



# **Memorandum of Understanding between the Financial Markets Authority and the Advertising Standards Authority**

**September 2016**

Memorandum of Understanding dated 14 September 2016

between (1) the Financial Markets Authority (the FMA)  
and (2) the Advertising Standards Authority (the ASA)

### *Background*

1. The FMA is an independent Crown entity established under section 6 of the Financial Markets Authority Act 2011 (**FMA Act**). The FMA's main objective, as set out in section 8 of the FMA Act, is to promote and facilitate the development of fair, efficient, and transparent financial markets. The FMA has statutory functions under the FMA Act and the Acts listed in Schedule 1 of that Act. The FMA enforces securities, financial reporting, and company law as they apply to financial services and securities markets and its role is to help develop financial markets that efficiently allocate capital, operate with integrity and provide diverse investment opportunities for New Zealanders and international investors.
2. The ASA is a self-regulatory authority with responsibility for the enforcement of advertising standards in New Zealand. It has fourteen member organisations representing advertisers, agencies and the media. The objectives of the ASA are to seek to maintain at all times and in all media a proper and generally acceptable standard of advertising and to ensure that advertising is not misleading or deceptive, either by statement or by implication; to establish and promote an effective system of voluntary self-regulation in respect to advertising standards; and to establish and fund an Advertising Standards Complaints Board.

### *Purpose*

3. The purpose of this memorandum is to record the FMA's and the ASA's commitment to:
  - a. identify common regulatory objectives and roles;
  - b. support each other in fulfilling each party's objectives; and
  - c. record the spirit of cooperation that will operate between the parties.
4. Nothing in this memorandum is intended to limit or affect the independence of each party or the requirement that each party act independently to fulfil its functions and obligations.

### *Roles and responsibilities in areas of common interest*

5. The FMA and the ASA recognise that both parties have a common interest in the regulation of financial advertisements.<sup>1</sup>
6. Consistent with its objectives, the ASA's responsibilities include:
  - a. To seek to maintain at all times and in all media a proper and generally acceptable standard of advertising and to ensure that advertising is not misleading or deceptive, either by statement or by implication.
  - b. To establish and promote an effective system of voluntary self-regulation in respect to advertising standards. Financial advertisements are subject to the ASA's Code for Financial Advertising.
  - c. To establish and fund an Advertising Standards Complaints Board.
7. The ASA operates in accordance with best practice self-regulatory principles and practices and accordingly relies on voluntary cooperation for enforcement.
8. Under the Financial Markets Conduct Act 2013, the FMA has the primary regulatory and enforcement responsibility for fair dealing in relation to financial products and services. The FMA has regulatory oversight for the disclosure of offers of financial products, including any related advertising, as well as oversight for the advertising of financial services.

### *How we will work together*

9. The FMA and ASA will work closely together in the spirit of cooperation to support each other in fulfilling each party's objectives.
10. The FMA and the ASA agree that there are a number of principles which will govern the relationship under this memorandum. Specifically, but without limitation, the two parties agree that, in relation to 'financial advertising', they will, so far as practicable:
  - a. work together to coordinate activities to avoid potential overlaps or duplication of effort between the parties, and to maximise efficiency and effectiveness;
  - b. work together to clearly communicate our respective roles and responsibilities to stakeholders;
  - c. share information, knowledge and skills to increase the overall capability and effectiveness of both parties in the performance of their functions; and

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<sup>1</sup> 'Financial advertisements' are advertisements for the lending, saving or investment of money, financial instruments, financial transactions and offers of securities (including category 1 and category 2 products as defined in the Financial Advisers Act 2008). Advertisements for the provision of advice or services in respect of financial products, investments or securities are also deemed to be financial advertisements.

- d. work together to achieve appropriate enforcement outcomes, for example the FMA may consider taking enforcement action against financial advertising that is in breach of relevant legislation where the advertiser has failed to comply with a decision of the Advertising Standards Complaints Board.
11. ASA acknowledges that the FMA's ability to share information with ASA described in section 59(3) of the FMA Act is limited by the provisions of that section which prohibits the FMA from publishing or disclosing information or documents that are supplied or disclosed to, or obtained by, the FMA under the FMA Act or any financial markets legislation (as defined by the FMA Act) unless the publication or disclosure of the information or document is to certain persons (as set out in section 59(3) of the FMA Act). Such persons include a person who FMA is satisfied has a proper interest in receiving the information or document. FMA will therefore only disclose or supply other information to ASA under this memorandum.
12. Staff from both parties will meet as required to give effect to the requirements of this memorandum.
13. This memorandum may be made available on both the FMA's and the ASA's websites.

#### *Maintaining confidentiality*

14. Without prejudice to or limitation of any applicable legal principles, each party will observe the strictest confidence in relation to information supplied under this memorandum, or derived from or based on any such information (**Protected Information**). Neither party will use or disclose Protected Information unless the use or disclosure is required by law or authorised by the other, or is otherwise required to fulfil a statutory function.

#### *Term of memorandum*

15. This memorandum remains effective unless terminated by either party (by giving 30 days written notice) or by mutual consent.
16. All confidentiality commitments between the parties will remain in effect despite any termination of this memorandum.
17. This memorandum may be amended at any time during its term by written agreement between the two parties.

#### *Issue resolution*

18. Both parties will use their best endeavours to resolve any issue in a timely manner and in the way that best supports the delivery of the parties' objectives.

19. In the event of issues arising between the parties, the parties will work together to resolve them as quickly as possible by mutual agreement.



**Robert Everett**  
**Chief Executive**  
**Financial Markets Authority**



**Hilary Souter**  
**Chief Executive**  
**Advertising Standards Authority**