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ALERT

ASIC to scrutinise marketing targeting wholesale investors

ASIC has announced a new surveillance program targeting the marketing of managed funds which will take in products available to wholesale investors and is likely to be far more sophisticated. Partner Selina Nutley and special counsel Matt Moses explore what this means for the funds management industry.

KEY TAKEAWAYS

- ASIC has commenced a new surveillance program into the marketing of managed funds, particularly in relation to the use of performance and risk representations in promotional material.
 - ASIC's surveillance has been broadened to take in products available to wholesale investors, particularly 'potentially unsophisticated wholesale investors, such as some retirees'.
 - Get in touch with our Funds Management team who can conduct an audit of your advertising material or help you respond to any notices or correspondence received from ASIC.
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BACKGROUND – ASIC'S 'TRUE TO LABEL' PROJECT

In 2019, ASIC commenced its 'true to label' project: a targeted surveillance of 37 funds operated by 20 responsible entities (REs) with \$21 billion in assets. Those funds had been shortlisted from data analysis conducted over 350 funds with \$65 billion in assets, through a combination of electronic search terms and analysis of marketing materials. The 'true to label' project identified two significant concerns:

1. Confusing and inappropriate product labels.
2. Redemption features not matching liquidity of underlying assets.

ASIC issued correspondence and notices to various REs which led to corrective action, including changing names of funds to better reflect production composition, changing asset allocation to better reflect names of funds, and the withdrawal of various promotional material.

At the time, ASIC highlighted the 'true to label' project would not be the end of ASIC's surveillance and that it had established a cross-team advertising working group intended to conduct ongoing assessments of advertising.

NEW SURVEILLANCE PROGRAM

ASIC has now issued a [media release](#) confirming it has commenced a new surveillance program into the marketing of managed funds, particularly in relation to the use of performance and risk representations in promotional material.

Interestingly, while the 'true to label' project seemed to focus on products available to retail investors, ASIC's present surveillance has been broadened to take in products available to wholesale investors, particularly 'potentially unsophisticated wholesale investors, such as some retirees'. This appears consistent with recent rhetoric and statements by ASIC that it will continue to scrutinise the sector's behaviour towards people who may technically meet the wholesale investor test through asset holdings or investment amounts, but may nonetheless be fairly novice investors. This seems aimed at providing increasing protections to wholesale investors, even if long mooted increases to the wholesale investor test are not introduced.

WHAT DOES IT MEAN FOR FUND MANAGERS?

We expect ASIC will take an increasingly sophisticated approach to its surveillance, which will extend beyond examining the express words of promotional material to the online search terms which result in hits on particular products. This has broad implications for the industry given a substantial segment of investors now conduct online searches in relation to products at various times of the investment cycle.

WHAT SHOULD YOU DO NEXT?

Deficiencies in advertising can lead to claims from investors, regulatory action, AFCA complaints, and the imposition of licence restrictions. If you are approached by ASIC, you should seek advice promptly to minimise the prospect or extent of any possible adverse action.

Get in touch with our Funds Management team who can conduct an audit of your advertising material or help you respond to any notices or correspondence received from ASIC.

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