



OCTOBER 2021

Guidance note:

Advertising offers of financial products under the FMC Act

This note gives guidance on the Financial Markets Authority's expectations in respect of advertising financial products under the Financial Markets Conduct Act 2013

About FMA guidance

Our guidance:

- explains how we interpret the law
- describes the principles underlying our approach
- gives practical examples about how to meet obligations
- explains when and how we will exercise specific powers under legislation

Guidance notes: provide guidance on a topic or topic theme. Issuing guidance is just one of the ways we can be transparent and share our intended approach with the market. Guidance notes are not binding, but they help market participants to be confident they understand our approach and how we interpret, and intend to apply, the law relating to their responsibilities.

You might also like to check the reports and papers on our website. For example, our monitoring reports describe actual practice we are seeing and our comments on this.

Disclaimer

This guidance note explains the approach the FMA intends to take when considering advertising offers of financial products in the context of the fair dealing and disclosure requirements in the Financial Markets Conduct Act 2013 (**FMC Act**).

It does not constitute legal advice. We encourage you to seek your own professional advice to find out how the legislation discussed and any other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples are provided purely for illustration. They are not exhaustive and are not intended to impose or imply particular rules or requirements.

Document history

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Introduction

The purpose of the Financial Markets Authority (FMA) is to promote and facilitate the development of fair, efficient, and transparent financial markets. This guidance sets out our expectations of good conduct in the advertising of offers of financial products.

We encourage market participants to not only follow the principles set out in this guidance, but also to consider how their conduct actively assists investors to make appropriate and considered investment decisions.

What this guidance applies to

This guidance focuses on the application of the fair dealing provisions in Part 2 of the FMC Act to communications made for the purposes of advertising or promoting offers of financial products (**advertising**). This guidance note uses the term “financial products” to mean any of these products:

- a debt security
- an equity security
- a managed investment product
- a derivative.

This guidance also covers the application of the specific advertising provisions in Part 3 of the FMC Act for regulated offers of financial products.

The term “advertisement” is given a broad definition in the FMC Act. In relation to an offer, or intended offer, of financial products, it means any form of communication made to the public or a section of the public for the purpose of promoting the offer or intended offer. An advertisement may not need to specifically mention an offer of a financial product or even a financial product to be captured by the fair dealing principles and advertising expectations outlined in this guidance. For example, an advertisement could focus on an issuer and still be promoting an offer of a financial product that the issuer is making or planning to make. An advertisement may also relate to more than one financial product or offer.

Advertising can be via any medium, including:

- social media and professional networking sites, including associated mobile phone applications and posts made by social media influencers;
- the internet, including news websites, issuers’ websites, and associated promotion and search tools;
- magazines and newspapers;
- radio and television;
- outdoor advertising, including billboards, signs at public venues, and transit advertising;
- mobile phone messages;
- product brochures and promotional fact sheets;

- direct mail (e.g. written letters or email);
- group presentations, seminars, and advertorials;
- newsletters and updates;
- forums where issuers and investors can communicate.

Other relevant guidance and resources

This guidance should be read in conjunction with other information published by the FMA, including:

- [FMA's guide to good conduct](#)
- [Regulatory response guidelines](#)
- [Information on fair dealing and stop orders](#)
- [Fair dealing guidance specific to crowdfunding and peer-to-peer lending](#)
- [Fair dealing guidance specific to initial coin offerings](#)
- [Customer vulnerability - our expectations for providers](#)
- [Guidance on advertising financial products that incorporate non-financial factors e.g. green bonds](#)
- [Guidance on talking about money online](#)

Additional guidance notes, information sheets, and other reference materials can be found in the FMA's guidance library: <http://www.fma.govt.nz/compliance/guidance-library/>

Contact us to make a complaint

Contact us [here](#) or call 0800 434 566 if you believe the fair dealing or disclosure provisions have been breached. Please note that consumer credit contracts are regulated by the Commerce Commission.

Fair dealing provisions

Conduct is at the core of the FMC Act. Central to the FMC Act are the fair dealing provisions in Part 2, which set out the standards of behaviour that those operating in the financial markets must comply with. The following section provides an overview of the key principles that underpin the fair dealing and stop order provisions, and that inform the FMA's approach to enforcement in respect of misleading, deceptive or confusing advertising.

Fair dealing provisions and stop orders

Part 2 of the FMC Act requires fair dealing in relation to all financial products. The fair dealing provisions prohibit:

- misleading or deceptive conduct, including conduct which is likely to mislead or deceive;
- false, misleading or unsubstantiated representations; and
- offers of financial products in the course of unsolicited meetings.

Part 2 further provides that a person must not, in trade, engage in conduct that is liable to mislead the public in relation to any dealing in financial products, or as to the nature, characteristics, suitability for a purpose, or quantity of financial products.

Stop orders

Additionally, under Part 8 of the FMC Act, the FMA may use a stop order in various circumstances, including to stop or prevent “restricted communications”¹ such as advertising of financial products that confuses or misleads, or is likely to confuse or mislead, consumers or investors on matters that influence investment decisions.

For example, we could issue a stop order to require an issuer to cease offering a financial product, or to stop an advertisement, if we were satisfied that content in an advertisement is ‘likely to confuse’ investors.

A key difference between the fair dealing provisions and the stop order provisions is the reference to information that is “likely to confuse” – this is a lower threshold than “likely to mislead”.

The Enforcement section on page 18 outlines other situations where we can use a stop order, and provides further information on other enforcement options available (e.g. direction orders). The purpose of noting stop orders in this section is to highlight the different threshold to the fair dealing provisions. The key principles on the next page underpin the fair dealing and stop order provisions, and inform our approach to taking action against confusing or misleading advertising for financial products.

¹ See section 464 of the FMC Act for a definition of ‘restricted communication.’ In practice, we would expect most if not all advertisements of financial products to constitute restricted communications, allowing exercise of the stop order powers.

Who do the fair dealing provisions apply to?

The fair dealing provisions in Part 2 apply widely, with few exceptions, to advertising inside New Zealand relating to financial products, and advertising outside New Zealand by any person carrying on business in New Zealand to the extent that the advertising relates to the supply of financial products in New Zealand. They also apply regardless of whether the person advertising the financial products is licensed or authorised by the FMA, or whether those products are aimed at retail or wholesale investors.

Contravention through involvement

Persons “**involved**” in advertising for a financial product may also be liable under the fair dealing provisions, even if they did not directly engage in any misleading or deceptive conduct themselves. For example, directors and senior managers of an issuer can be liable for misleading advertisements placed by the issuer if they aided, induced, or otherwise are directly or indirectly a party to the misleading advertising.

Key principles

It is the overall impression that counts

Whether an advertisement is likely to mislead, deceive or confuse depends on the overall impression as perceived by the consumer or investor. This means that:

- advertising that is likely to mislead, deceive or confuse, without actually being misleading, deceptive or confusing, is sufficient to breach the fair dealing or stop order provisions
- whether or not the advertisement was intentionally misleading, deceptive or confusing is irrelevant
- advertising is more likely to mislead where a financial product is relatively complex (compared to standard ‘vanilla’ financial products)
- investors and consumers who are vulnerable (e.g. due to personal circumstances) are more susceptible to being misled, deceived or confused
- representations that are true and verifiable in isolation may nonetheless leave a misleading, deceptive or confusing impression overall. This may be the case where material information or qualifications to a representation (e.g. risks or downsides to a product) are in fine print
- the form or context of an advertisement is relevant to the assessment of whether it is misleading (see section 13 of the FMC Act). For example, an advertisement for a product suitable for wholesale investors that appears in a national Sunday newspaper may be misleading to some readers, but the same advertisement that is only mailed out to a limited audience of wholesale investors might not be misleading
- the relevant test for whether something is misleading, deceptive or confusing is the reaction of an ordinary and reasonable (or typical) member of the advertisement’s audience – normally anyone who is neither unusually astute nor unusually gullible. The audience is not the audience that the advertiser would like, but the audience the advertisement actually reaches
- consumers cannot be expected to study or revisit an advertisement – the most important consideration is the overall impression created by the advertisement when viewed for the first time.

Omissions can be misleading, deceptive or confusing

Misleading, deceptive or confusing advertising extends beyond positive actions or positive statements in an advertisement – it also includes omissions. An omission can be either deliberate or inadvertent. It is not a defence that an advertisement “didn’t say anything” if an omission or partial disclosure (e.g. cherry picking) is likely to leave an overall misleading, deceptive or confusing impression on the investor.

Substantiate your claims

The fair dealing provisions require representations made in advertisements to be substantiated, which means having a reasonable basis for the representation at the time the representation is made. Anecdotal evidence, unsupported opinions and assumptions do not constitute a reasonable basis. We are particularly interested in representations in advertisements regarding the nature, suitability and characteristics of a financial product.

A representation that was unsubstantiated at the time it was made (e.g. at the time the advertisement was published) will remain unsubstantiated, even if the representation turns out to be true or is subsequently substantiated.

Advertising expectations

The following section sets out our expectations for how the principles of fair dealing should be applied in practice to the advertising of offers of financial products. They focus on the key areas where we consider poor conduct is likely to present a higher risk to the investors.

We encourage market participants to not only follow the principles and expectations set out in this guidance (as and where applicable to them), but also to consider how their conduct actively helps investors to make appropriate and considered investment decisions.

Advertising must be truthful and accurate

Information used in advertisements for financial products must be current, complete, and accurate throughout the lifespan of the advertisement. Any statements or claims made must be verifiable and substantiated. Information should be presented in such a way that it will be readily understood by the target audience, and advertisements must give prominence to key information (proportionate with the significance or importance of that information). In other words, key information or exceptions (e.g. key risks or downsides) buried in the fine print will not correct any misleading impression created by a prominent and misleading headline.

Advertisements should give consistent information across different communication channels, so that people receive the same impression of a financial product regardless of the source (e.g. radio vs. print advertising).

Dual or multiple language communications

Issuers should take care when communicating in more than one language. A reader or listener in one language should receive the same information and the same impression of the features, benefits, and risks of a financial product, as a reader or listener in another language.

If the main body of a communication is in one language, then any warnings, disclaimers, or qualifications must be presented in that same language.

Information provided in one language should be a full and accurate translation of the other in *all material respects* – this may not necessarily be a word-for-word literal translation.

Take care when comparing different products

Advertisements that compare different financial products have a role to play in investor decision-making, but are also at risk of conveying partial information, which can result in inaccurate or misleading impressions. A comparison need not be explicit – it can be implicit or hinted at. The key principle is that it is the overall impression that counts.

Direct comparisons should only be made between financial products that have sufficiently similar features for the comparison to be meaningful. If dissimilar products are compared, the differences need to be clearly

explained, not hidden in a footnote, and providers need to draw sufficient attention to the differing risks and features in the advertisement.

The information used to make a comparison must be current, complete, and accurate throughout the lifespan of the advertisement. Sources of information and key assumptions used to make the comparison should be clearly disclosed.

Advertisements that compare financial products should not emphasise certain aspects of financial products at the expense of other aspects that are important for investor decision-making. Similarly, advertisements that compare financial products should not overlook any key aspect that is important for investor decision-making.

Even where individual facts or details included as part of a comparative advertisement are literally true, the overall impression of the comparison may still be false, misleading, or deceptive (or likely to mislead or deceive). Subsequent disclosure (such as footnotes) may not be sufficient to correct a misleading first impression, especially where a comparison is likely to be inappropriate or unreasonable – e.g. comparing non-bank financial products to registered bank term deposits.

Balance risk and reward

A balanced message is important for ensuring the overall impressions and expectations formed by investors are realistic.

For example, advertisements must not state, imply, or otherwise give the impression that a financial product is:

- safe or free from risk, or is low risk;
- investors are immune to losing their investment; or
- returns are guaranteed

where this is not or cannot be substantiated. Nor should they exaggerate or give undue prominence to the potential benefits of a financial product, or portray returns at the expense of clear information on significant risks.

Careful consideration should be given to the use of certain terms or phrases. Some, such as 'safe', 'relatively secure', 'guaranteed', 'inflation proof', 'recession proof', 'highly secure' and 'highly liquid' may easily result in an investor forming an incorrect impression about an offer or product.

Examples of mistaken impressions may include that investors are immune to losing their investment, a product is secured, returns on a product are guaranteed, or an investment can be withdrawn/redeemed on short notice where this is not necessarily the case.

Even when a financial product does have the benefit of security, aspects such as the type and nature of the security and the assets it is over, or how the security assets are valued, whether they are complete or in progress and how liquid they are, may mean that advertising the financial product as secured, in the absence of additional information, may be likely to mislead or confuse.

Take care with phrasing and industry jargon

Terms and phrases should not be used where their actual meaning is inconsistent with the meaning commonly recognised by investors.

In addition, industry concepts and jargon should be avoided unless they are sufficiently explained and will be understood by the audience. Issuers should not assume that the audience will understand specific terminology or jargon, and such language should be used only where it is necessary for a complete and accurate understanding of an offer or financial product.

Forecasts must be based on reasonable and supportable assumptions

Forecast returns

Advertisements for financial products must only include information on forecast returns when there are reasonable grounds to do so. The basis of any forecast return should be made clear, and references to where further information on the underlying assumptions can be found should be included. What might constitute reasonable grounds will differ depending on the facts of the situation, including the nature and type of financial product on offer. For example:

- For an advertisement of a managed fund, there may not be any reasonable grounds for forecasting short to medium term returns and, even if there are, the disclosures required to ensure that the forecast does not give a misleading impression may be difficult to achieve.
- Managed investment scheme providers should not advertise forecast or expected returns unless they can demonstrate it is in their members' interests to do so.
- Forecast returns used in an advertisement should be stated net of fees and costs. Where the level of fees or costs is variable, either the maximum fee or cost should be deducted, or a "reasonable estimate" should be used along with disclosure of the fact it is an estimate and the basis on which it was made.
- If advertised returns are subject to change, this must be clearly indicated.
- Care should be taken where forecast cash distributions are advertised, as the word "distributions" is not necessarily synonymous with "returns".²

² Noting for example that returns will take into account any change in value of the financial product but that distributions will not.

Fixed returns

If future returns on a financial product are advertised as being fixed (e.g. an interest rate on a fixed-term debt security) but are subject to change, this must be clearly indicated.

Do not overemphasise performance at the expense of other material information

Performance history

Past performance information must be meaningful and be presented in a balanced way. Data that is “cherry-picked” to create a more favourable impression, or overly reliant on additional information for understanding, may create a misleading impression.

Performance history for periods of more than 12 months should be annualised, and the effects of commissions, fees, other charges, and tax should be disclosed.

The past performance of a financial product should not be the most prominent feature of an advertisement. Overemphasis on performance history, or stating that a product has a good performance history without qualification, may:

- result in an unrealistic expectation that high returns will continue into the future; and
- distract investors from other important information such as fees and risks.

Advertisements that disclose past performance should include a prominent warning statement that past performance is not a reliable indicator of future performance. The reference period and source of any comparative information should also be clearly stated.

Furthermore, for managed funds:

1. Advertising that covers the performance of a financial product for periods of less than 12 months is more likely to mislead or confuse. The shorter the performance period the more unreliable it is as an indicator of future performance; and the greater the likelihood the data has been ‘cherry-picked’ to create a favourable impression.
2. Performance for periods of 12 months or greater, but less than the recommended minimum investment timeframe³ for the product should not be advertised or promoted by itself. Instead, issuers should disclose more than one performance period and note how performance may vary over the minimum investment timeframe and longer. The larger the gap between the advertised performance periods and the recommended minimum investment timeframe, the greater the need for balancing disclosure. Accordingly, we strongly encourage issuers in this situation to include the disclosures set out in point 4 below.
3. Annualised performance for periods equivalent to, or longer than, the recommended minimum investment timeframe that is advertised or promoted without the inclusion of other performance periods,

³ For retail offers of managed funds a PDS must include a recommended minimum timeframe.

is less likely to mislead or confuse unless it has been significantly skewed by exceptional short-term performance.

4. For all advertisements that mention performance, regardless of period, issuers should ensure the advertisement is balanced. We encourage providers to:
 - a. provide additional information on the context for the performance, ideally by disclosing the performance of the relevant market index for the advertised performance period(s);
 - b. provide performance information for the following periods, as available for the product: one, three, five, and 10 years, and depending on what else has been provided, since inception (annualised, for periods over 12 months).

Case study

In April 2021 the FMA warned the funds management industry to avoid advertising large investment returns for the 12-month period to 31 March 2021, as this could mislead investors.

The period included none of the severe February and March 2020 COVID-19 sell-off in the market, but all the following recovery. The result was exceptional returns for many funds, particularly those with large exposures to equities.

We were concerned that returns for that 12-month period, being marketed through social media, websites and other channels without context, may mislead people into thinking the returns are typical market performance or that particular managers have significant, repeatable skill.

We noted shifting the performance period back just one month makes a significant difference to the result, as shown in the table below. Market index performance for 1 April 2020 to 31 March 2021 (the 12-month period in question) compared with 1 March 2020 to 28 February 2021 (which includes the March 2020 sell-down) shows the importance of the time period involved when promoting returns:

Index	1 April 2020 – 31 March 2021	1 March 2020 – 28 February 2021
NZX 50 (NZD)	+23.94%	+7.70%
MSCI World (USD)	+57.85%	+23.26%
S&P 500 (USD)	+53.17%	+23.92%

Benchmarks and performance objectives

If references are made to benchmarks or performance objectives, the advertisement should also disclose the benchmark/performance objective or provide a link to where further information on this can be found.

Tables, charts, graphs and diagrams

Tables, charts, graphs and diagrams can assist with presenting information to investors in a way that is easier to understand. Issuers must ensure that tables, charts, graphs or diagrams:

- are presented so that information is clear, concise and effective
- fairly present the information – for example, do not distort or misrepresent
- provide clear captions, labels, keys, scales, and/or time periods.

Warnings and disclaimers should be prominent

Warnings, disclaimers, and qualifications contained in advertisements must be prominent, and consistent across different communication channels. Subsequent disclosure of information, or qualification of a headline (e.g. in footnotes) may not be sufficient to correct a misleading or confusing first impression created by a false, misleading, deceptive or confusing claim.

The more that a qualification is required to balance a headline claim, the more likely the claim is to be false, misleading, likely to deceive, or confusing. Where qualifications to headline claims are unavoidable, they must be prominent, as information is less likely to be noticed or understood if it is in fine print or contained within a block of text.

Clearly disclose fees and costs

Fees advertised must be consistent with the relevant disclosure documents and must be disclosed in a way that gives a realistic impression of the overall level of fees and costs an investor is likely to pay (including any indirect fees or costs) over a relevant period. Where a particular fee or cost has been described, or a fee or cost has been broken down into its individual components, the description must be clear and not misleading or confusing.

Fees and costs should be shown in NZ dollars, and be inclusive of GST that is payable.

Care should be taken when claiming there are “no fees” in relation to a financial product. If the issuer earns money from the financial product, such as from a profit share or guarantee arrangement, then this may be considered in economic substance to be a fee, and the claim could be false or misleading. Alternatively, a claim of “no fees” with no information about the fact the issuer earns money from the financial product could give a misleading impression.

Do not claim to be endorsed, approved or regulated

No issuer is permitted to include the FMA logo in advertising materials, and issuers must not claim to be ‘governed’, ‘approved’, ‘authorised’, or ‘regulated’ by the FMA, the Reserve Bank of New Zealand, the Commerce Commission, or any other regulatory body, unless the claim is current and verifiable.

Issuers must not make any statement, or use any name, that suggests endorsement or approval by a government agency, professional body or independent agency, unless the claim and endorsement are current and verifiable.

Issuers must not falsely claim to be a member of a disputes resolution scheme.

Advertising should be discernible from other content

Advertising should be clearly identified as such and should not be masked as something other than an advertisement – e.g. paid or sponsored content should be clearly identifiable from other content.

This includes content that appears on social media platforms, or that is posted by an influencer on behalf of an advertiser. See our [guide to talking about money online](#) for more information.

Identify offers made only to wholesale investors

If an offer of a financial product is only available to wholesale investors,⁴ the advertisement should make it immediately and prominently clear that it is not available to retail investors.

Particular care should be taken when using wording in advertisements such as “open to wholesale and eligible investors only”. The term “eligible investors” has a specific meaning under the FMC Act but also could have a plain English meaning that is different, and therefore could be misleading, deceptive or confusing, depending on the context and audience. We also note that “eligible investor” is a subcategory of wholesale investor, not its own category.

An advertisement of an offer only open to wholesale investors is more likely to be misleading, deceptive or confusing when it is run in channels where retail investors are likely to view it, such as Facebook and daily newspapers. Particular care should be taken when using these types of channels to advertise offers made only to wholesale investors. Whether any wholesale investment advertisement is misleading, deceptive or confusing will depend on the context, channel, medium, and target audience of the advertisement.

⁴ See clause 36 Schedule 1 FMC Act.

Additional considerations for regulated offers

This section provides a summary of the specific requirements that apply to advertising of regulated offers of financial products under Part 3 of the FMC Act.

A regulated offer means an offer of financial products to one or more investors where at least one of those investors requires disclosure, usually a product disclosure statement (refer to section 41 of the FMC Act). This doesn't mean offers that aren't regulated offers are "unregulated" and face less scrutiny, since all advertisements promoting offers of financial products should be consistent with this guidance and Part 2 of the FMC Act.

The purpose of the Part 3 provisions is to ensure that investors are not persuaded to ignore a Product Disclosure Statement (PDS) or register entry, or to make investment decisions based on selective information provided to the market prior to the PDS being lodged with the Registrar.

Advertising provisions for regulated offers

Persons advertising regulated offers of financial products must comply with sections 89 – 92 in Part 3 of the FMC Act when advertising their offer.

*An **advertisement**, for the purposes of Part 3, means any form of communication made to the public (or a section of the public) for the purposes of promoting an offer or intended offer.*

For the avoidance of doubt, engaging in the "promotion of an offer or intended offer" may include communicating information about an issuer and/or the financial products that are being offered. To be considered an advertisement, a communication is not required to directly invite applications for the issue of financial products.

For example, a fund manager using monthly updates on its website to actively highlight the performance of its fund could, depending on the context, be promoting the acquisition of units in the fund (and by extension, the offer of units in the fund).

The general rule in section 89 is if an offer, or intended offer, of financial products is or will be a regulated offer, a person must not, except in accordance with any of sections 90 to 92, distribute an advertisement of the offer or intended offer.

Under section 90 a person may distribute a PDS or a copy of information or a document on the register entry for the offer without contravening section 89.

Section 91 deals with advertising an offer before a PDS is lodged. There are three mandatory statements that must be made in the advertising. Additionally, if the advertising states the offeror is seeking preliminary indications of interest it must further specify:

- how indications of interest may be made; and
- that no indication of interest will involve an obligation or a commitment to acquire the financial product.

Section 92 deals with advertising an offer after a PDS is lodged. In summary there must be a reasonably prominent statement in the advertising about who the issuer/offeror is; where and how to obtain the PDS; and the advertising must be consistent with the PDS and register entry.

Finally, section 93 carves out of sections 89-92 various factual items such as company statutory annual reports and listed companies' announcements to the NZX for the purpose of complying with market rules.

Advertising of regulated offers on platforms where the format of content is limited

This guidance also applies to advertising on platforms where the format of content is limited or restricted. Some platforms, such as social media and their associated mobile applications, often impose restrictions on the amount or type of content that can be displayed. Normal practice is to include a hyperlink in the advertising and put further information about the offer on the landing page of the issuer's website.

Persons advertising regulated offers of financial products must comply with Part 3 of the FMC Act – and in particular, the disclosures required under sections 89-92 of the Act.

However, we are aware that it may not be possible to include the disclosures required under sections 89-92 on advertising platforms where content is restricted. Accordingly, the FMA expects advertisements for regulated offers of financial products where content restrictions exist to adhere to the following principles:

- no part of the advertisement should create a misleading impression, and particular care should be given to the short form advertisement, which frames both the offer and the desired consumer response;
- messaging should be consistent between the initial advertisement and landing page that is linked from the advertisement; and
- all required disclosures should prominently feature on the landing page.

For example, it is not acceptable for the landing page to omit the required disclosures and simply invite an investor to fill out a form in order to receive more information.

Enforcement

The FMA has a variety of enforcement options available to address false, misleading, deceptive or confusing behaviour. The action taken will depend on the severity and level of misconduct.

For example, there may be instances where engagement and amendment through dialogue is sufficient to address a breach. In other cases, a formal feedback letter, issuance of a public warning, stop order or direction order may be more appropriate. If poor practices appear widespread, we may publish a monitoring report to help educate the market.

Stop orders

A stop order can be issued in some circumstances where the information contained in advertising is false or misleading, or is likely to mislead or confuse investors on material matters (i.e. matters that would influence a reasonable investor's decision to invest in the financial product or obtain financial services).

A stop order is required to be published, and prohibits the issuer from continuing the relevant activity, to protect investors and the integrity of the market. For example, we can issue a stop order to prevent or stop an issuer of a financial product from:

- distributing a PDS, other disclosure document, or advertisement (including keeping its website live);
- continuing to offer a financial product;
- accepting applications or deposits from customers for a financial product.

If we consider that it is in the public interest to do so, we may issue an interim stop order while we consider the grounds for a stop order.

We can issue a stop order without any need to go to court. Failure to comply with a stop order can result in a fine of up to \$300,000.

Direction orders

Another relevant regulatory tool available to the FMA is direction orders. We can make a direction order where it is likely an advertisement contravenes the Part 2 fair dealing provisions (among various other provisions). Whereas a stop order is to stop behaviour, a direction order is intended to modify behaviour by directing compliance or stipulating specific steps that must be taken (e.g. requiring an advertisement published on a website to be amended, as opposed to taking the entire website down or stopping the advertisement from running).

Civil liability provisions

More serious breaches of the fair dealing provisions may result in the FMA taking court action.

The fair dealing provisions are civil liability provisions. This means the courts, following an application from the FMA, have the discretion to issue civil liability orders, such as a pecuniary penalty order or compensatory order, for a breach of a fair dealing provision. In addition, civil liability orders can be made against not just the person in contravention, but also against those involved in the contravention. The aim is both to sanction the issuer for its misleading conduct and, where necessary, to seek redress for affected parties.

For more information on the enforcement options available to the FMA, please refer to our [Regulatory Response Guidelines](#).

AUCKLAND – Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143

WELLINGTON – Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140