



FINANCIAL SERVICES FEDERATION

30 June 2021

Advertising Standards Authority

By email to: Claire.hofer@asa.co.nz

Review of the Code for Financial Advertising

The Financial Services Federation (FSF) is grateful to the Advertising Standards Authority (ASA) for the opportunity to respond to the consultation on the review of the Code for Financial Advertising (the Code).

By way of background, the FSF is the industry body representing responsible non-bank lenders, fleet and asset leasing providers and credit-related insurance providers. We have over 70 members providing these products to more than 1.5 million New Zealand consumers and business. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society and business is attached as Appendix B.

Before answering the questions posed in the consultation document, the FSF has the following to say.

Firstly, as outlined above, the FSF represents non-bank lenders, fleet and asset leasing providers and credit-related insurance providers. This includes some Non-Bank Deposit Takers (NBDTs) including some of the Credit Unions and Building Societies. The FSF will therefore respond to the questions raised in the consultation document on the basis of the way in which the Code affects FSF members providing loans, deposits, leasing products and credit-related insurance products. The FSF is not able to comment on which the Code affects the advertising of financial products that are not non-bank loans, deposits, leasing products or credit-related insurance products.

Secondly, the FSF notes that the way in which the current Code defines “financial advertisements” with reference to category 1 and category 2 products as defined in the Financial Advisers Act 2008 will be amended to reflect the fact that these references are now outdated due to legislation changes.

However, the FSF points out that the Financial Advisers Act 2008 legislated for the way in which the products defined as being either category 1 or category 2 were offered to consumers or individuals and not to businesses or commercial enterprises. The FSF therefore suggests that the ASA consider clarifying whether or not the Code applies to all financial advertising to both consumers and businesses or purely to consumers when amending the definition of “financial advertisements” in the updated Code.

It would seem to the FSF that the fact that the current Code aligns its definition of those products covered by the Code with the definition in the Financial Advisers Act 2008 implies that the Code applies to products being offered to consumers only and the FSF believes that this is entirely appropriate.

Finally, the FSF also points out that there is a significant amount of legislation in place in New Zealand already that governs the way in which financial services products and services are developed and offered to New Zealand consumers. Not least of this is the recently updated Credit Contracts and Consumer Finance Act 2003 (CCCFA), the changes to which not already implemented, will come into force from 1 October this year. There is also a Financial Markets (Conduct of Institutions) Amendment Bill currently in front of the House which is designed to legislate for the fair treatment of consumers to ensure better customer outcomes.

There are many other such Acts and regulations all designed to protect consumers from the harm that can be caused when financial services products are mis-sold, or their benefits are overstated, or their costs understated.

The FSF also refers to the Financial Markets Authority’s proposed guidance on the advertising of financial products under the Financial Markets Conduct Act 2013, consultation on which was sought in February this year. This guidance covers the FMA’s position on short-form advertising, and the wording for the inclusion of offers to wholesale investors among other things all of which appears to be very reasonable.

The CCCFA changes in particular include newly introduced regulations governing the way in which consumer credit and credit-related insurance products are to be advertised. These regulations are highly prescriptive and very comprehensive and are backed up by further guidance in the Responsible Lending Code as to the way in which lenders and credit-related insurance products should be advertised.

All of which leads the FSF to question whether a Code for Financial Advertising is required at all and the conclusion to which we have come is that the Code does not add any further value to either the product providers or the end user and therefore consideration could be given to doing away with the Code in its entirety and instead ensuring good outcomes for consumers through existing legislation and the Advertising Standards Code.

The FSF does acknowledge that the ASA may well be the first point of contact for consumers wishing to make a complaint about a financial advertisement, particularly as consumers may be

unaware of the fact that the industry codes and legislation exist to protect them. The FSF therefore suggests that, rather than having a Code for Financial Advertising when the consumer protections exist in these other avenues, the ASA's role could be to direct consumers to the appropriate regulator depending on the product about which they have a complaint via their website.

Questions to consider in this submission:

1. Do you think there are any inconsistencies between the current code and the current legislation that applies to the advertising of financial products and services? Please provide details.

This question has been answered in the introduction to this submission provided above.

2. Please comment on what financial products and services you understand are covered by the definition of "financial advertisement". Please comment on whether there are financial products or services that need to be included or excluded from this definition and details to support your comments.

This question has also been answered in the introduction to this submission provided above but the FSF would draw attention to the belief that, if a Code is still considered to be necessary in spite of the comments the FSF has made in the introduction to this submission, consideration should be given to clarifying whether the Code applies to advertising of financial products and services to consumers only or to consumers and businesses.

3. In reference to question 2, which insurance products or services advertisements should be subject to this Code, if any? Please provide details.

The FSF refers to the fact that the advertising of credit-related insurance products is regulated under the CCCFA. With respect to the advertising of other types of insurance products, the FSF points out that the Fair Trading Act 1986 prohibits all businesses including insurers from indulging in misleading and deceptive conduct, or making false or misleading representations.

Beyond that Act, however, all insurers are required to be licensed by the Reserve Bank who is also their supervisor with respect to their conduct, which would include the advertising of their products. In addition to that, a comprehensive review of insurance contract law in New Zealand is to be commenced later this year. This will also look into the way in which insurers treat their customers.

All of which supports the FSF's contention that consideration be given to whether in fact the Code is still necessary in the highly regulated environment in which financial services products and services are currently offered.

4. In reference to question 2, should advertising for crypto-currency be subject to this Code? Please provide details.

Notwithstanding everything the FSF has said previously in this submission, it is the advertising of products like crypto-currency offerings that could give some validity to the view that the Code is still necessary. These products are complex, highly volatile and not widely understood in terms of the way in which they work, and the risks associated with them. They are the sort of product offering that can carry people away with the impression that they are “get rich quick” schemes without any real understanding of the very real risk that any money invested in them may never be seen again.

However, the FSF believes that the FMA is the regulator which understands investment products and the risks associated with them and therefore it is the FMA that should be overseeing the advertising of what can be highly complex products.

5. Apart from your comments in relation to questions 2, 3 and 4, do you agree with the wording of the rest of the current code? If not, please outline the part or parts you disagree with and why.

As previously stated, the FSF believes that what is required of advertisers of financial products and services by the Code are adequately and more appropriately stated elsewhere in other legislation and regulation and in guidance by the regulators who are charged with ensuring the relevant law is adhered to.

6. Are there any aspects of financial products and services advertising standards that are not captured in the current code? Please outline any additions you believe are required and why.

The FSF does not believe so.

Thank you once again for the opportunity for the FSF to comment on the review of the Code for Financial Advertising. Please do not hesitate to contact me if there is anything further you wish to discuss.



Lyn McMorran
EXECUTIVE DIRECTOR



FINANCIAL SERVICES FEDERATION

Appendix A

Membership List as at June 2021

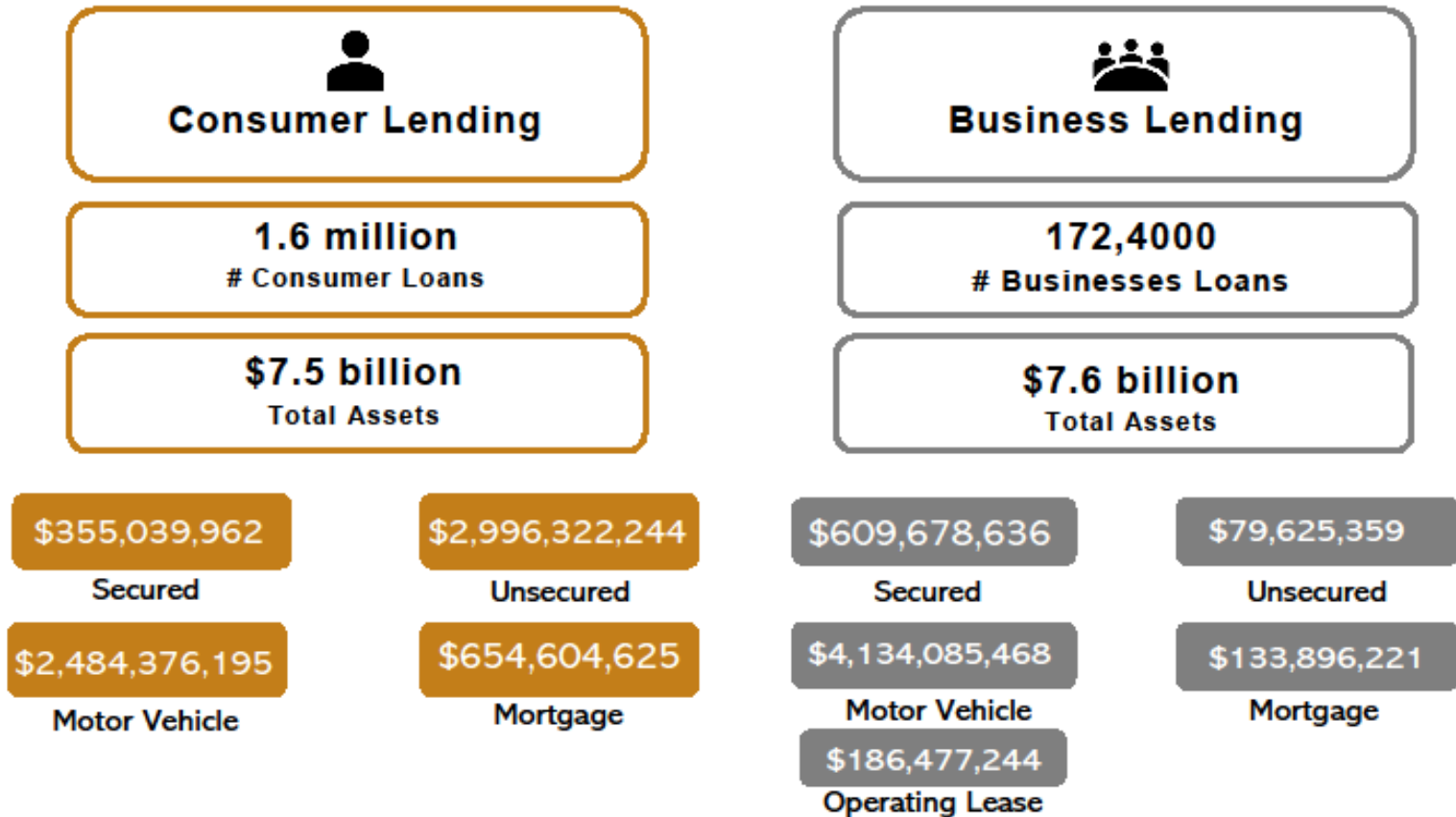
Non-Bank Deposit Takers Leasing Providers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit Reporting & Debt Coll Agencies	Affiliate Members
<u>Rated</u> Asset Finance (B) <u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➤ Loan Co <u>Credit Unions/Building Societies</u> First Credit Union Nelson Building Society Police and Families Credit Union <u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX New Zealand SG Fleet	AA Finance Limited Auto Finance Direct Limited BMW Financial Services ➤ Mini ➤ Alpha Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Kubota New Zealand Ltd Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance	Avanti Finance ➤ Branded Financial Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 Finance Now ➤ The Warehouse Financial Services ➤ Southsure Assurance Flexi Group (NZ) Limited Future Finance Geneva Finance Harmony Home Direct Instant Finance ➤ Fair City ➤ My Finance John Deere Financial Latitude Financial Metro Finance Pepper NZ Limited Personal Loan Corporation	Pioneer Finance Prospa NZ Ltd Smiths City Finance Ltd South Pacific Loans Speirs Finance Group ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yoogo Fleet Thorn Group Financial Services Ltd Turners Automotive Group ➤ Autosure UDC Finance Limited	Baycorp (NZ) ➤ Credit Corp Centrix Collection House Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited) Intercoll Quadrant Group (NZ) Limited <u>Credit-related Insurance Providers</u> Protecta Insurance Provident Insurance Corporation Ltd	255 Finance Limited Buddle Findlay Chapman Tripp Credit Sense Pty Ltd Experian EY FinTech NZ Finzsoft Green Mount Advisory Happy Prime Consultancy Limited HPD Software Ltd KPMG LexisNexis PWC Simpson Western Verifier Australia Total 73 members

Appendix B



FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the association for responsible finance and leasing companies operating in New Zealand. This infographic is a snapshot of our 40 lending members, the membership list can be found at our website www.fsf.org.nz.



FSF lending members data survey period as at 29 February 2020 . Data collected and aggregated by KPMG. Values in NZ\$.