Boutique CAPITAL

July 2026

COMPLIANCE NEWSLETTER

Key Changes in RG 234 Advertising Financial Products and Services (2026 update)

ASIC has strengthened RG 234 to reflect the growing use of social media and digital marketing in financial services. The updated guidance reinforces that promotional material must be clear, balanced and consistent with a product's risks and features, regardless of the platform used.

Stronger focus on “overall impression”

- The Total impression of an ad matters, not just technical accuracy.
- Even factually correct statements can be misleading if the overall message is not balanced.

👉 Impact for fund managers:
You can no longer rely on disclaimers or technical correctness—headline messaging must stand on its own.

Much tighter expectations on balance (returns vs risk)

- Explicit requirement to present balanced information across:
- returns
- benefits
- risks
- limitations
- Increased emphasis on prominence of risk disclosures.

👉 Change: Stronger than prior guidance—risk can’t be secondary.

Expanded crackdown on greenwashing (NEW focus area)

- Dedicated section on ESG / sustainability claims
- Clear prohibition on:
- overstating exclusions
- partial screening being presented as full screening
- Enforcement examples included.

👉 Impact:
This is one of the biggest new enforcement priorities, especially for fund managers.

Higher evidentiary standard for claims

- Clear requirement that all claims must be substantiated and evidence-based
- Promoters must retain supporting records.

👉 Change:
More explicit and enforceable than before—ASIC expects audit-ready evidence.

Stronger rules on disclaimers and fine print

- Disclaimers must:
- be prominent
- not contradict headline claims
- appear at the same time as the claim
- Explicit statement:
- Links, PDS, or “see website” cannot fix a misleading ad

👉 Impact: Common industry practice (e.g. footnotes, links) is no longer sufficient.

Expanded guidance on digital, social media and influencers

- New detailed guidance on:
  - social media ads
  - finfluencers
  - banner ads
  - short-form content (e.g. TikTok, reels)
  - Emphasis on:
  - space limitations NOT being an excuse
  - balanced messaging even in short ads

👉 Change: Major expansion reflecting modern distribution channels.

Greater scrutiny of past performance and modelling

- Stronger rules on:
  - selective performance periods
  - outdated data (>3 months)
  - implied future performance
  - Much tighter guidance on:
  - hypothetical / back-tested results

👉 Impact:
Targets common fund marketing practices (e.g. backtests, cherry-picked returns)

Clearer restrictions on terminology

- Expanded guidance on use of words like:
  - “secure”
  - “guaranteed”
  - “free”
- Focus on consumer interpretation, not technical meaning

👉 Change: Language risk is now a key compliance focus.

Explicit focus on target audience & complexity

- Ad must consider:
  - actual audience (not just intended audience)
  - financial literacy
  - product complexity
  - Warning against broad advertising of complex products.

👉 Impact:
Relevant for wholesale-only strategies marketed broadly.

New expectations around AI-generated content

- Explicit statement that:
- AI-generated advertising must meet the same standards
- risk of hallucinations/bias increases misleading risk

👉 Change: Reflects emerging use of AI in marketing.

Greater emphasis on consistency with target market / product design

- Advertising must align with:
  - product features
  - disclosure documents
- If marketing:
  - overstates benefits,
  - downplays risks, or
  - attracts investors outside the target market,
  - ASIC may view this as evidence that the distribution arrangements are not operating effectively.

👉 Impact: Your marketing should tell the same story as your product documents. If the advertisement suggests the product is suitable for investors who are outside the target market, ASIC may view this as a distribution failure.

Practical “What’s changed”

Old RG 234 (2012)

- Principles-based
- Less prescriptive
- Limited digital focus
- Less ESG scrutiny

New RG 234 (2026)

✅ Much more prescriptive and enforceable
✅ Strong focus on balance and overall impression
✅ Greenwashing crackdown
✅ Digital/social media rules expanded
✅ Evidence required for all claims
✅ Disclaimers much less effective as defence

Bottom line for your AFSL

The shift is from:

“Don’t be misleading”

To:

“Actively ensure your advertising is balanced, substantiated, and clearly understood at first glance—across all channels.”

📢 ASIC RG 234 Social Media Advertising

🔎 Why this matters

ASIC continues to monitor digital and social media advertising closely, particularly short-form content where:

→ Messaging is condensed
→ Risks are often under-emphasised
→ Investors may rely on first impressions only

Key principles:

- Social media is subject to the same regulatory standards as any other financial promotion. Limited space or format constraints do not reduce the requirement to provide balanced, accurate and clear information.
- Whether a message appears on LinkedIn, Instagram, X or a website, the same rules apply: ***promotional content must be clear, balanced and not misleading.***

✅ What ASIC expects (DO's)

Provide a balanced message

- Present both benefits and risks
- Avoid highlighting positives in isolation

👉 Expectation:
A reasonable investor should see a fair and balanced view, not just upside

Include a clear risk statement

- Use simple, visible wording
- Examples:
- All investments carry risk
- Returns are not guaranteed

👉 Expectation:
Risk information must be prominent and understandable

Focus on the overall impression

Consider what a client takes away at first glance

Assess:

Headline
Tone
Structure

👉 The overall impression, not isolated wording

Use neutral, factual language

Prefer wording such as:

- Income-focused
- Diversification
- Risk management

👉 Avoid overly promotional tone — keep content informational and factual

Ensure consistency across the message

- Headlines, body and visuals must align
- Risk statements must not be undermined by stronger positive messaging

👉 Key point:
The entire communication should reflect a coherent and balanced outcome

Treat social media like any other advertising

- Same legal obligations apply
- Limited space is not an excuse

👉 Expectation:
Compliance must be achieved within the format — not despite it

❌ Common concerns (DON'Ts)

Do not imply certainty or safety

Avoid terms like:

- Stable
- Secure
- Guaranteed

👉 These can overstate the risk profile

Do not present benefits without risks

Do not highlight:

- Income
- Growth
- Returns

Without also addressing:

- Risk
- Variability
- Limitations

Do not rely on disclaimers to fix strong headlines

- A bold or misleading headline cannot be corrected by fine print
- Disclaimers must not contradict the main message

Do not assume users will click through

- Links to:
  - IMs
  - Websites

  Are not sufficient
- Key information must be in the post itself

Do not create an overly positive impression

- Avoid messaging suggesting consistent success
- Do not imply predictable returns

Do not oversimplify complex investments

- Keep content accurate even when concise
- Simplification must not create a misleading impression

✅ Quick Compliance Checklist Before Posting

Ask yourself:

Does the post include both benefits and risks?

Does any wording suggest certainty or predictability?

Could a reasonable investor misunderstand the message?

Is key information visible without clicking elsewhere?

Is the overall impression balanced and realistic?

🧩 Simple "Safe Post" Structure

Headline:
- Neutral wording
- No implication of certainty

Body:
- Informational
- Balanced (benefits + risks)

Footer:
- *All investments carry risk. Returns are not guaranteed.*

📌 Practical Example

High risk (non-compliant):
"Secure income opportunity delivering consistent returns"

Improved (compliant):
"Income-focused investment strategy designed to generate returns.
All investments carry risk and returns are not guaranteed."

🧭 Final Takeaway

Social media content is judged on its first impression.

If:
- Benefits are prominent
- Risks are unclear or secondary

The content may be considered **misleading**, regardless of disclaimers

🔑 Bottom line for ARs

- Keep messaging balanced, factual and clear
- Ensure risk disclosure is visible and meaningful
- Always assess the overall impression — not just the wording

📢 ASIC RG 181 Conflicts Update

ASIC has updated Regulatory Guide 181 (RG 181) to strengthen expectations around how conflicts of interest are identified, managed, disclosed, and monitored. The updates place greater emphasis on tailored conflict management arrangements, robust controls, meaningful disclosure, and regular review of conflict frameworks to ensure they remain effective as business activities and risks evolve.

🔎 Why this matters

ASIC's updates to Regulatory Guide 181 (Conflicts of Interest) signal a clear shift:
Conflicts management must be practical, defensible, and evidenced — not generic or theoretical.
For AFSLs operating in wholesale markets (fund managers, trustees, private markets), this is a key supervisory and enforcement focus area.

🚩 What has changed – and what it means for ARs

Tailored, activity-specific conflict management

Old approach:
One overarching conflicts policy covering all activities

Exepctations Now:
Conflicts must be broken down by activity

What this means for you:

- Identify conflicts separately across:
- Trustee responsibilities
- Capital raising
- Investment decisions
- Related party dealings
- Design specific controls for each activity

👉 AR risk: Applying a "one-size-fits-all" conflict policy across different business lines

Robust, demonstrable controls (not just documented)

Controls must operate in practice and be provable.
What this means:

- Controls must be:
  - Implemented
  - Followed consistently
  - Documented and evidenced
- High-risk conflicts require stronger governance, such as:
  - Independent committees
  - Second sign-offs
  - Segregation of duties

👉 AR focus:
Be ready to show how conflicts are managed day-to-day, not just what the policy says

📢 ASIC RG 181 Conflicts Update

Higher disclosure standards

Disclosure is clear, specific and decision-useful disclosure

What needs to improve:

- Explain:
  - Who benefits
  - How they benefit
  - Why it matters to the client
- Provide disclosure before the client makes a decision
- Avoid generic statements like:
  - “Conflicts may exist”

👉 AR risk: Boilerplate disclosure that doesn’t reflect actual arrangements

Disclosure alone is no longer enough

A key message:
Disclosure does not neutralise a conflict

What this means:

- Additional controls may be required:
- Removing conflicted individuals from decisions
- Independent approval processes
- Escalation to governance committees
- In some cases:
- The transaction should not proceed

👉 AR mindset shift:
Disclosure is a supporting control, not the primary control

Conflicts must be considered alongside other obligations

The regualation emphasises that conflicts interact with broader duties.

You must consider:

- Fiduciary duties (particularly for trustees)
- Duty to act efficiently, honestly and fairly
- Product governance and investor suitability

👉 Key point: A conflict that undermines these obligations is not adequately managed

Mandatory periodic review

Conflict frameworks must remain current and effective

Review your conflicts at least annually, and when:

- New products or strategies are launched
- Remuneration structures change
- Related party arrangements evolve
- Incidents, breaches, or near misses occur

👉 AR takeaway:
If business activities change, your conflict framework must also change

Increased focus on high-risk conflicts

RG181 is prioritising specific areas where conflict risk is highest:

- Related party transactions
- Trustee roles (dual responsibilities)
- Remuneration structures (fees, incentives, commissions)
- Private markets / less transparent investments

👉 Expectation: These areas must have enhanced controls, governance or avoidance strategies

📘 Practical example (for AR consideration)

Scenario:

A fund manager:

- Acts as both trustee and investment manager
- Invests in related party assets
- Earns management + performance fees

Conflict risks:

- Incentive to favour related entities
- Bias toward fee-generating decisions
- Reduced independence in oversight

Expectation:

- Independent investment committee
- Clear separation of roles
- Transparent disclosure of fee structures
- Evidence decisions are made in investor best interests

📌 Key actions for Authorised Representatives

✅ Map your conflicts by activity

- Break down conflicts across each part of your business
- Ensure controls are tailored and specific

✅ Test your controls in practice

- Ask:
  - Are controls actually being followed?
  - Can we evidence this if audited/investigated

✅ Upgrade disclosure

- Make it:
- Clear
- Specific
- Timely
- Eliminate generic or templated statements

✅ Strengthen governance for high-risk areas

- Use:
  - Independent oversight
  - Second-line review
  - Segregation of duties

✅ Challenge whether to proceed

- If a conflict cannot be effectively managed:
- Do not proceed with the transaction

✅ Keep frameworks current

- Regularly review and update your approach
- Align with changes in business activities

🧭 **Final takeaway**

Conflicts management must move from policy to practice.

For ARs operating in wholesale markets:

- Complexity of structures = higher conflict risk
- Reliance on disclosure = no longer sufficient
- Evidence of real controls = critical

🔑 **Bottom line**

If you cannot clearly explain and demonstrate how a conflict is managed it will be assumed it is not being managed

📢 Compliance Insight – Wholesale vs Sophisticated Investors: Are We Getting It Wrong?

🔎 Why this matters now

ASIC has made it clear that wholesale client classification is under review, with concerns that:

- Too many investors are being treated as wholesale
- Investors are losing critical protections despite lacking real experience
- The tests are outdated and overly reliant on wealth rather than capability

Investors may meet the legal tests but still be functionally retail — exposing them to harm.
At the same time, industry commentary (including Holley Nethercote) highlights that the ease of meeting wholesale tests has increased significantly over time, raising real compliance risk.

Quick refresher – the key tests

A client can be treated as wholesale via:

✅ Individual wealth test

- $2.5m net assets OR
- $250k income (2 years)
- ➡ Supported by accountant's certificate

✅ Sophisticated investor test

- Licensee determines client has sufficient experience to understand risks
- Requires documented reasoning and client acknowledgement

✅ Professional investor

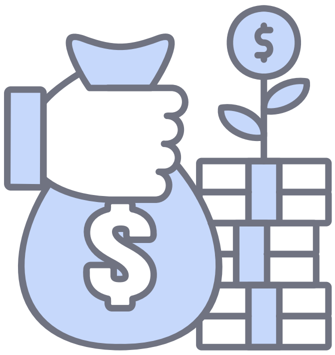
- Includes AFSL holders, financial institutions, etc.
- Has or controls gross assets of at least $10 million

👉 Critical point:
Meeting these tests means retail protections fall away, including:

- Product Disclosure Statements (PDS)
- Design & Distribution Obligations (DDO)
- Certain conduct and advice safeguards

🚩 The core issue: Wealth ≠ Sophistication
Regulatory bodies are increasingly aligned on one concern:
Financial thresholds are a poor proxy for financial literacy or experience.

- Thresholds have not materially changed since early 2000s
- Asset inflation (e.g. property) has expanded the wholesale population
- The sophisticated investor test is subjective and inconsistently applied



📘 Real-world scenario for AR consideration

Example

The migrant investor example
1991 scenario:

- Migrant client arrives in Sydney
- Purchases a modest home in Inner West
- Limited English
- No exposure to financial markets
- No investing experience

👉 Clearly a retail client

Fast forward to 2026:

- Now 75 years old
- Same property now worth $2.5m+
- May technically pass wealth test
- Still:
    - Limited financial literacy
    - No investment experience
    - Not actively engaged in financial markets

👉 Legally wholesale — but practically unsophisticated

⚠️ The compliance risk

This client:

- Meets the legal threshold
- But fails the intent of the regime

The concern is that investors are being classified as wholesale due to asset growth, not capability

🔍 What regulators are saying

ASIC has called for reform because:

- Investors are being incorrectly treated as wholesale
- This leads to loss of protection and increased harm risk
- The framework needs to better identify true sophistication

Parliamentary inquiry (2025)

Key findings:

- Sophisticated investor test is too subjective
- Consider objective measures of knowledge and experience
- Introduce regular review mechanisms

Holley Nethercote (industry view)

- Wholesale eligibility is an active regulatory concern
- Passing tests removes key obligations, so must be applied carefully
- The sophisticated investor test is not a "blank cheque" — it must be:
- Product-specific
- Evidence-based
- Reassessed where appropriate

🚩 Key risk areas for ARs

Over-reliance on accountant certificates

- Treating certificate = automatic wholesale
- Ignoring client capability and understanding

👉 Regulators and AFCA are increasingly challenging this

Misuse of the sophisticated investor test

- “Rubber stamping” experience
- Poor documentation of reasoning
- No real assessment of:
- Risk understanding
- Product complexity

Failure to consider client vulnerability

Examples:

- Elderly clients
- Language barriers
- Low financial literacy
- Single-asset wealth (e.g. property only)

Treating legal compliance as sufficient

👉 Legal test met ≠ compliance risk eliminated

ASIC focus is shifting to:

- Appropriateness
- Outcome
- Client understanding

📌 **Actions for ARs**

✅ **Look beyond the numbers**

- Wealth alone is not enough
- Consider:
- Experience
- Financial knowledge
- Risk tolerance

✅ **Apply the “would I defend this?” test**

- Could you justify to ASIC/AFCA:
  - Why this client is sophisticated?
  - Why retail protections were removed?

✅ **Strengthen documentation**

- Record:
  - Basis for classification
  - Client experience
  - Rationale for decisions

✅ **Be cautious with elderly / asset-rich clients**

- Property wealth ≠ investment capability
- Higher vulnerability = higher regulatory risk

✅ **Default to retail where uncertain**

- Increasing industry view:

“Start with retail, and only move to wholesale where clearly justified.”

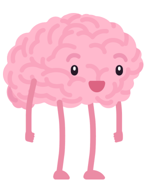
🧭 **Final takeaway**

The direction is clear:

- The **wholesale regime is under pressure**
- The **sophisticated investor test may change**
- **Enforcement risk is increasing now — not later**

For ARs:

If a client qualifies as wholesale on paper but behaves like a retail client — treat that as a red flag.



📢 Compliance Update – ASIC Action on Corpay Subsidiary (Feb 2026)

🔎 What happened?

On 12 February 2026, ASIC imposed additional licence conditions on Cambridge Mercantile (Australia) Pty Ltd (a subsidiary of Corpay Inc.) following significant compliance failures in its FX derivatives business.

ASIC identified multiple systemic issues, including:

- Misclassification of >2,800 retail clients as wholesale clients
- Inadequate systems, controls, monitoring, and record keeping for client classification
- Delayed remediation, with expected compensation in the millions of dollars
- Conflicts of interest failures, including remuneration structures
- Weak risk management frameworks and insufficient resourcing
- Breaches of financial resource requirements

⚖️ Regulatory outcome

ASIC imposed enforceable licence conditions requiring Cambridge to:

Develop and implement a comprehensive remediation plan

Compensate all affected retail clients

Appoint an independent expert to:

Assess the adequacy of remediation

Validate effectiveness of corrective actions

Provide assurance that failures will not recur

ASIC reinforced a key principle:

AFS licensees must not profit from compliance failures and must remediate promptly.

🚩 Why this matters for Authorised Representatives

This case highlights core failure themes ASIC continues to actively enforce:

Client classification = high enforcement risk

Misclassifying retail clients removes critical protections (PDS, TMD, best interests obligations).

This is a frontline AR risk, especially where:

Sophisticated/wholesale tests are applied incorrectly

Documentation is incomplete or outdated

Client circumstances are not reassessed regularly

Conflicts of interest remain a priority

ASIC linked failures to remuneration structures and conflicts.

AR risk areas:

- Incentives influencing product recommendations
- FX / derivatives margins or spreads
- Sales-driven behaviours vs client outcomes

"Tick-the-box" frameworks will not pass scrutiny

ASIC criticised systems, controls, and monitoring failures, indicating:

Classification processes must be operationally embedded

Controls must be tested, monitored, and evidenced

Record-keeping must support auditability and traceability

Resourcing and capability matter

ASIC explicitly cited insufficient human resources across compliance and risk functions.

Key expectation:

- Licensees must have adequate skilled staff to supervise ARs and controls

Remediation delays amplify regulatory exposure

Delayed remediation led to multi-million dollar exposure.

Expect ASIC to scrutinise:

- Speed of breach identification
- Timeliness of client compensation
- Governance escalation processes

📌 Key Learnings / Actions for ARs

✅ Review client classification practices

Ensure wholesale classifications are robust, documented, and justified

Avoid reliance on outdated or blanket classifications

✅ Strengthen documentation

Maintain clear records supporting client status, advice, and disclosures

✅ Escalate issues early

Any classification errors or system gaps → escalate immediately

✅ Focus on client outcomes

Ensure clients receive all retail protections where applicable

✅ Be alert to conflicts

Understand how remuneration or incentives may influence advice

🔄 Broader Regulatory Context (AUSTRAC)

While ASIC focuses on conduct, AUSTRAC is simultaneously raising expectations across AML/CTF compliance heading into 2026 reforms:

- A strong risk-based approach is mandatory — not "one size fits all"
- Firms must document risks and controls clearly, tailored to business models
- Compliance programs must be actively maintained and updated, not static
- Regulatory scrutiny and enforcement activity are increasing across sectors

👉 Key message:
Both ASIC and AUSTRAC are aligned — poor systems, weak governance, and delayed action will result in intervention.

🧭 Final Takeaway

This ASIC action reinforces a clear regulatory direction:

Get client classification right

Embed effective systems and controls

Act quickly on remediation

Ensure governance, resourcing and oversight are fit for purpose

For ARs, the focus remains simple:

If a client is treated as wholesale – you must be able to clearly prove why.

Thank You!

We appreciate you taking the time to read our 4th newsletter.