

## Feedback: Proposed guidance on advertising offers of financial products under the Financial Markets Conduct Act 2013

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: proposed guidance on advertising offers of financial products under the Financial Markets Conduct Act 2013' in the subject line. Thank you. **Submissions close on 16 February 2021.**

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Number of pages: 2

Name of submitter: Nick Whalley

Company or entity: Insurance Council of New Zealand (ICNZ)

Organisation type: Industry Association

Contact name (if different):

Contact email and Phone: [nickw@icnz.org.nz](mailto:nickw@icnz.org.nz), 04 914 2224

Question Number	Comment
<p><i>You don't need to quote from the consultation document if you use part &amp; paragraph numbers.</i></p> <p><i>You may attach extra pages - please label each page with your name &amp; organisation.</i></p>	
1 (general scope)	<p>The scope and unified approach (advertising of offers of all financial products by market participants) appears reasonable and appropriate, noting that the proposed guidance aligns with requirements under the Advertising Standards Code in various respects.<sup>1</sup></p> <p>We note that the proposed guidance overlaps with guidance issued by the Commerce Commission. If an organisation is advertising products captured by both the FMA and Commerce Commission guidance this means that they need to comply with two sets of requirements. Consideration should be given to, in the future, consolidating both guidelines to avoid duplication and unnecessary regulatory burden, potentially in conjunction with the Council of Financial Regulators (CoFR), which both FMA and Commerce Commission belong to.<sup>2</sup> For completeness, we see a real opportunity for CoFR to avoid duplication of consultations, guidance and other regulatory work programmes and ensure alignment between member agencies on a number of fronts.<sup>3</sup></p> <p>Also see comments in the feedback summary section below.</p>
2 (short form advertising)	No comment.
3 (potential gaps)	We are not aware of any additional examples of poor conduct, or other areas in need of guidance, not adequately addressed in the proposed guidance.
4 (offers restricted to wholesale investors)	<p>We agree that, in the advertisement, customers should be immediately made aware if the offer is unsuitable for retail investors.</p> <p>We recommend that the suggested statement for inclusion be amended to include a brief plain English explanation of the wholesale investor criteria under the Financial Markets Conduct Act 2013. Like the suggested statement, the explanation of wholesale investor criteria should be able to be adjusted to, while conveying the intended detail, reflect the specifics of the product being offered and keep details brief.</p>
5 (miscellaneous)	Under the 'take care when comparing different products' section consideration should be given to including a requirement, like that included in the Advertising Standards Code, <sup>4</sup> not to denigrate competitors (including a specific competitor, multiple competitors or the rest of the

<sup>1</sup> <https://www.asa.co.nz/codes/codes/advertising-standards-code/> specifically principle 2: truthful presentation.

<sup>2</sup> See <https://comcom.govt.nz/business/dealing-with-typical-situations/advertising-your-product-or-service>. For completeness, we note the Memorandum of Understanding that the Commerce Commission and FMA entered into in March 2014, <https://comcom.govt.nz/news-and-media/media-releases/2014/commerce-commission-and-fma-sign-mou>.

<sup>3</sup> See, by way of other examples, duplicating work generated by different CoFR members on COVID-19 impacts, outsourcing arrangements and cyber resilience.

<sup>4</sup> See Rule 2 (d) Comparative advertising.

industry as a whole). Doing so may lead to inaccurate or misleading impressions being formed and potentially undermines trust and confidence in the broader investment sector.

It would assist if content on ‘stop orders’ in the proposed guidance was expanded to provide further details about the specific circumstances FMA is likely to use this power and how this would work in practical terms, noting the novel ‘likely to confuse’ element. While reference is made to the FMA website in this regard, details provided there are also limited. Consideration could be given to summarising other examples where such orders have been made to illustrate the application.

We also recommend that the comments made about potential liability for directors and senior managers on page 8 of the proposed guidance be expanded so it is clearer when this liability may arise.

Also see comments in the feedback summary section below. We are not aware of any unintended consequences that may arise from the proposed guidance.

#### **Feedback summary – if you wish to highlight anything in particular**

ICNZ and members support advertising best practice that is in the best interests of consumers and that reinforces trust and confidence in the wider financial services industry. We note the following in this regard:

- The proposed guidance relates to ‘fair dealing’ requirements under Part 2 of the Financial Markets Conduct Act 2013 as they relate to financial products (e.g. a debt security, an equity security, a managed investment product or a derivative), as opposed to financial services (such as acting as an insurer),<sup>5</sup> with a clear focus on good outcomes in respect of the investing public. On this basis, and to avoid any ambiguity and uncertainty for providers and customers, we recommend that the references on pages 5 and 10 of the proposed guidance that it ‘may’ be applicable to ‘financial services’ be removed. The vague reference to the guidelines potentially applying to ‘other areas’ on page 10 should also be removed.
- The focus on financial products is appropriate given the growth in interest in investing following the COVID-19 outbreak and the complexity of these products, which may require consumers to have a good understanding of historical returns, forecasts, different fees and cost structures, assumptions and risk.
- It is not necessary or appropriate to extend these requirements to general insurers because, as members of the ICNZ,<sup>6</sup> they are already subject to robust requirements under the Fair Insurance Code. This includes requirements to:
  - act transparently, and with integrity and utmost good faith (clause 2)
  - develop, market and sell their products responsibly (clause 4)
  - communicate clearly, including answering questions accurately and in writing if requested, providing access to policy wordings (which sets out in plain English what is insured and not insured, and what their obligations are), and explaining decisions accurately, clearly, concisely and effectively in all interactions (clause 6).
- In addition to these obligations and any relevant requirements to ensure good customer outcomes under the financial advice regime and consumer protection legislation, ICNZ members, as licensed insurers, also have disclosure obligations to policyholders under the Insurance (Prudential Supervision) Act 2010.<sup>7</sup>  
For the reasons set out above, we do not consider that it is necessary or appropriate for advertising guidance relevant to the insurance industry to be prepared.

**Please note:** Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

**Thank you for your feedback – we appreciate your time and input.**

<sup>5</sup> See the definition of ‘financial service’ in section 6 of the Financial Markets Conduct Act 2013 that refers to section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 which at 5(1)(m) lists ‘acting as an insurer’.

<sup>6</sup> ICNZ members insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars’ worth of New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

<sup>7</sup> See sections 64 to 72 of the Insurance (Prudential Supervision) Act 2010.