ABA Response to ASIC Consultation on RG 234

Section	Draft Paragraph/s	Comments / Feedback
Returns, features and benefits	RG 234.23-24	Example 10 references the incorrect output of an algorithm and while this is a valid example, it is important for the guidance to strike an appropriate balance to avoid inadvertently restricting innovation. For example, banks may want to explore new digital tools such as “estimator” ads, behavioural targeting, or interactive marketing. The updated guide should support permissible forms of innovative communication. Further, from a flow / formatting perspective it appears that RG 234.24 should be incorporated into Example 10.
Greenwashing	RG 234.25-26	At RG 234.25 the guidance focuses on negative screening but offers less clarity on advertising positive attributes. More detailed examples on how to appropriately market positive sustainable objectives or a product’s impact would be useful. At RG 234.26, we also recommend that Information Sheet 271 is reviewed / updated in conjunction with the RG 234 changes.
Risks	RG 234.30	RG 234.30 notes that few products can claim they are ‘fully insured’ or ‘guaranteed.’ It would assist if ASIC could consider including an express reference here to the more detailed guidance on similar terms and phrases referenced in RG 234.112. Further, ASIC might consider setting out the objective criteria it considers acceptable to support the use of specific terms such as ‘capital protected’ or ‘guaranteed.’ Whilst examples 47 – 50 provide some guidance, they may not fully clarify when those terms can be used appropriately, if at all.
Risks	RG 234.31-33	Where an advertisement is not misleading or deceptive, it should not be mandated as a blanket requirement for the advertisement to include prominent disclosure of key or significant risks or different / innovative features where these are not relevant to the advertisement.

		Such disclosure is more appropriately addressed in the relevant disclosure document. While there will be circumstances where these risks and features will need to be disclosed and highlighted, this determination should be made on a case-by-case basis rather than a standard requirement for all advertisements
Warnings, disclaimers, qualifications, and fine print	RG 234.34-41	This section may further benefit from including more recent examples such as *Australian Securities and Investments Commission v Mercer Superannuation (Australia) Limited* 2024 [FCA] 850. For example, when an entity uses unqualified language or unequivocal terms such as we will 'not invest' or we will 'eliminate' in relation to investments, it cannot correct those representations by relying on a consumer searching around for other investment policy documentation that might otherwise qualify those statements.
Interest rates	RG 234.53 - 54	RG 234.53 states that advertisements should describe what interest rates or fees revert to, but that this information need not be stated with equal prominence to the discount rate or fees, unless there are unusual features. RG 234.54 further provides that the current amount of the discount rate need not be stated unless the advertisement emphasises savings during the discount period only. We consider these provisions leave unresolved whether an advertisement must state the numerical reversion rate, or whether it is sufficient to identify the reversion rate by reference to the relevant product rate, such as the lender's standard variable rate. We seek confirmation from ASIC that identifying the reversion rate by name alone satisfies RG 234.53-54, and numerical disclosure is not required.
Comparison rates	RG 234.61	RG 234.61 expressly recognises that, online banner advertisements may provide a clear link to the comparison rate warning where it is not possible to include the warning on the same page. This reflects an acceptance of a "one click away" approach for the provision of mandatory information in contemporary digital advertising, given such an advertising format has limited space. Example 24, however, suggests that online banner advertisements must themselves mention key restrictions on offers, and that including a link or reference to another webpage is unlikely to correct a misleading impression. To the extent that this example is read as precluding a "one click away" approach for mandatory statutory warnings or disclosures, it appears inconsistent with the approach reflected in RG 234.61.

		We therefore seek clarification on how Example 24 is intended to operate alongside RG 234.61, including whether ASIC intends to distinguish between substantive eligibility restrictions necessary to avoid a misleading impression, and mandatory statutory warnings or disclosure references for which a limited click-through approach is contemplated by legislation. Given that advertising is increasingly digital with the availability of easy click through mechanisms, and the familiarity consumers have with clicking through to find out information and relevant details, and considering that digital advertising locations often have space limitations, we suggest that a “one click away” approach should be acceptable for mandatory statutory warnings or disclosure references – particularly if the advertisement itself points the reader to such warnings. This should be available for all digital advertising where space is limited, not only for online banner advertisements. Clarification on this point would assist regulated entities in applying the guidance consistently across digital advertising formats with inherent space constraints.
Time periods for past performance information	RG 234.96	RG 234.96 refers to ‘reports’ for existing clients of a product or service and makes clear that those are an ‘exception’ to ASIC’s guidance on short performance periods. We recommend that this paragraph be amended to clarify that this scenario be distinguished instead (i.e. rather than framing as an ‘exception’). In such cases, product and service providers are not ‘advertising’ to existing clients but are instead providing information or updates on the performance of their products, sometimes under a contractual obligation. Those providers should not be confused about whether their ability to provide information on short performance periods is qualified by this paragraph.
Media-specific guidance	RG 234.148	RG 234.148 defines mass media as media channels used for mass communication, including radio, television, newspapers, magazines, and the internet. While the definition is broad, it does not expressly address streamed and digital audio platforms, such as podcast advertising delivered through platforms like Spotify or other streaming services. The reference to ‘podcasts’ in the Audio advertisements section (RG 234.154-156) is helpful in identifying the issue, but does not resolve the regulators expectation and approach to assessing compliance.

		Digital audio advertising is increasingly used to convey marketing messages for financial products and services, often in podcast or on-demand audio formats that differ materially from traditional broadcast radio. These platforms also raise consideration of issues in relation to disclosure, prominence of warnings and consumer attention, similar to traditional audio advertisements. We request ASIC clarify that the definition of mass media in RG 234.148 does capture streamed and digital audio platforms, including podcast advertising and audio advertising delivered through music and content streaming services. Explicit clarification would assist advertisers in applying the appropriate guidance to these formats and ensure consistent treatment across traditional and digital audio channels.
Film and video advertisements, Internet advertising	RG 234.158 and 168.	We understand the intention of the guidance is that: • the headline statement must not be misleading when read with prominent text in the advertisement, • to the extent that any disclaimer or conditions are necessary to ensure a balanced position is presented, they should be understandable on the first viewing, and • if the disclaimer or conditions are not necessary to ensure a balanced position is presented (i.e. because this is achieved through the headline claim / content in the advertisement) then it is not necessary that the disclaimer / conditions are fully understandable on the first viewing. If this the intention, we recommend ASIC make this clearer in the guidance at RG 234.158 and RG 234.168 to ensure consistent interpretation.
Internet advertising	RG 234.161	RG 234.161 defines internet advertising broadly, including in-app advertising. However, it is unclear whether this is intended to capture communications within an issuer's own proprietary application, such as direct marketing communications delivered to existing customers from a banking app, i.e. push notifications or marketing "tiles" that appear within the app. We suggest ASIC clarify that "in-app advertising" (and more broadly, internet advertising) includes issuer-originated messages from / within proprietary applications – and indicate any applicable ASIC expectations in these contexts.

		For example, clarifying this would permit the use of the 'click through' approach for providing further information when advertising in such channels (as permitted by RG 234.163). As noted above, the format of messages in banking apps is by nature typically limited in space and advertisements in that environment are well understood by consumers as being able to be clicked through to obtain key information. Further, while discussing a range of internet advertising, the draft does not expressly refer to search engine marketing, including paid search advertising and the presentation of promotional content in search engine results. Search engine marketing is a significant and established form of digital advertising used across the financial services industry. The absence of any express reference to search engine marketing creates uncertainty as to how RG 234 is intended to apply to these advertisements, particularly given their space constraints and reliance on links to landing pages. We seek clarification on whether ASIC intends RG 234.161 to capture search engine marketing within the definition of internet advertising, including both paid search results and promoted listings. And if so, we consider that explicit reference to search engine marketing, accompanied by an outline of ASIC's expectations in this context, would assist regulated entities in understanding ASIC's expectations and applying the guidance consistently. In formulating such guidance, we note that search engine results are by nature messages which a reader would be inherently inclined to 'click on' (relevant to whether a 'one click away approach' is appropriate for disclaimers and other mandatory information) and the appearance of the result message is often not within the control of the advertiser.
Internet advertising	RG 234.163-165	These paragraphs state that providing a facility for consumers to click through for more information cannot be used to correct a misleading overall impression. While we agree with this principle in relation to substantive claims, the RG does not clearly distinguish between qualifications intended to cure misleading impressions and mandatory statutory warnings that legislation expressly permits to be abridged or displaced in certain circumstances. This lack of distinction creates uncertainty about the extent to which click-through mechanisms may be used for warnings such as general advice warnings under s949A, or disclosure references under s1018A of the Corporations Act. We therefore seek clarification on which warnings or disclaimers may be provided on a click-through basis, and how this guidance is intended to interact with existing legislative provisions that contemplate abridged or modified warnings in advertising contexts.

Internet advertising	RG 234.167	It would be useful for ASIC to clarify what would be considered a reasonable retention period for each advertisement record, including those maintained by third parties. Further to the above, RG 234.167 requires that both promoters and consumers should be able to retain a record of an advertisement, including any disclaimers or warnings. While this is reasonable for promoters, this is not practical for a consumer particularly in the context of new digital forms of advertising (e.g. a consumer will likely be unable to retain a record of an advertisement that appears on the internet, or a in a Facebook 'reel'). We recommend that ASIC remove the absolute requirement for consumers to be able to retain a copy of the advertisement as this is not always feasible in practice.
Related Issues for ASIC Consideration		
1. Use of abridged general advice warnings by product issuers		Existing ASIC guidance, including ASIC Corporations (Advertising by Product Issuers) Instrument 2015/539 and RG 175, recognises circumstances in which **product** issuers may provide an abridged general advice warning in advertisements. However, the wording of the Instrument talks not about 'products' but about 'securities,' implying that an abridged general advice warning is only available when advertising an issuer's own securities (e.g. listed shares in a bank, advertised for sale by the bank itself). In contrast, various ASIC guidance indicates that the relief in this Instrument is available for advertisements of financial products e.g. INFO 291 refers to the relief in the ASIC Instrument applying to 'a financial product or securities that the entity issues'; and parts of the Explanatory Statement refer to 'financial products or securities', and that this similarly occurs in paragraph 174.44 of Regulatory Guide 175, and also Consultation Paper 226. It would be helpful if ASIC or Treasury could consider clarifying in the Instrument itself that it is intended to extend to advertisements of financial products (and not just 'securities'). Separately, regarding the use of an 'abridged general advice warning' permitted by sub regulations 7.7.20 and 7.7.02(5A) in channels including 'the media', it is unclear whether that approach is also permitted for messages in a banking app or other logged-in web platform.

	We note that these channels have a wide reach to audiences including both customers and non-customers, similar in many ways to a logged-in subscription to a mass media outlet (such as national newspaper). It would be helpful if ASIC or Treasury could clarify that 'the media' in the modern age also captures advertising in a bank's own banking app or logged-in web portal.
2. Use of QR codes and emerging technologies, including artificial intelligence, in advertising	Draft RG 234 does not address the use of QR codes or emerging technologies, including artificial intelligence, in the marketing of financial products and services. QR codes are now commonly used across both physical and digital advertising to direct consumers to landing pages, disclosures, or application pathways. In addition, the increasing use of artificial intelligence in marketing, including automated content generation, personalisation of advertising messages and dynamic targeting, has the potential to materially influence how financial products are promoted and perceived by consumers. The absence of any reference to these technologies in the draft guidance creates uncertainty as to how existing principles in RG 234 are intended to apply to modern marketing practices that were not contemplated when the guide was last substantively updated. Given the length of time between updates to RG 234, it would be beneficial for ASIC to acknowledge the use of QR codes and emerging technologies, including AI-driven marketing tools, within the guidance.
3. Other Digital / Social Media / Emerging and New Model formats	The guidance makes explicit reference to Facebook, Instagram, TikTok, X, Reddit etc, but gives limited practical direction on how key warnings and disclaimers should be effectively used across these mediums (i.e. noting character limits, where content is visible etc). The social media examples do not always reflect how promotions operate today (e.g. Example 66 on Blogs is arguably outdated). We recommend that ASIC provide general guidance on its expectations for the use of warnings / disclaimers in these digital / social media formats (e.g. what could be in the advertisement vs what could reasonably be on a landing page or under a post etc). Further, for borderline cases or new advertising models we suggest ASIC adopts a consultation first process / model with industry before updating guidance.