise does not inadvertently create new compliance obligations.

Comment 2: Transition guidance

We request ASIC provide guidance on the transition period for updating materials that currently reference RG 53, including whether a grace period will apply after RG 53 is withdrawn.

6. Target Audience and DDO

Position: Raise concerns

We acknowledge the reference to *ASIC v Latitude Finance Australia (No 2)* [2024] FCA 1205 and the cross-reference to RG 274 (DDO). However, we raise concerns about the articulation of the "actual audience" test at RG 234.125.

Concern 1: Regulatory uncertainty

The statement that "the actual audience must be taken into account" and that the actual audience "may have no starting assumptions about a product, or assumptions that are very different from those envisaged by a promoter" creates significant uncertainty for promoters.

It is unclear how a promoter is expected to assess or control who actually sees an advertisement, particularly in digital and social media environments where:

- Audience targeting tools are imprecise and platform algorithms extend reach beyond intended demographics
- Content can be shared, screenshotted, or redistributed beyond its original context
- Advertisements may be served to users based on behavioural data that does not correlate with financial literacy or product knowledge

We request ASIC provide practical guidance on how promoters should assess "actual audience" across different media channels and what steps demonstrate reasonable compliance with this expectation.

Concern 2: Impracticality for mass media

If promoters must assume their "actual audience" includes consumers with no financial literacy or knowledge, this effectively limits what products can legitimately be advertised via mass media channels.

We request ASIC clarify that promoters can rely on reasonable targeting measures—such as platform demographics, publication readership profiles, or content placement—rather than being required to assume the lowest common denominator in all circumstances.

Concern 3: Proportionality

The guidance as drafted appears to shift responsibility for consumer understanding entirely to the promoter, without acknowledging that consumers also bear some responsibility for making informed decisions.

We request ASIC adopt a more balanced approach that recognises:

- The role of consumers in seeking further information before acting on advertisements
- The distinction between creating a misleading impression (which is prohibited) and failing to anticipate every possible misunderstanding by every possible viewer (which is not a reasonable standard)
- The practical reality that some consumers will misunderstand even the clearest advertisement, and that this does not necessarily indicate a failing by the promoter

7. Finfluencers and Social Media (Section C)

Position: Support with comments

We support ASIC's focus on unlicensed individuals who promote financial products on social media without appropriate authorisation or disclosure. The enforcement example at Example 68 illustrates conduct that is clearly problematic—misleading representations about success prospects, false claims of expertise, and lifestyle imagery designed to lure consumers into high-risk products.

Comment 1: Distinguish licensed advisers from unlicensed influencers

We request ASIC clarify that the finfluencer guidance is primarily directed at unlicensed individuals, and that licensed financial advisers using social media for compliant marketing should not be conflated with problematic finfluencer behaviour.

Licensed financial advisers increasingly use social media to:

- Share educational content about financial concepts
- Promote their advice practices and service offerings
- Engage with existing and prospective clients

This activity is conducted under the supervision of AFS licensees and is subject to the same compliance standards as traditional advertising. It is qualitatively different from the conduct described in Example 68.

Comment 2: Positive guidance on compliant social media use

We request ASIC provide positive guidance on how licensed advisers can use social media compliantly, including practical examples of acceptable content. The current guidance focuses heavily on what is prohibited, with limited guidance on what "good" looks like in practice.

For example:

- Can an adviser share general educational content about superannuation without triggering personal advice obligations?
- Can an adviser share client success stories (with appropriate consent and disclaimers)?
- Can an adviser promote their practice by describing their service offering and areas of specialisation?

Comment 3: Character limits and balanced information

RG 234.166 notes that promoters should consider whether content limitations on social media platforms mean there is insufficient space to provide balanced information. We request ASIC provide practical guidance on how advisers can comply with balance requirements on platforms with:

- Character limits (e.g. X/Twitter's 280 characters)
- Short-form video constraints (e.g. TikTok, Instagram Reels)
- Story/ephemeral content formats

For instance, is it acceptable to provide a brief attention-grabbing message with a link to a longer-form resource that contains balanced information? If so, what minimum content must appear in the initial post?

8. Film and Video Disclaimers

Position: Support

We support the reference to *ASIC v Latitude Finance Australia (No 2)* [2024] FCA 1205 at RG 234.159. The principle that consumers may not pay attention to disclaimers that are "barely visible in real time" is a useful clarification of existing law.

9. Use of Certain Terms and Phrases

Position: Support

We support the addition of Example 47 (misleading claims about "free" services and unrealistic timeframes), the cross-reference to RG 175 regarding restricted language, and the explicit statement that ASIC's logo must not be reproduced without approval.

These are sensible clarifications that assist compliance.

Conclusion

WT Financial Group supports ASIC's update of RG 234 and the consolidation of RG 53. The majority of the proposed changes are sensible updates that reflect current law and enforcement experience.

We respectfully request ASIC:

1. Provide guidance on substantiation requirements for claims about financial advice services
2. Confirm no substantive compliance change from RG 53 consolidation and provide transition guidance
3. Reconsider the "actual audience" test to address uncertainty, impracticality, and proportionality concerns
4. Distinguish licensed advisers from unlicensed influencers and provide positive guidance on compliant social media use

We would welcome the opportunity to discuss any aspect of this submission with ASIC.

Contact

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This submission may be published on ASIC's website.