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Dear ASIC Regulatory & Research team,

We write to provide feedback on the proposed update to RG 234 (CS 37), from the perspective of a digital lead-generation business that lawfully produces consumer opt-ins to compare products and services across multiple B2C industry verticals.
- From a perspective and experience of being caught up in the **collapsed Shield Master Fund and First Guardian investment funds case.**

About EMBR Group Pty Ltd (our experience and role)

EMBR Group Pty Ltd has operated for over 11 years as a B2C digital marketing and lead-generation business in Australia. We have significant experience in compliant consumer opt-ins across regulated verticals, including superannuation performance comparison campaigns, using established consent, privacy, and advertising-integrity controls. Our role has always been to facilitate consumer-initiated requests for general information, comparison or assistance, not to recommend products or provide financial advice directly. We are not an AFSL holder, do not represent ourselves as one, and do not design campaigns to promote specific superannuation products or investment schemes.

Our experience in this sector (and what went wrong downstream)

Our advertising was product-neutral and consumer-initiated: we generated explicit opt-ins from people who were not engaged with their super and seeking to compare options. We are remunerated solely on the opt-in regardless of its outcome or investment choice. We did not promote or recommend specific funds or investment schemes. However, we have since learned that some advisers and call-centre operations used these neutral opt-ins as a gateway to steer consumers into unsuitable products, including (but not limited to) the Shield Master Fund and First Guardian funds, without our knowledge.

Importantly, our leads went to two different types of counterparties:

1. **Licensed advisers**—many of whom served consumers appropriately, and some of whom have since been subject to regulatory action. We have assisted ASIC with information when requested; and

2. **Call centres that represented themselves to EMBR and to consumers as licensed financial advisers**, but were later found not to be appropriately licensed or to be operating outside lawful advice boundaries. Those representations were material to our engagement decisions.

Lead generators do not have visibility of post-handoff sales scripts or advice conduct. In practice, this meant product-neutral comparison opt-ins could be mischaracterised downstream as consent to receive product recommendations, enabling evasion of anti-hawking/anti-spruiking protections. We share this candidly because it is exactly the regulatory gap RG 234 can help close.

We seek to help reform in any way possible – whether it's to prohibit legitimate opt-in marketing for financial services or define and regulate **the specific conversion incentives, consent-gaming methods, and handoff opacity** that turn neutral marketing into a spruiking pipeline.

Suggested additions to RG 234

1. **Comparison ads must remain product-neutral.**
   Include an example that "compare/check your super" advertising should not imply that a rollover, switch or product acquisition is likely suitable without personal advice, and if they do;
2. **Standardised lead-generator disclosures.**
   RG 234 should outline minimum prominence disclosures for intermediated comparison ads:
   (a) role clarity (not a fund/adviser) at an advertisement level (not fine print),
   (b) clear and explicit data pathway,
   (c) statement of neutrality, and
   (d) Explicit commercial relationship.
3. **True-consent standard.**
   Add guidance that consent must be affirmative, unbundled and prominent, and that bundled consent may be misleading.
4. **Handoff transparency.**
   Provide an example addressing brand/entity handoffs, requiring each party's role to be clearly identified so consumers do not infer endorsement or continuity that does not exist.
5. **Referral incentive red flags.**
   Note that outcome-based lead fees (e.g., per-rollover or per-product acquisition payments) raise heightened misleading-conduct risk and should be avoided or robustly disclosed or outlawed.
6. **Digital publishers/platforms.**
   Clarify that digital platforms/comparison sites that actively target or optimise financial advertising may bear publisher responsibilities under RG 234.

Other suggestions:

Prohibit "comparison" language unless you're AFSL licensed.
Possible Rule: Only AFSL or Authorised Rep License holders with a specific authorisation can run "compare/check/review" campaigns in super or investments.

Make lead gen lawful only under *direct adviser liability*
Adviser is strictly liable for the whole funnel
Rule: If an AFSL holder uses a lead generator, **every ad, landing page, consent flow, and script is deemed *their* advertising**, even if produced by a third party.

Mandatory pre-approval + registration of lead-gen partners – Bring the lead gen process into ASIC's vision.
Rule: AFSL / Authorised reps must:

- register each lead-gen provider with ASIC or internal RM,
- lodge sample ads/flows, and re-lodge on material change.

EMBR's Offer to assist ASIC

We have a unique perspective to help ASIC shape future changes to improve the landscape. We are willing to provide de-identified examples of compliant and non-compliant ad/consent flows, typical lead-gen contracts (fixed-fee marketing vs outcome-based incentives), and practical funnel maps showing where lawful comparison marketing can be gamed into hawking-by-proxy. We would also welcome the opportunity to brief ASIC on operational lead-generation mechanics to help refine enforceable guidance.

Thank you for considering these views and we humbly offer any assistance or insight we can if/when you need.

Kind regards,

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