

2 August 2013

Hilary Souter
Chief Executive
Advertising Standards Authority
By email: asa@asa.co.nz

Dear Hilary

Advertising Standards Authority Code for Financial Advertising

Thank you for the opportunity to comment on the Advertising Standards Authority Code for Financial Advertising.

NZBA is strongly supportive of self-regulatory practices where possible, especially in sectors that are already heavily regulated.

With regards to the Code, we agree with the ASA that while this is not a significant area of complaint, it is important to ensure the Code is up-to-date for current purposes.

Overall, NZBA supports the draft Code. There are, however, a few minor comments that we would like to make:

- The Code generally aligns with requirements under the Securities Act. However, in places, the Code appears to go beyond the Act which is not desirable. One example is guideline 1(c) which states that you cannot give the impression that investments are low risk without robust evidence to support the claim. Under the Securities Act, you cannot imply the investment is safe or free from risk. This is, however, a narrower standard than implying an investment is low risk. In addition, if this guideline remains as drafted further guidance would need to be given regarding what would constitute "robust evidence".
- Where there is a cross-over between the Code and legislative rules, NZBA would like greater clarity around how the ASA decides to refer a matter to regulators, such as the FMA, if there is an overlap with legislation they administer. If the ASA decides that there is a breach of their rule and that the matter should also be referred to a regulator, there is a danger that businesses could be disadvantaged due the ASA's pre-determination of a breach. Care must be taken to avoid such situations.
- Guidelines 1(b) and 2(a) appear to overlap. Also, the proposed wording of 1(b) is quite broad and could unintentionally stifle the creative nature of TV advertising in particular. Alternative wording that could be adopted is "Advertisements shall not portray unrealistic or exaggerated financial expectations or outcomes".
- Principle 2 appears to be missing "and" between the words "truth" and "clarity".

We are happy to discuss this submission further so if you have any questions please do not hesitate to contact me.

Yours sincerely

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