



ASIC puts Finfluencers on notice

Information sheet 269: Discussing financial products and services online

Matthew Daley and Avi Kumar

The Australian Securities and Investments Commission (ASIC) has published an information sheet to guide the 'finfluencers'—financial social media influencers—and Australian financial services (AFS) licensees who walk the tightrope between content generation about personal finance and providing financial advice to retail clients.

Young people have revealed a strong desire to learn more about their finances with 57% of young people surveyed wanting to learn more about how to invest money, ways to invest, types of investments and possible risks and returns. Those that have investments monitor them frequently with 53% monitoring at least weekly.

ASIC chair Joe Longo has acknowledged that everyday Australians who require access to quality financial advice are heading online and educating themselves via financial influencers or finfluencers. [In a speech given at an Association of Financial Advisers Conference in September 2021] Longo acknowledged that ASIC is aware that the COVID-19 pandemic has "created the perfect conditions for

finfluencers to flourish and the result is the conflation of general and personal advice".

The rise of social media influencers has had an impact on these people. Twenty-eight percent of young people have indicated that they follow at least one finfluencer on social media, the top three categories of finfluencers being 'financial popstars', entrepreneurs and celebrities. Sixty-four percent of those that follow a finfluencer have indicated that they changed their financial behaviours based on information provided by the finfluencer.

Licensing

The Australian financial services licensing regime sets out what financial services are and requires those who provide them to be appropriately licensed where they do so as part of carrying on a business. The licensing provisions under the Corporations Act 2001 (Corporations Act) relevantly apply to persons who provide financial product advice or arrange for a person to deal in a financial product. The legislation also prohibits misleading and deceptive conduct.

ASIC has published Information Sheet 269 *Discussing financial products and services online*

(Information Sheet 269), flagging three key areas social media influencers and AFS licence holders who use influencers need to be aware of:

- providing financial product advice
- arranging for dealing
- misleading and deceptive conduct.

The rise of finfluencers and ASIC's guidance

Finfluencers typically use social media to provide a range of content regarding personal finance ranging from discussing specific investments and platforms to providing household budgeting tips and tricks. However, some typical examples of the licensable activities finfluencers conduct include:

- providing financial product advice by making sponsored posts promoting financial products such as share trading apps, cryptocurrency exchanges or derivative trading programs
- arranging for their followers to deal in a financial product by providing unique affiliate links and unique discount codes to specific platforms or financial products.

ASIC has provided guidance on some of these activities to assist finfluencers and their audience to understand the line between factual information, general advice and personal advice, and what misleading and deceptive conduct looks like.

Financial product advice

Financial product advice is a recommendation or statement of opinion which is intended to influence, or which could reasonably be regarded as being intended to influence a person deciding in relation to financial products. Examples [provided in Information Sheet 269] are as follows:

- Statements intended to influence someone's decision to purchase specific financial products are likely to be financial advice, such as, 'I'm going to share with you five long-term stocks that will do well, and you should buy and hold'.
- Statements of opinion are likely to be financial product advice and may also be misleading such as, 'Exchange-traded funds (ETFs) will make you a guaranteed positive return'.
- Descriptions of different types of financial products are unlikely to be financial product advice such as, 'You can invest by buying shares—this means you are investing in a company, and you get to vote on the company's management and potentially earn dividends. On the other hand, ETFs can track different asset classes or individual assets that may generate a return, but the ETF provider owns the shares or assets on behalf of the fund members'.
- Tips on budgeting and saving money are unlikely to be financial product advice such as 'You can save money each week by preparing your own home-cooked lunches for work, instead of eating out'.

Dealing by arranging

Arranging for a person to deal in a financial product such as buying or selling a financial product is a financial service which requires an AFS licence. The level of involvement in the transaction between the audience and the financial product provider is key to determining whether someone is dealing by arranging. Information sheet 269 discusses scenarios including the following:

- Active involvement in a transaction where the arranger receives a benefit is likely to be dealing by arranging, such as 'promoting a unique link to a trading platform where a payment is received by both the influencer and the customer upon signing up to the platform'.
- Limited involvement in the transaction is unlikely to be dealing by arranging, such as providing the names of various brokerages in a post.

This has significant implications for both AFS licensees and finfluencers as often significant revenue streams are generated from paid content such as posts or providing affiliate links to their followers where the influencers obtain a commission for each referral through their link.

Misleading and deceptive conduct

Misleading and deceptive conduct is any statement made that is misleading or deceptive, or likely to mislead or deceive. There does not need to be an intention to mislead, and an influencer does not need to be licenced to breach the law. An influencer needs to consider the audience their post will have as opposed to the audience they would like it to have. ASIC provides examples including the following:

- Claims that cannot be substantiated such as, 'Holding onto this share in the long term will generate significant returns and is just like depositing your money in the bank'
- Untrue opinions on risk such as, 'Trading in this derivative is a risk-free way to make a quick profit on the side—I made \$\$\$\$ from trading these alone!'

Practically, the above examples should provide clarity to finfluencers as to whether their activities require a licence. They will need to consider whether the revenue from their content will outweigh the obligations of holding, and the administration and cost of obtaining, an AFS licence. Otherwise, they will need to consider changing their social media strategy or risk enforcement action from ASIC.

What should AFS licensees consider?

ASIC has stated that it monitors select financial discussion by influencers who feature or promote financial products for any misleading or deceptive, or unlicensed financial services. It has indicated that it will take enforcement action where it is in the public interest to do so.

The ASIC guides have implications for AFS licensees who currently use influencers to promote their product and use affiliate links to refer business. ASIC advises that AFS licensees should:



**Matthew Daley,
Clayton Utz**

Matthew Daley is a partner at Clayton Utz specialising in investment funds and financial services. Matthew is particularly involved in fund establishment, capital raisings, governance, regulatory matters, disclosure, contracting and distribution.



**Avi Kumar,
Clayton Utz**

Avi Kumar is a lawyer in the Clayton Utz Banking and Financial Services team specialising in funds management, financial services regulation and superannuation.



The quote

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- review their obligations as a licensee in the Corporations Act and the *Australian Securities and Investments Commission Act 2001*
- ASIC provides guidance on key provisions relating to licensing in Regulatory Guide 36 *Licensing: Financial product advice and dealing*, advertising in Regulatory Guide 234 *Advertising financial products and services*, advice in Regulatory Guide 244 *Giving information, general advice and scaled advice* and product design and distribution in Regulatory Guide 274 *Product design and distribution obligations*.
- check their agreements with the influencers to determine whether the influencer is acting as their representative as this will give rise to a range of obligations on the AFS licence holder, including appropriate disclosure, training and compliance
- put in appropriate risk management systems and monitoring processes to ensure finfluencers are not providing unlicensed financial services
- have sufficient compliance resourcing to monitor influencers
- ensure that any products advertised subject to design and distribution obligations are only promoted to consumers in the target market. **FS**

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