



National Insurance Brokers Association.



NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA)

SUBMISSION ON ASIC CONSULTATION PAPER 167

ADVERTISING FINANCIAL PRODUCTS AND ADVICE SERVICES: GOOD PRACTICE GUIDANCE

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ABOUT NIBA

NIBA is the voice of the insurance broking industry in Australia. NIBA represents 500 member firms and over 2000 individual qualified practising insurance brokers (QPIBS) throughout Australia.

Brokers handle almost 90% of the commercial insurance transacted in Australia, and play a major role in insurance distribution, handling \$10 billion in premiums annually and placing around half of Australia's total insurance business.

Over a number of years NIBA has been a driving force for change in the Australian insurance broking industry. It has supported financial services reforms, encouraged higher educational standards for insurance brokers and introduced a strong independently administered and monitored code of practice for members. The 500 member firms all hold an Australian financial services (AFS) licence under the Corporations Act that enables them to deal in or advise on risk insurance products.

EXECUTIVE SUMMARY

NIBA does not object to ASIC giving guidance in relation to the complex field of advertising of investment products, but notes there are some important considerations that need to be taken into account in relation to risk products.

NIBA's position can be summarised as follows:

- NIBA does not support any guidance that would tend to promote or increase what appears to be the current consumer trend of:
 - not properly reading the policy documentation provided to them; or
 - choosing not to seek appropriate professional advice on what are by their nature complex products.



- NIBA notes that it will always be a fine line in determining whether those advertising, in particular product issuers, have provided sufficient information in the general representations made in the advertisement and/or appropriately clear qualifications/disclaimers so as not to mislead consumers. Much will depend on the content and context.
- NIBA believes that ASIC's proposed guidance may be seen as imposing such onerous requirements that those advertising cease or reduce such practices. NIBA is concerned that this may not be in the community interest in relation to risk insurance as it may increase under/non insurance.
- The ASIC guidance as drafted may serve to reinforce consumer reliance on general advertising when what is important is the proper reading of the policy documentation to allow an informed decision to be made about the cover being purchased. An advertisement in relation to insurance can NEVER assist a consumer to form such a view given the reality that the terms, conditions, exclusions and limitations of a policy will always affect the cover advertised in SIGNIFICANT ways no specific qualification can accurately cover in the limited advertising space available.
- NIBA's view is that it is important to ensure that product issuers provide a prominent qualifier to this effect so consumers are clearly made aware of the reality of the situation.
- NIBA proposes that ASIC and Federal Government consider requiring product issuers to include a standard ASIC or Government notice that better focuses consumer attention on the above practical reality that advertisements should not be relied on in making a decision (currently s1018A requires advertisements to tell the consumer to read the Product Disclosure Statement before deciding to purchase a product, and advise where or when it is available).
- Those relying on advertisements to sell their products are currently required to provide consumers with access to the relevant PDS information before the customer is bound or at least before the cooling off period ends where relevant.

The current Chapter 7 Corporations Act regime as it applies to risk insurance requires this in most cases with PDS delivery required before issue except in time critical situations. However, the practical issue that appears to arise is the lack of consumer interest in reading such information no matter how clearly concisely or effectively insurers seek to make the documents. In NIBA's view, the current proposed Federal Government Key Facts Statement



may help consumers to some degree in relation to the main areas of cover or exclusion from cover, but again, consumers need to be encouraged to either take the time to fully understand the product they are purchasing or seek competent and professional advice.

NIBA believes that the solution is not to focus on advertising which can in most cases be addressed by a strong general qualifier/warning, but to change consumer practice through appropriate education or other methods.

A prominent ASIC or Government notice in PDSs and confirmatory documents provided to consumers (e.g renewal notices) that focuses the consumer's mind on what is actually important is one option. Such a notice could link the consumer to Government or ASIC educational tools that assist consumers in better understanding how to read their policies and/or obtain appropriate professional advice from advisers such as insurance brokers where required. NIBA and other industry associations could work with Government and ASIC to develop such useful tools.

NIBA sets out below its specific responses to each proposal below where relevant.

NIBA RESPONSE ON ASIC PROPOSALS

The following sets out ASIC's proposal, the feedback requested, the rationale behind the proposal (where relevant) and NIBA's feedback.

Proposal B1

We propose that our guidance apply to:

- (a) promoters of financial products and financial advice services. The promoter will sometimes be the product issuer, but can also be a third party such as a financial adviser, distributor or agent; and
- (b) publishers of promotions about financial products and financial advice services.

Your feedback

B1Q1 Do you agree that our good practice guidance should apply to publishers, as well as promoters? Do you anticipate any practical difficulties for publishers that would arise as a result of our good practice guidance? If yes, please provide details.



NIBA feedback

In relation to risk insurance products, the nature of advertising by (and therefore any ASIC guidance in relation thereto) product issuers (insurers) and advisers (insurance brokers) would be very different. Insurance advertise their reputation, service and products. Brokers advertise their expertise and knowledge in giving advice to their clients. These are very different concepts, and these differences must be taken into account in any guidance issued by ASIC.

NIBA is also concerned that publishers will not have the requisite product knowledge to be able to apply the guidelines and this may significantly slow down the process and/or add to the costs of advertising.

Proposal B2

We propose that our guidance apply to:

- (a) all types of financial products, including:
 - (i) investment products;
 - (ii) risk products;
 - (iii) non-cash payment facilities; and
 - (iv) credit facilities; and.
- (b) both general and personal financial product advice.

Your feedback

B2Q1 Do you agree with the proposed application of our good practice guidance? If not, why not?

NIBA feedback

NIBA has no issues with this proposal so far as it relates to investment and related products. After all, the core issues described in section A of the Consultation Paper and the research projects on which the Consultation Paper is based relate primarily to investment type products. NIBA believes that risk products are of a very different nature to investment products. Advertising in relation to risk products is of a different nature, and guidance in relation to that advertising would of necessity need to be of a different nature. NIBA believes that guidance in relation to advertising of risk products should be dealt with as a separate issue, focussing on the specific nature of those products, messages



that are appropriate for the advertising of those products, and the needs of consumers to fully understand and appreciate the nature of those products prior to purchase.

In this submission, NIBA will offer comments on the Consultation Paper as it stands, in case ASIC remains of the view that the guidance should include risk products, despite our reservations on this issue.

Proposal B2Q2

Do you think we should include other financial services? If so, which ones and why?

NIBA feedback

NIBA makes no comment in this regard.

Proposal B3

We propose to issue, at a later date, additional guidance for credit providers and providers of credit services under the National Consumer Credit Protection Act 2009 (National Credit Act).

Your feedback

B3Q1 Do you agree with our proposed approach to issue separate guidance for credit providers and providers of credit services? If not, why not?

NIBA feedback

NIBA has no issues with this proposal.

Proposal C1

We propose to give good practice guidance on how financial product and financial advice service providers can achieve accuracy and balance in their advertising. Our good practice guidance would cover:

- (a) the nature of the product (see draft RG 000.30–RG 000.31);
- (b) returns, benefits and risks (see draft RG 000.32–RG 000.46);
- (c) warnings, disclaimers, qualifications and fine print (see draft RG 000.47–RG 000.51);



- (d) fees and costs (see draft RG 000.52–RG 000.55);
- (e) comparisons (see draft RG 000.56–RG 000.71);
- (f) past performance and forecasts (see draft RG 000.72–RG 000.75);
- (g) use of certain terms and phrases (see draft RG 000.76–RG 000.86);
- (h) the advertisement’s target audience (see draft RG 000.87–RG 000.93);
- (i) consistency with disclosure document (see draft RG 000.94–RG 000.97);
- (j) photographs, diagrams, images and examples (see draft RG 000.98–RG 000.102); and
- (k) the nature and scope of the financial advice service (see draft RG 000.103–RG 000.104).

Rationale

32 The objective of our guidance is to help promoters and publishers present advertisements that are accurate and balanced and that help consumers make decisions that are appropriate for them.

33 Our guidance may also help promoters and publishers comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.

34 Our regulatory experience is that the areas for good practice guidance listed in proposal C1 are the key areas where advertisements are more likely to give a misleading or deceptive impression.

35 Some of the good practice guidance reflects established ASIC policy—for example, our proposed standards on past performance in Regulatory Guide 53 The use of past performance in promotional material (RG 53) and on forecasts in Regulatory Guide 170 Prospective financial information (RG 170).

36 We may take a greater interest in advertisements that do not meet our good practice guidance when considering whether to make further inquiries or to exercise our regulatory powers.

37 Australian financial services (AFS) licensees should carefully consider our good practice guidance in meeting their licensee obligations: see Section D of the draft regulatory guide.

Your feedback

C1Q1 Do you agree that good practice guidance is the best approach? Do you think prescriptive standards setting out what advertisers must do (or not do) in order to comply with their legal obligations would be a better approach?



C1Q2 Do the areas listed above address the key issues in relation to advertising of financial products and advice services? If not, what additional areas should our guidance address?

C1Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

NIBA feedback

C1Q1 - NIBA agrees that good practice Guidance is usually a better approach than prescriptive standards, except to the extent that such standards create confusion or are so inconsistent with the generally accepted legal position that they cause more problems than they solve. It is very important to note that consumers, and the community at large, benefit from innovation and the development of new products and services. Guidance should not operate in a way that discourages innovation, the development of new products, and the promotion of new services and new ways of meeting the community's needs in insurance and other financial services.

C1Q2 – In NIBA's view, the areas identified cover the key issues, subject to NIBA's comments and proposals in the Executive Summary which could be taken into account. We do note, however, that a number of the key issues relate to investment products only, and would not be relevant in relation to risk products.

C1Q3 – More practical examples could be provided. NIBA has included or noted where such examples may be appropriate in its feedback below.

Proposal C2 Nature of the product

We propose that:

- (a) advertisements for financial products should clearly explain the nature of the advertised product, in terms likely to be understood by the audience that is likely to see the advertisement; and
- (b) advertisements should be complete so that consumers can assess the merits of the financial product or advice service being advertised: see draft RG 000.30–RG 000.31.

Rationale

38 An understanding of the nature of the product and how it fits into a consumer's financial arrangements is necessary for the consumer to make a decision that is appropriate for them. The remainder of our guidance discusses specific issues in more detail



Your feedback

C2Q1 Does our proposed guidance address the key issues in relation to the nature of the product? If not, what additional issues should our guidance address?

C2Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.

C2Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.

C2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

C2Q1 – NIBA believes that ASIC should not be seen to be promoting a consumer’s reliance on general advertising in relation to risk insurance when the reality is that such products are complex arrangements that an advertisement can never properly cover. See NIBA’s Executive Summary for NIBA’s general position and proposals.

The words “necessary for the consumer to make a decision that is appropriate for them” suggests that an advertisement may be sufficient. NIBA is firmly of the view that this is not and cannot be the case. The financial services regime was designed to provide consumers with product information in a product disclosure statement (PDS) to promote and assist them in reading this information.

The reality is that an advertisement can do no more than provide a high level summary of some key concepts, in the hope that the advertisement will attract the consumer’s attention and the consumer will pursue the matter with the product producer or an adviser. An advertisement should be about providing these key concepts and ensuring that appropriate warnings are included to ensure the consumer is not left believing that this is all they have to read to properly understand the product.

The key message for consumers, reinforced by ASIC guidance, should be for the consumer to be made aware that the advertisement does not contain all relevant information and terms and conditions apply, and that they need to read the PDS before proceeding to make a decision. Advertisements are currently required to contain the PDS message pursuant to section 1018A.

A Government or ASIC notice to this effect is worth considering. ASIC should also consider suggesting that product issuers advise consumers to seek appropriate professional advice on the product if they are unsure or uncertain of any aspect of the product or, in the case of insurance, the cover being provided.



NIBA has no issue with the nature of the product being described as proposed, however NIBA believes that in the risk insurance context:

- *describing the nature of the product usually only involves a high level description of the product and provide examples e.g “Motor vehicle insurance”, “Home insurance” etc.*
- *ASIC should note that in more complex risk insurance products, e.g business insurance packages, it would not be practical to provide details of all of the types of cover available in the package and that a generic description identifying that the package contains certain insurances typically relevant to businesses could be sufficient (provided appropriate qualifiers are included to refer the customer to the PDS for more information).*
- *that the level of information on the nature of a product will in some types of advertising, by necessity, be limited by the available space. Billboard advertising, for example, invariably involves images, with very few words.*

C2Q2 – NIBA believes an example of what ASIC expects in the general insurance product scenario as noted above would be useful.

C2Q3 – Yes, see above.

C2Q4 - It is unrealistic to expect those advertising in limited space to provide information that would allow consumers to assess the merits of the financial product or advice service being advertised for the reasons noted above. NIBA believes that the statement should start with “To the extent reasonably practicable....”. It could then be qualified by words such as “To the extent they are not complete an appropriate disclaimer must be included to help ensure consumers are not misled and do not seek to rely on the advertisement in making any decision about the financial product.”

Proposal C3 Returns, benefits and risks

We propose that advertisements for financial products should give a balanced message about the returns or benefits and risks associated with the product. Benefits should not be given undue prominence compared with risks: see draft RG 000.32–RG 000.46.

Rationale

39 We acknowledge that some product features will be more attractive to consumers than others and that these features are ones on which there is a greater temptation for promoters to focus. Information about returns and benefits are important but so is information about associated risks. It is for this reason that we think giving a balanced message about the returns, benefits and risks associated with a product is important.



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40 We do not think that information about risks should always have equal prominence to information about returns and benefits, but we do think that an advertisement is more likely to create unrealistic expectations if it gives undue prominence to the returns compared with the risks.

Your feedback

C3Q1 Does our proposed guidance address the key issues in relation to advertising returns, benefits and risks? If not, what additional issues should our guidance address?

C3Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.

C3Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

In relation to risk insurance products there are no “returns”. The relevant concepts are thus the “risks” and “benefits” associated with such products. For this reason, NIBA believes risk products should be addressed in their own right, and not as part of some broader guidance applying across financial services products.

NIBA notes that the Federal Government deliberately removed from the general insurance PDS requirements the need to notify significant risks given the nature of general insurance see regulation [7.9.15D](#). The PDS is specifically required to contain the terms and conditions of the product see regulation [7.9.15E](#) and the focus should be on promotion of the consumer’s need to read the PDS and relevant policy documents as only by reading these documents can a proper understanding of the insurance policy and the terms and conditions of the cover being provided be obtained.

RG 000.34 states that “the advertisement should include a statement about the overall risk associated with the product or a clear explanation of the assumptions made in predicting the benefit”. Paragraph 000.45 contains a similar statement about unusual risks.

NIBA assumes that the statement should in the insurance context only require appropriate and sufficiently prominent high level qualifications such as “terms, conditions and limits apply” and a reference to the need for the customer to read the PDS.

By doing this the customer will not be misled and the need to read the PDS is reinforced. To try and cover the risks on an individual basis would usually make an advertisement unworkable in the risk



insurance context. A specific appropriately qualified comment relevant to risk insurance in this respect would be useful.

C3Q3 The examples other than Example 6 provided are not risk insurance relevant but NIBA has no specific concerns with them. In relation to Example 6 it would be useful for ASIC to provide a form of words it believes may be appropriate.

C3Q4 See above comments.

Proposal C4 warnings, disclaimers and qualifications

We propose that:

(a) warnings, disclaimers and qualifications should not be inconsistent with other content in an advertisement, including any headline claims, and should have a proportionate level of prominence to the claims to which they refer; and

(b) advertisements should be self-contained—that is, consumers should not need to access a warning, disclaimer or qualification contained in another website (or other page of the website) or document: see draft RG 000.47–RG 000.51.

Rationale

41 We recognise that not all relevant information can be included in the headline claim. However, the more that a qualification is required to complete or balance the information contained in the headline claim, the more prominently placed the qualification should be.

42 Warnings, disclaimers, qualifications and fine print, where they are inconsistent with other content of the advertisement, do not have sufficient prominence or are hard to find, can have the effect of undermining the consumer’s understanding or impression of the advertisement.

Your feedback

C4Q1 Does our proposed guidance address the key issues in relation to using warnings, disclaimers, qualifications and fine print? If not, what additional issues should our guidance address?

C4Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.

C4Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.



NIBA feedback

In the insurance example 12 about containing offers and discounts without appropriate qualifiers ASIC indicates that a link to another page on the website where the consumer can find out information about the risks is unlikely to correct a misleading impression.

NIBA's view is that if a simple, appropriate and prominent warning that terms and conditions apply that can affect the matter represented in the advertisement is used and a prominent and clear link is provided to more information e.g the PDS, this may be sufficient, depending on the content of the advertisement. NIBA refers ASIC to its comments and proposals in the Executive Summary above.

The insurance example in 14 appears to be a relatively harsh position where consumers are clearly and prominently told in the advertisement that the 12 monthly payments cost more than the annual payment, especially as the heading is not in fact inaccurate.

Proposal C5 Fees and costs

We propose that where fees or costs are referred to in an advertisement, it should give a realistic impression of the overall level of fees and costs a consumer is likely to pay, including any indirect fees or costs: see draft RG 000.52–RG 000.55.

Rationale

43 Like risks, fees and costs associated with a product are less attractive features and therefore there can be a temptation to underplay their importance in an advertisement.

44 However, the fees and costs that are associated with a financial product and, in particular, their affect on returns, should be clearly understood by consumers so that they do not have an unrealistic impression of what the product will cost them (or how those fees and costs will affect their likely return). Information in an advertisement should realistically reflect the cost of the product or service to consumers.

45 The draft regulatory guide indicates some factors promoters should consider when referring to fees: see draft RG 000.54.

Your feedback

C5Q1 Does our proposed guidance address the key issues in relation to advertising fees and costs? If not, what additional issues should our guidance address?

C5Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.



C5Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

NIBA does not have any issues with the guidance in 000.52-53. However in 000.54 ASIC is again promoting the concept that an advertisement should contain a significant amount of detail. In some cases this may be appropriate. However, in NIBA's view, provided the representation made in the advertisement is not misleading and a clear and prominent qualifier is used to ensure it is not, industry should not be forced to include overly onerous detail. Consumers should be encouraged to read the relevant documentation or obtain appropriate professional advice. NIBA refers ASIC to its comments and proposals in the Executive Summary above.

Insurance products are generally a grudge purchase and it is in the community interest to promote the acquisition of such products. Any conduct that inappropriately restricts advertising by making the obligations unrealistic or onerous, would be likely to have that effect.

NIBA supports the example in 000.55 regarding fees for financial advice services.

Proposal C6 Comparisons

We propose that:

- (a) comparisons should only be made between financial products that have sufficiently similar features;
- (b) comparisons should only be made about returns if the information used is current, complete and accurate; and
- (c) if an advertisement discloses a rating, the rating used should be properly explained, including the rating scale and where an investor can obtain further information about the rating: see draft RG 000.56–RG 000.71.

Rationale

46 Consumers often use information from advertising when making decisions between competing products.



47 Advertisements that compare two or more products, or use tools such as ratings and awards to highlight differences in products, can be misleading if the comparative features or tools are not used accurately or properly explained.

48 We acknowledge that a promoter will naturally focus attention on those aspects of a product which are most attractive. However, if a comparison is made between financial products that do not have sufficiently similar features, this can create a misleading impression of the overall nature of the product.

49 Ratings and awards can create an impression of third party endorsement of a product. If ratings or awards are included in an advertisement, they need to be explained so that consumers can form their own view about whether to trust this implied endorsement.

Your feedback

C6Q1 Does our proposed guidance address the key issues in relation to using comparisons in advertising? If not, what additional issues should our guidance address?

C6Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.

C6Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

NIBA notes that much will depend on the advertisement and it is not entirely clear what ASIC means by “sufficiently similar features to make the comparison relevant and not misleading”.

Example 18 suggests an insurer could not compare their premium with another policy without specifically bringing to the customer’s attention a higher excess. NIBA’s concern with such detail is where will the line be drawn? Such an insurer theoretically should also then refer to coverage differences. The end result is that no advertisement is permitted or practically possible in the insurance context where a product’s terms differ in any respect that may impact on the matter advertised. An appropriately clear and prominent general qualifier should be able to be used to cover off on such matters.

In relation to awards, NIBA makes no additional comment other than to explain the qualifications relevant to an award is likely to lead to the use of awards in advertising being removed.



NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal C7 Past performance and forecasts

We propose that:

- (a) past performance information in advertisements should be accompanied by a warning that past performance is not indicative of future performance; and
- (b) forecasts about future performance of a financial product in advertisements should be based on reasonable assumptions and should also state that the forecasted future performance is not guaranteed to occur: see draft RG 000.72–RG 000.75.

Rationale

50 Information about past performance or forecasts about future performance in advertisements can be very influential for consumers when deciding whether to invest in a financial product as they can create expectations about likely returns.

51 Where an advertisement relies on statements of past performance or forecasts of future performance, it could create an impression that this past performance will be repeated or that the forecasted future performance is guaranteed.

We have previously provided detailed guidance on disclosure of past performance and forecasts: see RG 53 and RG 170. The draft regulatory guide reflects this guidance.

Your feedback

C7Q1 Does our proposed guidance address the key issues in relation to use of past performance and forecasts in advertising? If not, what additional issues should our guidance address?

C7Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.

C7Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C7Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

This would not typically apply to risk insurance products or services.



Proposal C8 Use of certain terms and phrases

We propose that:

- (a) terms and phrases should not be used in a particular way by industry where this usage is inconsistent with the ordinary meaning commonly recognised by consumers (e.g. 'free', 'secure', and 'guaranteed'); and
- (b) industry concepts or jargon should be avoided, unless the promoter is confident that those terms will be understood by the audience: see draft RG 000.76–RG 000.86.

Rationale

53 While using terms and phrases that are commonly recognised can make advertising more understandable, consumers may be misled if those terms and phrases are used in a way that is inconsistent with their ordinary meaning.

54 Certain terms and phrases may also have a strong emotive pull on consumers (e.g. 'free', 'secure' or 'guaranteed') and care should be taken in how those terms and phrases are used.

55 Technical language and jargon can have very precise meanings that are well understood by industry. While this can help make an advertisement more 'precise' technically, it may not convey a clear message for consumers if the likely audience is unfamiliar with the concepts.

Your feedback

C8Q1 Does our proposed guidance address the key issues in relation to the use of certain terms and phrases and industry jargon in advertising? If not, what additional issues should our guidance address?

C8Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.

C8Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C8Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.



NIBA feedback

NIBA has no issue with this proposal as drafted.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal C9 The advertisement's target audience

We propose that:

- (a) advertisements should be capable of being clearly understood by the audience that might reasonably be expected to see the advertisements;
- (b) advertisements should not state or imply that a financial product is suitable for particular types of consumers unless the promoter has assessed that the product is suitable for that class; and
- (c) advertisements for complex products that are only appropriate for a limited group of consumers should not be targeted at a wider audience: see draft RG 000.87–RG 000.93.

Rationale

56 Advertising, particularly through mass media channels, is designed to reach wide audiences and this is part of its appeal for promoters. However, all consumers bring their own background, knowledge and expectations when viewing an advertisement, and this will be different for each consumer. While advertising cannot take into account each consumer's background and understanding, we think that promoters should consider the actual audience that is likely to see the advertisement and whether the advertisement provides adequate information for that audience.

57 We also think that particular care should be taken when advertising complex products where these are marketed to retail investors. Retail investors can struggle to understand the structure and associated risks of such products, and often falsely conclude they are similar to more familiar methods of investing, such as trading directly in shares.

Your feedback

C9Q1 Does our proposed guidance address the key issues in relation to the advertisement's target audience? If not, what additional issues should our guidance address?

C9Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances (e.g. where complex products are advertised to a mainstream audience)? If yes, please provide details.



C9Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C9Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

In relation to the above, much will depend on the advertising content as to whether it can or should be distributed more widely or not.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal C10 Consistency with disclosure documents

We propose that advertising content should be consistent with information contained in any disclosure document (such as a PDS or prospectus) or contracts: see draft RG 000.94–RG 000.97.

Rationale

58 Advertising and other disclosure documents (such as a PDS or prospectus) are both important sources of information in a consumer’s financial decision-making. Inconsistencies between the information presented in an advertisement and in a disclosure document may reduce a consumer’s ability to fully understand the features of the product or advice service.

59 Inconsistency can arise not only where the information in an advertisement is different to what is included in a disclosure document, but also where an advertisement, in order to be fully understood, must rely on context or additional material that is not included in the disclosure document.

Your feedback

C10Q1 Does our proposed guidance address the key issues in relation to consistency with disclosure documents in advertising? If not, what additional issues should our guidance address?

C10Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.

C10Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.



C10Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

In relation to the insurance Example 30, NIBA agrees that where an insurer fails to note terms and conditions and limits and exclusions apply, a customer would be misled and an appropriately clear and prominent disclaimer should be used.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal C11 Photographs, diagrams, images and examples

We propose that:

- (a) photographs and images should be relevant and not contradict, detract from or reduce the prominence of any warnings, disclaimers or qualifications; and
- (b) graphical presentations should not be ambiguous or overly complicated: see draft RG 000.98–RG 000.102.

Rationale

60 Photographs and other images are an important tool for promoters and can increase the broad appeal of an advertisement. However, they can have a strong emotive influence in communicating things such as the features or suitability of a product or service. They can also contradict, distract or detract from key messages in the advertisement. For this reason, we think promoters need to carefully consider how they use imagery so that the overall impression of the advertisement is not misleading.

61 Tables, diagrams, graphs, charts and maps can help present information in a way that is easy for consumers to absorb, provided they are not used in a misleading way. Our draft regulatory guide indicates some issues for promoters to consider when presenting them: see draft RG 000.101.

Your feedback

C11Q1 Does our proposed guidance address the key issues in relation to the use of photographs, diagrams, images and examples in advertising? If not, what additional issues should our guidance address?

C11Q2 Should our proposed guidance in this area be modified to better address particular products, media or other circumstances? If yes, please provide details.



C11Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C11Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

NIBA has no specific issue with this proposal.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal C12 Nature and scope of advice

We propose that an advertisement for a financial advice service should not create unrealistic expectations about what the service can achieve: see draft RG 000.103–RG 000.104.

Rationale

62 Financial advice can be provided in a variety of different ways depending on the consumer’s needs, the structure of the adviser’s business and the adviser’s area of expertise. For example, some financial advisers will provide a comprehensive financial plan addressing the consumer’s needs across the full range of financial products, whereas other advisers are more limited in the range of products from which they select when making a recommendation. A consumer’s expectations of the nature and scope of the advice service they will receive are often shaped by advertising.

Your feedback

C12Q1 Does our proposed guidance address the key issues in relation to advertising the nature and scope of a financial advice service? If not, what additional issues should our guidance address?

C12Q2 Should our proposed guidance in this area be modified to better address particular services, media or other circumstances? If yes, please provide details.

C12Q3 Is the example helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

C12Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.



NIBA feedback

NIBA has no specific issue with this proposal.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal D1 What advertising does our guidance apply to?

We propose that:

(a) our good practice guidance should apply to any advertising designed to inform consumers about or promote financial products or financial advice services, communicated through any medium, including:

(i) magazines and newspapers;

(ii) radio and television;

(iii) outdoor advertising, including billboards, signs at public venues, transit advertising;

(iv) internet, including webpages, banner advertisements, video streaming (e.g. YouTube) and social networking and microblogging (e.g. Twitter);

(v) social media and internet discussion sites;

(vi) product brochures and promotional fact sheets;

(vii) direct mail (e.g. by post, facsimile or email);

(viii) telemarketing activities and audio messages for telephone callers on hold; and

(ix) presentations to groups of people, and advertorials; and

(b) where particular media raise specific issues in relation to misleading or deceptive advertising, we would include additional good practice guidance specific to that media.

Rationale

63 We believe our proposed good practice guidance can be usefully applied to any communication medium used. However, we recognise that there can be specific problems associated with certain types of media. In Section C of the draft regulatory guide, we have highlighted some issues to consider when applying our guidance to particular types of media.



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Your feedback

D1Q1 Do you agree that our good practice guidance should apply to advertising communicated through any medium? If not, why not?

D1Q2 Do you agree that media-specific guidance is necessary and useful to illustrate specific issues associated with certain types of media? Which media raise such issues?

NIBA feedback

NIBA has no specific issue with this proposal. However, NIBA does note that these advertising media are very different in their nature and scope, and that the approach of the advertiser is likely to vary considerably across the different media. It will be very difficult for guidance to apply across the board, given these differences.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal D2 Mass media

We propose that when advertising through the mass media:

(a) promoters must consider the actual audience that is likely to see the advertisement and whether the advertisement is accurate, balanced and helpful for that audience; and

(b) advertising should be clearly distinguished from normal program or editorial content: see draft RG 000.105–RG 000.109.

Rationale

64 Mass media refers to media channels used for mass communication, such as radio, television, newspapers, magazines, and the internet. Mass media advertising can take the form of audio, video, images, text, or a combination of all four.

65 As noted in paragraph 56, mass media has capacity to reach a wide audience, often beyond the promoter's target or anticipated market. Therefore, we think promoters should consider the actual audience that is likely to see the advertisement and whether the advertisement is accurate, balanced and helpful for that audience.

Consumers may not employ the same critical analysis of program content as they do for advertising and other commercial messages they are exposed to. Where the form of an advertisement is similar to surrounding program content (e.g. a live read by a radio announcer, or an advertorial lift out in a



newspaper), there is potential for consumer confusion if a clear distinction is not drawn between the advertising and the program content.

Your feedback

D2Q1 Does our proposed guidance address the key issues in relation to mass media advertising? If not, what additional issues should our guidance address?

D2Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.

D2Q3 Are the examples in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

D2Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

NIBA has no specific issue with this proposal.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal D3 Audio Advertisements

We propose that any warnings, disclaimers or qualifications included in audio advertisements should be read at a speed that is comprehensible to an average listener: see draft RG 000.110–RG 000.112.

Rationale

67 Broadcast media, such as radio, does not allow the listener to process the information in an advertisement at their own pace. It is important that information in an audio advertisement is presented in a manner that a consumer is able to understand.

Your feedback

D3Q1 Does our proposed guidance address the key issues in relation to audio advertisements? If not, what additional issues should our guidance address?

D3Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.



D3Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.

D3Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

NIBA has no specific issue with this proposal.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal D4 Film and video advertisements

We propose that information about risks and any warnings included in film and video advertisements should be easy to understand by an average viewer on the first viewing of an advertisement and not undermined by distracting sounds or images: see draft RG 000.113–RG 000.115.

Rationale

68 The combination of images and sound in film and video advertisements can make it particularly easy for consumers to be distracted from important information such as information about risks. This occurs regardless of the distribution method for the advertisement, including television, cinema, and internet video (e.g. YouTube).

Your feedback

D4Q1 Does our proposed guidance address the key issues in relation to film and video advertisements? If not, what additional issues should our guidance address?

D4Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.

D4Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.

D4Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

NIBA has no specific issue with this proposal.



NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal D5 Internet advertising

We propose that:

- (a) internet advertisements should be self-contained. Consumers should not need to click through from an online advertisement to additional information on another website to ensure they are not misled;
- (b) promoters should consider the appropriateness of using new media channels for advertising if content limitations mean there is insufficient space to provide balanced information; and
- (c) promoters and consumers should be able to keep a record of an advertisement (e.g. by printing it), including any disclaimers or warnings: see draft RG 000.116–RG 000.121.

Rationale

69 Internet advertising can take the form of banner advertisements, webpages, video streaming (e.g. YouTube) and social networking and microblogging (e.g. Twitter). These media share common features, in that they are interactive, more easily targeted directly at individual consumers, and can allow consumers to access additional information. However, regardless of the form an internet advertisement takes, our guidance is media neutral and applies similarly to internet advertising as for other media.

70 Internet banner advertising is often relatively short and consumers can quickly access additional information. Despite this, internet advertisements should be self-contained—that is, consumers should not need to click through to another page to find additional information, including relevant qualifications or disclaimers about the headline claims in the advertisement.

71 Video streaming on the internet raises similar issues as for television advertising. For example, the combination of images and sound can make it particularly easy for consumers to be distracted from important information such as information about risks.

72 Social networking and microblogging services (e.g. Twitter) deliver short ‘bites’ of information directly to consumers. The content limitations imposed by some new media channels may mean that there is insufficient space to provide balanced information.

Your feedback

D5Q1 Does our proposed guidance address the key issues in relation to internet advertising? If not, what additional issues should our guidance address?



D5Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.

D5Q3 Is the example in the draft regulatory guide helpful in providing practical illustration of our good practice guidance? Should additional examples be included? If yes, please provide us with appropriate examples.

D5Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

NIBA believes a form of disclaimer should be included on the same page as the advertisement but there is no reason links to additional information should not be able to be used if easily accessible.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

Proposal D6 Outdoor advertising

We propose that promoters should take into account the conditions under which an outdoor advertisement will be viewed (e.g. from a distance or from a moving vehicle) when considering whether the overall impression of the advertisement is misleading or deceptive: see draft RG 000.122–RG 000.123.

Rationale

73 Outdoor advertising is often viewed under circumstances where the consumer is undertaking some other activity so is not fully engaged with the advertisement (e.g. billboards at the side of the road, which are seen from a moving vehicle). This raises significant issues in relation to the consumer's ability to take in and understand any fine print or disclaimers set out in the advertisement. These factors are relevant in determining the overall impression of the advertisement as viewed by the consumer.

Your feedback

D6Q1 Does our proposed guidance address the key issues in relation to outdoor advertising? If not, what additional issues should our guidance address?

D6Q2 Should our proposed guidance in this area be modified to better address particular products or other circumstances? If yes, please provide details.



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D6Q3 Would it be helpful to include examples providing practical illustration of our good practice guidance? If yes, please provide us with appropriate examples.

D6Q4 Do you anticipate any practical difficulties that would result from following our good practice guidance? If yes, please provide details.

NIBA feedback

NIBA has no specific issue with this proposal.

NIBA also refers ASIC to its comments and proposals in the Executive Summary above.

If you would like to discuss any aspect of this matter further do not hesitate to contact us.

Dallas Booth

Chief Executive Officer

Mobile: 0488 088 478/Direct: +61 (0)2 9459 4305

Fax: +61 (0)2 9964 9332/Email: dbooth@niba.com.au

National Insurance Brokers Association of Australia