

Feedback to FMA: Proposed guidance on advertising offers of financial products

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QUESTION	COMMENT
1	Agree ,with comments about excluding an adviser’s Statement of Advice.
2	Don’t agree as it is currently proposed.
3	No comments.
4	Agree with the intent.
5	Nothing to add.

Financial Advice New Zealand is a professional membership body for financial advisers in New Zealand. It represents around 1600 members.

Financial Advice New Zealand has no direct involvement with the advertising of financial products. However, one of our mandates under our Constitution is to work with financial service providers, and their industry bodies, to promote consumer focused products and services.

We also note the FMAs point that much of the guidance “may also applicable to the advertisement of financial services”, which makes these guidelines relevant for our members.

In general, we support the goals of providing clear guidance around fair dealing in relation to advertising of financial products.

We understand that these guidelines may reduce advertising of financial products compared to what we see today due to the detail now required. We recognise the positive role advertising can play in the financial services market and wouldn't want to see too much overall reduction. We have some particular concerns about possible unintended consequences of restricting short form advertising.

Quality advertising informs consumers of the options available to them and supports better consumer outcomes whereas misleading or deceptive advertising can lead to poor consumer outcomes. On balance, we hope any reduction in advertising is balanced by a focus on advertising that protects and better informs consumers.

We would like to see strong leadership from the FMA in ensuring that breaches of the guidelines are dealt with swiftly and the lessons learnt are available to all as precedents.

Consultation Questions

Question 1: General Scope

The proposed guidance is applicable to all advertising and promotion of offers of financial products, including advertising relating to offers subject to an exclusion in Schedule 1 of the Financial Markets Conduct Act 2013 (the FMC Act), and including all financial product types.

- Do you agree with the scope of the guidance? [Yes, for financial products.](#)

[We do not agree that the inclusion of financial services by way of a comment that “much of the information expressed in this guidance may also be applicable to the advertising of financial services” is appropriate.](#)

[We ask that when/if guidelines are developed for the advertising of financial services that we are given the appropriate opportunity to consult on what those particular guidelines are.](#)

- Do you think the guidelines need to differ for advertising of different types of financial product offers? [No.](#)
- Do you think the guidance adequately captures all relevant parties involved in advertising and promoting offers?

Statement of Advice – should be explicitly excluded

[We ask that a financial adviser's Statement of Advice is explicitly stated as excluded as an “advertisement of a financial product” for the avoidance of doubt.](#)

[We posit that the Statement of Advice is not an advertisement as the advice given is independent of the issuer/offerer and therefore falls outside the definition of Restricted Communication as defined by s464 of the FMC Act.](#)

At present, a reader of the guidance document could believe the Statement of Advice was included as arguably it falls within the Restricted Communication definition given as footnote 1 on page 5,

“For the purposes of the FMC Act, a “restricted communication” means a form of communication that directly or indirectly relates to an offer (or intended offer) of financial products, is reasonably likely to induce persons to apply for financial products, or is reasonably likely to induce persons to make further contributions, investments, or deposits. In this guidance a reference to “advertising” or an “advertisement” is a reference to a “restricted communication”. See section 464 of the FMC Act.

What this footnote excludes is the requirement under s464 of the FMC Act that in addition to the above, Restricted Communication is;

authorised or instigated by, or on behalf of, the offeror, the issuer, the service provider, or an associated person of the offeror or issuer or service provider or that is prepared with the co-operation of, or by arrangement with, any of those persons

In our view, this full definition excludes an adviser’s Statement of Advice from the classification of Restricted Communication as the information and advice contained within it are independent from the issuer/offeree and not authorised or instigated by them.

While we do not disagree that a Statement of Advice should follow the general principles included in this guidance, ie not be misleading or deceptive, there is a key difference between an advertisement from an issuer to the public vs a Statement of Advice between an adviser and the public.

In the latter, the consumer has engaged the adviser to use their experience and professional judgement to advise them, and the adviser is already under many obligations through FSLAA to ensure their advice is appropriate.

Including the Statement of Advice in this guidance by not excluding it could lead to significant duplication of information which, in our opinion, would be detrimental to the consumer’s ability to understand the advice given.

Question2: Short Form Advertising.

We (FMA) are aware of current market practice where a user may “click through” a short-form advertisement (e.g. from a Google search, LinkedIn, Facebook, Instagram, Stuff.co.nz, etc.) to a second webpage (often maintained by the issuer) where information required by sections 90-92 of the FMC Act is located.

Our position is that sections 89-92 of the FMC Act apply to all advertising regardless of any length or content restrictions. If the provisions cannot be complied with, then a short-form advertisement must not be made.

Do you agree with this position? If not, can you please explain why?

We do not agree with the position how it is currently expressed, although we do support the idea that advertisements should not be able to rely on secondary click through pages to ensure content is not misleading or deceptive.

Social media, ads on news sites, search engines and other short form advertising mediums are a key component of how Kiwis receive information, and stopping all advertising of financial products in these mediums we see as detrimental to New Zealanders' overall financial wellbeing.

We believe the proposed blanket ban on short form advertising of financial products unacceptably reduces the ability of consumers to know where they can go to meet their financial needs and goals.

In our opinion, advertisers should be allowed to generically advertise their product, product categories or the fact they have an offer available, in short form advertising as long as no features, comparisons, returns or similar are stated.

The fact that a firm offers a particular type of financial product should be allowed, and encouraged, to be advertised, with click throughs to the product/offer web page where all required disclosures should be given. These generic ads play a significant role in informing the public about the availability of financial products, and in who they can contact for more information.

Generic advertisements of this type do not appear to be excluded from the full requirements under these guidelines. If the intention is that these generic ads fall outside the scope of these guidelines, we'd like to see that stated with some examples.

New Zealanders need to be more active in their involvement and management of KiwiSaver, develop an investment mentality and generally gain better financial literacy. Restricting advertising of financial products in the place that most New Zealanders now receive their information severely restricts where consumers can hear these key messages.

Google searches

Another unintended area which may be captured by this section of the guidance is SEO information on webpages. When a consumer does a google search, the difference between a paid google ad (a clear advertisement), and a google listing derived from a firm's SEO on a product page is minimal from the consumer's point of view.

Was it the FMAs intention that google search responses derived from website SEO referring to a financial products are captured by the guidelines and therefore not allowed as they are short-form advertising?

This could severely reduce a firm's ability to reach their market as in effect they would have to remove their website, or at least all product/offer pages, from Google search.

If non-paid google search results were not intended to be included in this guidance, then there seems a discrepancy whereby SEO generated search results are allowed, yet paid search results aren't.

Question3: Potential Gaps.

Are you aware of examples of poor conduct or need for guidance in the advertising of financial products that have not been addressed, or adequately addressed, in the proposed guidance, including specifically the advertising guidelines?

No.

Although we are aware of other types of investment advertising offers which fall outside of the “financial product” definition that we would ideally like to see covered by these guidelines such as property investment and syndication products. We understand, however, that the FMA has no jurisdiction in this area.

Question 4: Offers restricted to wholesale investors.

Do you agree that consumers of advertising for wholesale offers should be made aware immediately in the relevant advertisement that an offer is not available to retail investors? Do you agree with the suggested wording for inclusion?

We agree with the intent, but have concerns about the practicality.

We are concerned that an average consumer would not understand whether they are a retail or wholesale investor and at what point they might qualify to be a wholesale investor.

Question 5: Miscellaneous.

Are there any other aspects you wish to submit on? For example, are there any unintended consequences that may arise from the proposed guidance that we should be aware of?

Nothing additional to add.