

Submission

to the

Advertising Standards Authority

on the

Draft Financial Advertising Code

12 October 2021

About NZBA

1. The New Zealand Bankers' Association (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.
2. The following seventeen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Introduction

3. NZBA welcomes the opportunity to provide feedback to the Advertising Standards Authority (**ASA**) on the Draft Financial Advertising Code (**Code**). NZBA commends the work that has gone into developing the Code.

Contact details

4. If you would like to discuss any aspect of this submission, please contact:

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Summary

NZBA acknowledges the importance of appropriate rules around financial advertising and thank the ASA for its work in reviewing the Code to ensure it remains fit for purpose. The following table sets out our section-by-section comments on the Code. The major points are:

- We consider that there are issues with the rules around moderation of user-generated comments. As currently drafted, it is unclear what comments are intended to be captured by this rule, and what moderation may require. We would welcome a clear definition of 'user-generated comments', and if this definition captures comments by the public on social media, we suggest a balance is needed between monitoring user-generated comments on an advertisement and allowing users to have a platform to voice opinions. It is also unclear what the reference to 'social responsibility' requires, that is, whether it refers to the social responsibility rule in this Code (that financial advertising must be easily understood by consumers), or the broader social responsibility principles in the Advertising Standards Code (relating to offensive content, safety etc.). We would welcome clarification on this point, as well as further guidance on what a financial advertiser must do to 'moderate' any comments that do not meet the relevant standard of social responsibility.
- We suggest that standards in the Code be aligned with other legislative standards where possible. For example, the Code requires that financial advertising must be 'decent, honest and truthful', which creates a new and different standard to other well-known concepts such as those contained in the Fair Trading Act 1986 (**FTA**) and the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**). This creates problems for our members when operationalising the rules. We consider that alignment with existing legislative standards is efficient and minimises confusion.

Section-by-section Comments

Section of Code	Comment
Introduction: Financial Advertising Code	<p>The introduction provides that "All Financial Advertising must be legal, decent, honest and truthful and respect the principles of fair competition." This introduces a new standard for advertising of financial products.</p> <p>We are concerned that the words 'decent, honest and truthful' are undefined and would be difficult to apply in practice. For example, from an operational perspective, what is the difference between advertising that is 'honest' vs 'truthful'. Similarly, the concept of 'decency' is highly subjective, and in this context is not easily distinguishable from 'honest' or 'truthful'.</p>

Section of Code	Comment
	<p>We consider that it would be preferable for the Code to replicate the language used in other relevant legislative and regulatory frameworks (for example the standards of 'misleading' and 'deceptive' are used in the CCCFA and FTA). Those concepts are clear and well understood by our members and other lenders.</p> <p>This section refers to the Financial Markets Conduct Act, the CCCFA, the Credit Contracts and Consumer Finance Regulations 2004, and the Responsible Lending Code (version February 2021). We consider that the FTA should be included in this list of relevant legal requirements.</p> <p>It would also be useful if this section could clarify how the Code is intended to work alongside the Financial Market Authority's proposed <i>Guidance: advertising offers of financial products under the Financial Markets Conduct Act 2013</i>. This clarification could be achieved by including this guidance in the list of legislation, regulations and codes referred to above.</p>
Definitions	<p><i>Financial Product or Service</i></p> <p>The Code should be extended to expressly capture other financial services that routinely engage in financial advertising. In particular the following institutions should be included: Non-Bank Deposit Takers, pay day lenders, any licensed or unlicensed advisor, any registered or unregistered lender, and anyone offering 'above market' returns on investments.</p> <p>We consider that the scope of 'financial training/courses' is potentially too wide. It is unclear whether market updates, presentations by market teams to brokers, and other opinion pieces would be covered. We suggest limiting this aspect of the definition.</p>
Rule 1(a) Social Responsibility	<p>We think the following requirement is ambiguous and may be problematic:</p> <p><i>"user-generated comments or reviews on Financial Advertising content must meet the high standard of social responsibility expected from the Principles and Rules in this Code. A moderation practice that regularly removes non-compliant content is recommended."</i></p> <p>We suggest that defining 'user-generated comments' and 'moderation practice' would be useful. Currently these terms are ambiguous and may be open to different interpretations. For example, it is unclear whether 'user-generated comments' captures comments from the general public on social media, or refers to comments and content made by influencers doing paid advertising work for third parties.</p>

Section of Code	Comment
	<p>There are some problems that may arise if ‘user-generated comments’ captures comments on social media platforms such as Facebook and LinkedIn. It is difficult to moderate such comments given the broad reach of posts on these platforms. There are also risks involved in censoring users of these platforms, particularly when they consider they are providing feedback or making a complaint.</p> <p>Additionally, it is unclear what the reference to ‘social responsibility’ is intended to capture. We note that the social responsibility rules in this Code differ to those contained in the Advertising Standards Code, and would welcome clarification as to whether this rule refers to the more limited rule in this Code (that financial advertising must be easily understood by consumers), or the broader rules in the Advertising Standards Code (rules around offensive and unsafe content etc.).</p> <p>We would welcome further guidance on what the “payment to post online” section is intended to capture.</p>
Rule 2(b) Truthful Representation	<p>The reference to hyperbole in this rule should be more clearly linked to the FTA concept of ‘puffery’. Without that linkage, the concept of hyperbole is undefined and may be open to interpretation.</p> <p>We suggest including in this list people for whom English is a second language.</p>
Rule 2(c) Use of Data	<p>The guidelines to this rule should also state that financial advertising must not omit to include complete information such as the losses, negatives, or risk in any investment. We suggest that Guideline 1(ii) should read:</p> <ol style="list-style-type: none"> 1. Financial advertising must not... <ul style="list-style-type: none"> (ii) provide incomplete information such that the advertising is misleading e.g. by omitting to include complete information such as the losses, negatives, or risk in any investment.
Other	<p>We query whether the Code should have a section on advertising in a different language, as this is specifically covered by the CCCFA.</p>