

11 October 2021

By email: [claire.hofer@asa.co.nz](mailto:claire.hofer@asa.co.nz)

Claire Hofer  
Advertising Standards Authority

Dear Claire,

### **ICNZ submission on Draft Advertising Standards Authority (ASA) Financial Advertising Code**

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Thank you for the opportunity to submit on the ASA's draft Financial Advertising Code (**Code**) released for consultation on 31 August 2021. The Insurance Council of New Zealand - Te Kāhui Inihua o Aotearoa (**ICNZ's**) and its 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.

By way of background, the ICNZ's members are general insurers and reinsurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand assets 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).

Please contact Nick Whalley ([nickw@icnz.org.nz](mailto:nickw@icnz.org.nz)) if you have any questions on our submission or require further information.

The remainder of this submission addresses the questions set out in the consultation document accompanying the Code and provides some additional comments, drawing particular attention to the need for the Code to be consistent and complement current and incoming legal requirements and regulatory guidance, to avoid unnecessary cost, complexity and confusion.

#### **1. Questions**

Question	Response
1. The Codes Committee view is that the definition of 'Financial Product or Service' should be in a language that is easily understood by consumers. They should be able to easily recognise if an advertisement is for a Financial Product or Service	It is important that the definition of 'Financial Product or Service', as well as other content in the Code, is set out in plain English, using language that is clear and easy for customers to understand.  To better reflect the breadth of cover available from a general insurance perspective, while keeping things simple with a consumer focus, we suggest that the fifth bullet point be amended as follows (amendments in red):

<p>based on the definition in the code. Please comment on the definition included in the new draft code.</p>	<ul style="list-style-type: none"> <li>• <i>Insurance <del>products</del> for <del>buildings, homes, and contents, vehicles and other things you own, as well as for travel, pets and liability</del> <del>and other possessions</del></i></li> </ul> <p>We comment on other areas of the Code where we consider language can improved from a plain English perspective below.</p>
<p>2. In reference to question 1, are there any other financial products, services or advice that should be included in the definition of 'Financial Product or Service'? Please provide details.</p>	<p>See above.</p>
<p>3. Apart from your comments in relation to questions 1 and 2, do you agree with the wording of the rest of the new draft code? If not, please outline the part or parts you disagree with and explain why.</p>	<p><u>Preamble ('Application of the Financial Advertising Code')</u></p> <p>We suggest that the second paragraph under this heading (sentencing beginning " Ultimately, the responsibility...") should be removed or at least reworded so as not to comment on where responsibility falls under advertising regulation. As is made clear in the consultation document itself, the scope of the Code is limited to the specific guidance provided under it and we consider commenting on where responsibilities fall under wider advertising regulation is inappropriate. Where responsibilities ultimately fall will depend on the particular circumstances and legal requirements involved.</p> <p><u>Rule 1(a) Social responsibility</u></p> <p><i>Clause 2</i></p> <p>We suggest that the use of the words 'commensurate' and 'assimilated' in this clause should be reviewed as these are technical words which are not widely understood. We suggest using 'proportional' and 'absorbed' respectively instead.</p> <p><i>Clause 3 (first paragraph)</i></p> <p>This paragraph should be amended to make it clear that where individuals (e.g. social media influencers and other content creators) are not licensed financial advisers, any relevant regulatory requirements will still need to be met. Please also see our other comments below about ensuring alignment with regulatory guidance from the Financial Markets Authority (<b>FMA</b>) in this regard. It would also be helpful if the limits of what advertisers and financial services and product providers (<b>providers</b>) may be able to monitor and/or control is acknowledged in this paragraph.</p> <p><i>Clause 3 (third paragraph)</i></p> <p>While we support the general intention of upholding a high standard of social responsibility in an online environment and note that there may be circumstances where it is appropriate for user-generated content online to be removed (i.e. on the grounds that it</p>

	<p>is personal information,<sup>1</sup> a harmful digital communication,<sup>2</sup> or on some other legal or valid basis (e.g. in accordance with an organisation’s own community guidelines), the broadly framed requirement under this clause to moderate (and potentially regularly remove) user-generated comments or reviews to ensure ‘high social responsibility standards are maintained’ needs to be reconsidered in our view. As currently drafted, this could be interpreted as requiring an advertiser or provider to remove any negative user-generated content or reviews that is adverse to them or as requiring them to correct any user-generated comments that contains misleading or incorrect information. Such approaches run the risk of undermining transparency and trust and confidence in the financial service industry and the integrity of user-generated comment platforms. The cost of actively monitoring and adjusting user-generated content for accuracy is also likely to be significant. Regard also needs to be had to the fact that the relevant advertiser or provider may be unable to moderate and remove user-generated content (as they may not own or control the platform) and these platforms’ terms of use.</p> <p><u>Rule 2(b) Truthful presentation</u></p> <p>The use of the words ‘credulity’ and ‘hyperbole’ should be reviewed. These are technical words which are not widely understood and we suggest referring to ‘trustfulness’ and ‘exaggeration’ respectively instead. Additionally, while we appreciate the need for sensitivity about financial matters, to prevent confusion, care should also be taken to ensure that the guidelines for hyperbole/exaggeration align with the underlying Advertising Standards Code and regulatory guidance indicating that hyperbole/exaggeration is permissible in certain circumstances (e.g. where it is so obvious that is unlikely to mislead).<sup>3</sup> Lastly, for clarity, consideration should be given to rewording the commentary on exaggeration/hyperbole to be an active, rather a passive, sentence and to expand upon and/or provide examples about what conduct would meet the relevant threshold, with regard to the remarks above.</p>
<p>4. Are there matters that are not covered in the code that you believe should be included? If yes, please let us know, and explain why.</p>	<p>See other comments below.</p>

## 2. Other comments

<sup>1</sup> In New Zealand personal information is any information which is about an identifiable individual. See <https://www.digital.govt.nz/standards-and-guidance/governance/managing-online-channels/security-and-privacy-for-websites/foundations/privacy-and-personal-information/> for agencies obligations in this respect.

<sup>2</sup> See <https://www.justice.govt.nz/courts/civil/harmful-digital-communications/> for more details in this respect.

<sup>3</sup> See the guidelines for rule 1(e) and rule 2(b) and guidelines for this rule under the Advertising Standards Code 2018 and the Commerce Commission’s guidance on using exaggerations and puffery, available here: <https://comcom.govt.nz/business/dealing-with-typical-situations/advertising-your-product-or-service/jargon,-exaggerations-and-puffery>.

To avoid unnecessary cost, complexity and confusion, the ASA should ensure that the Code is consistent and complements current and incoming legal requirements and regulatory guidance. To this end, in addition to the guidance referred to above, the FMA has recently released guidance following concerns that some social media influencers and bloggers may be straying into regulated financial advice.<sup>4</sup> Additionally, in November 2020, the FMA consulted on proposed guidance on advertising offers.<sup>5</sup> The outcome of this consultation is currently outstanding.

We also note the National Strategy for Financial Capability glossary project being led by Te Ara Ahunga Ora Retirement Commission.<sup>6</sup> The aim of this project is to simplify language around finance and make it more consistent, with a view to helping people make better and more informed decisions about money.

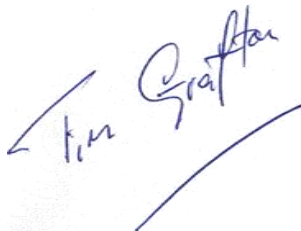
Additionally, we note that the link to the Responsible Lending Code included in Appendix 1 of the ASA's consultation document refers to a previous version of the Code dated June 2017. The current version of this Code was revised in February 2021.<sup>7</sup> The Government has recently indicated that there will be public consultation on the reissuing the addendum to this code related to COVID-19 impacts.<sup>8</sup> We also note that the Code refers to credit contracts and consumer finance regulations from 2004 which have been, or are being, superseded.<sup>9</sup>

Before the Code is finalised, we strongly recommend that the ASA take the opportunity to reflect upon the developments referred to above and any finalised regulatory guidance and requirements once these are available.

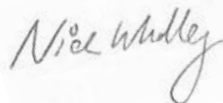
### 3. Conclusion

Thank you again for the opportunity to submit on this matter. If you have any questions, please contact our Regulatory Affairs Manager by emailing [nickw@icnz.org.nz](mailto:nickw@icnz.org.nz).

Yours sincerely,



**Tim Grafton**  
Chief Executive



**Nick Whalley**  
Regulatory Affairs Manager

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<sup>4</sup> See <https://www.fma.govt.nz/news-and-resources/media-releases/fma-releases-guide-for-finfluencers/>.

<sup>5</sup> See <https://www.fma.govt.nz/assets/Consultations/Consultation-draft-guidance-advertising-offers-FMC-Act.pdf>.

<sup>6</sup> See <https://retirement.govt.nz/financial-capability/national-strategy/> for more detail.

<sup>7</sup> See <https://www.mbie.govt.nz/assets/responsible-lending-code.pdf>.

<sup>8</sup> See <https://www.consumerprotection.govt.nz/assets/uploads/responsible-lending-code-covid-19-addendum.pdf>. Please note that the Responsible Lending Code will come into force from 1 December, not 1 October as earlier intended, due to COVID-19.

<sup>9</sup> See the Credit Contracts and Consumer Finance (Exemptions, Annual Returns, and Other Matters) Amendment Regulations 2021. See also the Credit Contracts and Consumer Finance Amendment Regulations 2020 and Credit Contracts, Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020. Also see subsequent amending regulations including the Credit Contracts and Consumer Finance Amendment Regulations 2020 Amendment Regulations 2021 and the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 Amendment Regulations 2021.