

28 January 2026

Australian Securities and Investment Commission
Level 7, 120 Collins Street
Melbourne, 3000
Via email: rri.consultation@asic.gov.au

RE: FSC Submission to ASIC on revised RG234 Advertising financial products and services (including credit)

The FSC welcomes the opportunity to respond to ASIC's consultation on proposed updates to *RG234 Advertising financial products and services (including credit)*.

The FSC and our members support ASIC's commitment to enhancing the clarity of advertising standards. We support the objective of updating the guidance to reflect enforcement and regulatory action undertaken since RG234's publication in 2012. We also support simplifying the guidance and incorporating content from *RG53 The use of past performance in promotional material* so that ASIC's advertising guidance is in one place.

The proposed updates significantly raise the compliance bar for advertising financial products and advice services. In order to strengthen implementation and ensure consistent compliance, we have provided some additional recommendations for consideration. Some of these recommendations also relate to the interpretation of existing RG234 requirements.

Summary of recommendations

Scope and application

- Clarify effective compliance dates and any transitional arrangements.
- Expand definition of "promoter" to explicitly include lead generation and introduction services.

Benefits, risks and warnings

- Clarify required granularity of sustainability-related claims.
- Clarify required consistency between advertisements and disclosure documents.
- Provide additional guidance on the practical expectations for warnings or disclaimers to be "sufficiently prominent" (including the use of click-through links).
- Include examples addressing lead generation's role in the "overall impression" of an advertisement.

Fees and costs

- Strengthen wording on headline fee requirements.
- Provide additional guidance on use of certain phrases ("no additional cost").

Comparisons

- Provide guidance on managing changes to benchmarks.

Past performance and forecasts

- Provide guidance on the use of corporate statistics.
- Include timeframe expectations for "up to date" past performance data.

- Clarity that short-term performance restrictions do not apply to product updates.
- Specify standard comparable periods (of one and three years) when data is not available for previous five years.
- Specify where past performance expectations relate specifically to retail audiences.
- Include a forecast example.
- Permit use of non-actual performance figures that leverage certain modelling strategies.

Use of certain terms and phrases

- Clarify expectations on the permissible use of “technical language”.

Scope of financial advice

- Clarify required granularity of distinction between general and personal advice.

Internet advertising

- Clarify expectations on the use of social media by including additional examples.

Other

- Implement certain structural changes / edits for readability.

About the Financial Services Council

The FSC is a peak body which sets mandatory standards and develops policy for more than 100 member companies in one of Australia’s largest industry sectors, financial services. Our full members represent Australia’s retail and wholesale funds management businesses, superannuation funds, financial advice licensees and investment platforms.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia’s GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

Recommendations

Scope and application

Draft RG234 section	Recommendation
Overview of this guide (pg 5)	Clarify effective compliance dates and any transitional arrangements.
RG 234.3 <i>Our guidance is relevant to: (a) promoters of financial products, financial advice services, credit products and credit services. The promoter will sometimes be the product issuer or credit provider, but can also be a third party such as a financial adviser, credit service provider, distributor or agent; and (b) publishers of promotions about these products and services, such as television networks, newspapers,</i>	<p>This RG already applies to “any communication” whose purpose is to inform consumers about or promote financial products / services.</p> <p>In order to address recent misconduct, ASIC could expand the definition of “promoter” to explicitly include paid or incentivised lead generation, referral and introduction services. This would clarify that these activities are both a form of advertising <u>and</u> a functional part of the product distribution chain.</p>

radio stations, social media and digital platforms.	
Other guidance (pg 52)	Reference to RG53 should be removed given this guide will be withdrawn on issue of the updated RG234.

Benefits, risks and warnings

Draft RG234 section	Recommendation
Greenwashing	In order to resolve ambiguity on the level of required granularity for ESG exclusions or sustainability-related claims, ASIC should clarify that a summary statement is acceptable, rather than a full exclusion list, to the extent that it does not create a misleading impression.
RG 234.27 <i>When an advertisement draws attention to specific features of a product, those statements should be consistent with the product's features and the disclosures in any corresponding disclosure documents (e.g. a PDS, FSG or prospectus) or contracts.</i>	Clarify that the required consistency between statements and the PDS is alignment of key messages / information rather than identical wording. This approach allows for flexibility in communication style while ensuring that advertisements accurately reflect the product's features and disclosures.
Warnings, disclaimers, qualifications and fine print	Provide additional guidance on the practical expectations for warnings or disclaimers to be "sufficiently prominent", both in the context of physical advertisements and digital advertisements. These expectations should be flexible enough to realistically account for the variety of mediums used in advertising. While prescriptive requirements (e.g., around font size, placement or timing) should be avoided, ASIC could include wording specifying that warnings be easily accessible and clearly seen by the consumer with the level of prominence having regard to the level of risk.
RG234.41: <i>Some warnings or notices are required to be included in an advertisement under various provisions of the Corporations Act or other laws rather than because they qualify a headline claim. In these cases, the warning does not necessarily need to be as prominent as the headline claim.</i>	In some cases, the notices required under provisions of the Corporations Act are very lengthy. For example, an entity may be required to (i) refer to the issuer, (ii) explain where consumers might obtain the PDS and TMD, and (iii) advise consumers to consider the PDS in making an investment decision. It would be beneficial if ASIC were to provide additional guidance on the proximity of these warnings or notices to be included, particularly in the case of online banner ads (where space is constrained). We would recommend that ASIC permit the use of click-through links to this information. Permission for such click-through links is given in RG234.61 in relation to comparison rate warnings.

<p>Warnings, disclaimers, qualifications and fine print</p>	<p>Provide additional examples specifically addressing lead generation / referrals.</p> <p>These examples should emphasise that the entire funnel (advertisement → landing page → call → referral) is relevant when ASIC assesses potential misleading conduct based on the “overall impression” created by an advertisement.</p> <p>Including these examples would help to address recent misconduct that involved benign front-end messaging in advertisements (e.g., the promise of ‘free help’ or ‘matching services’ with no explicit product claims) that was followed up with aggressive downstream steering (often to inappropriate products).</p>
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Fees and costs

Draft RG234 section	Recommendation
<p>RG 234.42 <i>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. When a headline claim about a fee or cost is used in an advertisement, any exclusions or qualifications should be contained within the headline claim or be clearly and prominently noted within the advertisement.</i></p>	<p>Further strengthen this wording to ensure that providers present headline fees that are inclusive of investment, administration and an estimate of transaction fees.</p>
<p>RG234.47 <i>The effect that the fees and costs may have on returns for a financial product should be clearly stated in an advertisement. For example:</i></p> <ul style="list-style-type: none"> (a) <i>returns should be net of fees and costs to the greatest extent practicable;</i> (b) <i>where the fee level is variable, the maximum fee should be deducted from the possible returns advertised;</i> (c) <i>where it would be impractical to deduct some fees or costs, the existence of undeducted fees and costs should be prominently disclosed;</i> (d) <i>where practicable, the size of undeducted fees and costs should be disclosed;</i> (e) <i>where a product is offered with multiple fee options, any advertised returns should make clear which fee option they relate to and not only show the option that shows the highest net returns; and where a scenario is given for a specific investment period, entry and exit fees should be deducted.</i> 	<p>The content under the heading ‘<i>Impact of fees and costs on advertised returns</i>’ should be rearranged so that RG234.47 is the first paragraph in the section, with Examples 34 and 35 to follow. This is because RG234.47 contains the actual prescriptive guidance.</p> <p>Furthermore, the wording of RG 234.47(e) should be updated to “where a product is offered with multiple fee options, any advertised returns should make clear which fee option they relate to and not only show the option that shows the highest net returns” (as shown in red on LHS). This would allow paragraphs RG234.45 and RG234.46 to be deleted. These changes would streamline the section and make it easier to interpret.</p>
<p>RG234.48 <i>Where an advertisement makes a claim about the fees or costs associated with a financial advice service, this should be easily understood, and any qualification clearly and prominently noted in the advertisement. An advertisement should not suggest that an advice</i></p>	<p>We support transparency and clarity on fees and costs (including pertaining to advice services).</p> <p>Currently, it is unclear how this requirement applies to intra-fund advice being provided “at no</p>

<p>service is ‘free’ or ‘low cost’ if, in fact, the consumer would pay for the service indirectly through the fees and costs of any financial products they are placed in or through an administration fee incorporating fees or costs associated with a financial advice service.</p>	<p>additional” cost. In such cases, intra fund advice is provided at no additional <u>direct</u> cost to the consumer but fees are still embedded within the product.</p> <p>As such, additional guidance from ASIC on use of the term “no additional cost” would be helpful to avoid misleading impressions.</p>
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Comparisons

Draft RG234 section	Recommendation
<p>RG234.64: <i>Where a comparison is made showing differences in outcome over time, it is important to ensure not only that the differences are accurate and relevant <u>but also that they will remain consistent for a reasonable period of time.</u></i></p>	<p>Although the clause carries over wording from the existing RG234.74, we recommend that the underlined phrase be removed, given it is unknown what will happen in the future.</p> <p>We recommend that the comparison be deemed acceptable if the assumptions for the projection are reasonable and clearly disclosed.</p>
<p>Comparison against benchmarks</p>	<p>Provide guidance on how changes in benchmarks should be reported in promotional materials such as fund factsheets.</p> <p>For example, it is currently unclear whether providers are required to show previous benchmark returns alongside the new benchmark returns (and if so, for how long).</p>

Awards

Draft RG234 section	Recommendation
<p>RG234.79: <i>Where awards received are included in an advertisement for a product, the grantor of the award should be clearly identified and the award explained, including the currency of the award. An advertisement should make it clear if an award is granted by someone related to the promoter. This information should be included either in the advertisement itself or by including details of where an investor can obtain this information about the award.</i></p>	<p>This paragraph should be updated to include wording similar to that used for rating disclosures in RG234.76 (as added in red on LHS).</p> <p>As award descriptions can be lengthy, it would be beneficial to permit this via a click-through hyperlink on an advertisement.</p>
<p>Example 42: Disclosing awards <i>If an advertisement includes a statement such as ‘Best Investment Product of the Year Award’, it should include an explanation of who granted this award and any relationship with the product issuer.</i></p>	<p>Include example wording of a hypothetical award disclosure rather than a repetition of content from RG234.79. This would better convey expectations to industry.</p>

Past performance and forecasts

Draft RG234 section	Recommendation
<p>Past performance and forecasts</p>	<p>Guidance should be provided on whether corporate statistics (e.g., “number of transactions processed”, “volumes settled”, “assets serviced”)</p>

	trigger any form of past-performance-style disclaimer or contextual note.
<p>RG234.80: Advertising with information about past performance has a greater risk of being misleading if it is presented in a way that: (a) implies it constitutes a projection illustrating the likely future value of an investment; or (b) creates the impression that substantially the same returns will be achieved in the future; or (c) gives disproportionate prominence to past performance and implies that simple past performance figures should be the sole or dominant method of selecting a financial product or service.</p> <p><i>In easily updated media (such as daily, weekly or monthly print media, the internet, broadcast media and direct mail advertisements), performance data would not be considered 'up to date' if more than three months had elapsed since the end date being used.</i></p>	<p>This clause should be updated to include more comprehensive wording from RG53. Although the clause already contains some past performance guidance from RG53, it omits RG53 10.4 which states “performance data would not be considered ‘up to date’ if more than three months had elapsed since the end date being used”.</p> <p>Including this specific timeframe (added in red on LHS) would provide greater clarity for industry and encourage the use of more relevant information.</p>
<p>Time periods for past performance information</p>	<p>Clarify that short-term past performance restrictions do not apply to product updates for existing members, which are not advertisements.</p>
<p>RG 234.91 An advertisement which refers to past performance should include past performance information for standardised periods:</p> <p>(a) the single figure for the per annum return over the previous five years; or</p> <p>(b) <i>the single figure for the per annum return over the previous three or one year(s) (if less than five years).</i></p> <p>the single figure for the per annum return for the whole period the investment has been available (if less than five years).</p>	<p>Remove guidance to compare a single figure for the “whole period an investment has been available” where it is less than five years. Instead, standardised comparable periods of three or one year(s) should be used if a fund does not have five years’ worth of data (as reflected in red on LHS).</p> <p>‘Since inception’ measurements can lead to confusing comparisons since they are unique to each fund.</p>
<p>RG 234.96 For investments that have operated for less than one year, using such a short performance period to promote the investment <i>to a retail audience</i> would usually be inappropriate and may be misleading (cash-type investments excluded). An exception is reports aimed at existing <i>retail</i> clients of the product or service (and/or their advisers) that are clearly for information purposes and not promotional purposes. Regular publications, such as a periodic fact sheet, may contain the latest month, quarter or year-to-date figure, provided such figures are clearly for information purposes and are not displayed more prominently than other figures.</p>	<p>Update this clause with the additions flagged in red to clarify that it applies to reports or promotions for a retail audience.</p> <p>This paragraph aligns with RG53 9.6 which states it covers promotions to retail clients.</p>
<p>RG234.101: Information about future performance should only be used in advertising where it is relevant and there are reasonable grounds to provide the information. If a person makes a representation about any future matter for a financial product, but does not have any reasonable grounds for making the representation, the representation is taken to be misleading: s769C.</p>	<p>Include an example to demonstrate what would constitute “reasonable grounds” for future performance claims or benefit assertions. There is currently no ‘forecast’ example in this section.</p>
<p>RG 234.107 Non-actual performance information is more likely to be misleading where... (g) <i>if the promotional material is for a retail audience, the non-</i></p>	<p>RG53 states that it covers promotion to retail clients and industry needs to assess the extent to which the same principles apply to promotions</p>

<p><i>actual past performance is not based entirely on other existing investments.</i></p>	<p>aimed at wholesale clients or financial advisers. The updated RG234 does not contain any such statements, and the implication is that it applies to promotions aimed at both retail and wholesale clients.</p> <p>Point (g) has been added to RG234.107 (reflecting RG53 11.5) to note that non-actual past performance should be based entirely on other existing investments to avoid being misleading. However, RG53 11.5 specified that this applied to promotional material aimed at retail clients. This distinction is important because it is not uncommon in the financial services industry to present “hypothetical”, “simulated”, “modelled” or “back-tested” past performance to wholesale clients (e.g. institutional investors) and/or financial advisers in order to demonstrate the performance of a particular investment strategy.</p> <p>As this distinction has been lost in RG234, in order to allow industry to continue providing wholesale clients with such “hypothetical” past performance information, 234.107(g) should be amended to state “if the promotional material is for a retail audience, the non-actual past performance is not based entirely on other existing investments” (as added in red on LHS).</p>
<p>RG 234.107 <i>Non-actual performance information is more likely to be misleading where:</i></p> <ul style="list-style-type: none"> (a) <i>if the promotional material is for a retail audience, the non-actual past performance is not based entirely on other existing investments;</i> (b) <i>it does not accurately represent how the investment would have performed if it had existed in the past; or</i> (c) <i>the calculation involves significant assumptions that do not necessarily reflect how the investment would have performed if it had existed;</i> (d) <i>the calculation involves significant selections, adjustments or assumptions that may not apply in the future;</i> (e) <i>the assumptions and adjustments used to produce the information are not readily available to the audience or unlikely to be understood by the audience;</i> (f) <i>the information concerns the performance of another existing product or service, which a different entity was responsible for achieving, especially where the performance achieved required a degree of skill;</i> (g) <i>the calculation involves selections, adjustments or assumptions where a favourable result may have been</i> 	<p>Further to the above, this paragraph should be updated for readability.</p> <p>Point (g) should become point (a) as it is the most important, and the following points flow better from it.</p>

<p>achieved by using the benefit of hindsight; if the promotional material is for a retail audience, the non-actual past performance is not based entirely on other existing investments.</p>	
<p>RG 234.108 In general, the only scenarios where non-actual performance may be able to be used in a non-misleading way (given appropriate presentation) are:</p> <ul style="list-style-type: none"> (a) when a new investment fund is identical to an existing investment fund, except for different fees (e.g. a new retail fund will invest in an existing wholesale fund); or (b) when the new investment fund will mirror an index. <p>The exception is where a modelled investment strategy follows a rigid and predetermined mathematical process (such as index matching), and where prices on the relevant markets are unlikely to have been influenced by the operation of such an investment.</p>	<p>Include additional guidance from RG53 11.5 (as added in red on LHS) which provides for the use of modelled investment strategies that follow rigid and predetermined mathematical processes (such as index matching), and where prices are unlikely to have been influenced by the operation of such an investment.</p>
<p>Example 46: Presenting past performance information A retail fund that has been operating since January 2022 2023 seeks to compare past performance with actual fund performance. To give a longer term view of the retail fund's performance in this asset class, it shows longer returns for its wholesale fund. The wholesale fund has identical investments and the returns have been adjusted to reflect fee differences in the fund's comparison details, see below.</p>	<p>Consider moving this example to sit directly under RG234.110 rather than RG234.11.</p> <p>The date should also be changed to January 2023. Because the 3-year figure in the performance table has not been populated, the date should not be kept as 2022.</p>
<p>RG 234.111 If a mathematical model has been created with the benefit of hindsight, 'back-tested' data may give a misleading impression of the fund manager's ability to choose a strategy that will succeed in the future.</p>	<p>RG234.111 should be moved up to follow RG234.107 as it relates to 'hindsight' which is mentioned in RG234.107(f). Example 46 should sit under RG 234.110 (as noted above).</p>

Use of certain terms and phrases

Draft RG234 section	Recommendation
<p>RG 234.115 Industry concepts or jargon may not be well understood by many consumers and should be avoided unless the advertisement is unlikely to be seen by any consumers outside a defined group and the promoter can be confident that those consumers are familiar with the subject matter. It should not be assumed that consumers will understand concepts used within a particular industry or even understand the products themselves.</p>	<p>Provide clear expectations on the use of technical language and jargon, with examples of compliant and non-compliant usage.</p> <p>We recommend that if technical language or jargon is used, it should always be clearly defined and accompanied by easy-to-understand explanations tailored to the intended audience. This would ensure accessibility and reduce customer confusion.</p>

Scope of financial advice

Draft RG234 section	Recommendation
<p>RG 234.144 <i>An advertisement for a financial advice service should not create unrealistic expectations about what the service can achieve. In particular, advertisements should make clear any relevant limitations on the breadth of services offered. An advertisement should not suggest that, in recommending a financial product for a consumer, the adviser will consider all relevant financial products across the market if this is not the case. It also should not describe an advice service as offering ‘full financial plans’ or ‘comprehensive financial advice’ if the adviser is only able to advise on a narrow range of issues or financial products.</i></p>	<p>In distinguishing general advice from personal advice, ASIC should clarify that a simple disclaimer (“General advice only”) is sufficient.</p>

Internet advertising

Draft RG234 section	Recommendation
<p>Internet advertising</p>	<p>Further detailed guidance should be provided on the use of social media to prevent ambiguity in regulatory expectations. This could be achieved by adding examples covering:</p> <ul style="list-style-type: none"> • Considerations for an entity reposting the content of another entity or individual. • Whether the publication of wholesale product information is permitted on social media platforms (with relevant disclaimers, warnings and appropriate use of targeted marketing). • Whether a LinkedIn post promoting a business’ general services or capabilities requires an information disclaimer, when no particular product is referenced.
<p>Example 68: Social media ‘finfluencer’ advertising <i>ASIC was concerned about social media ‘finfluencers’ who were suspected of unlawfully promoting high-risk financial products. ASIC was concerned that the social media content produced by these finfluencers were was accompanied by misleading or deceptive representations about the prospects of success of the products and the trading strategies that were promoted. This included representations that of themselves as so-called trading experts and sharing images of lavish lifestyles, sportscars and luxury goods. ASIC issued warning notices to these finfluencers.</i></p>	<p>Update wording for clarity (as reflected in red on LHS).</p>

The FSC welcomes the opportunity to meet to discuss the matters outlined in this submission. If you would like to arrange a meeting, please do not hesitate to contact me on 0421506231 or ballan@fsc.org.au.

Yours sincerely,

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