



Enforcement Notice:

Advertising of Whisky Cask Investments

Who we are

We are the Committee of Advertising Practice (CAP). We write the advertising rules, which are enforced by the Advertising Standards Authority (ASA), the UK's independent advertising regulator. You can read about the UK advertising regulatory system on the ASA website.

Why are we contacting you?

The ASA has published two rulings about the advertising of whisky cask investments, concluding that the ads were misleading and socially irresponsible (see CAP Code: Section 3 and Section 1). They also breached the rules which apply to ads for financial products (see Section 14).

Please immediately review your advertising with reference to the Guidance section below and make any changes required.

If non-compliant ads persist after **2 January**, we will commence targeted monitoring, which may result in the application of sanctions, to ensure a level playing field.

Scope

This Notice applies to ads in all media for whisky cask investments targeted at UK consumers.

This includes:

- **paid-for ads** in all offline and online media, including ads on search engines, social media platforms and display ads, and
- **non-paid-for** advertising online, such as websites, email marketing and any social media presence you may have, including influencer and affiliate advertising.

It does not apply to the rules around the investment itself.

Guidance Summary

Ads for whisky cask investments are financial products and must abide by the advertising rules. See subsequent pages for more detailed advice but in summary:



- Ads should make clear that the value of investments can go down as well as up;
- Ads should not state or imply that results can be guaranteed;
- If a rate of increase in investment per annum is stated it must be representative and supported by documentary evidence;
- Ads should be clear about the risks involved.

The presentation or omission of information can easily take advantage of consumers' inexperience and credulity and affect their understanding of an offer; care must be taken to ensure consumers are not misled.



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When creating an ad, you should consider the presentation of the content in its entirety, the context in which it appears and the likely interpretation of claims by the target audience. Advertisers are reminded that marketing communications must reflect both the spirit and letter, of the Code (CAP Code Rule 1.2).

1. Qualifications

1.1 Ads must expressly and prominently state material information:

Material information is that which the consumer needs to be able to make an informed decision in relation to a product. Ads should state that:



- Whisky cask investments are **unregulated** in the UK;
- The value of investments is variable and **can go down** as well as up;
- That **fees apply** and there are **terms and conditions** for the service¹.

1.2 Qualifications must be presented clearly for the medium used:

Material information should be included in all ads, unless genuinely limited by time or space – paid-for ads on search engines and online display ads have been deemed to be potentially constrained, so material information should be presented prominently and clearly on the landing page.

Terms and conditions that should be made clear to consumers include:



- that the volume of spirit will decrease over time (“the Angels’ share”);
- their rights to cancel and the costs involved in doing so;
- “New Make” spirit has to be matured for 3 years, during which time its alcoholic strength could reduce. However, for the product to be classed as “whisky”, it must retain a minimum strength of 40%;
- how an investment is realised and any conditions around that process.

Websites and press ads

Websites and press ads are unlikely to be regarded as being limited by time or space.

¹ The two rulings by the ASA outline some specific examples of fees that the consumer in those cases would incur, such as, a further cost to store or insure the whisky cask after 5 or 10 years, that bottling the whisky would mean VAT is required to be paid by the consumer on the cask purchase price, as well as paying duty on the cask and that there would be associated costs of bottling the whisky, or a payment could be made to the investment company to administer that for a consumer. The nature of what is being offered could determine whether other fees or terms and conditions need to be included to ensure consumers are not misled.



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For websites, qualifications should be clearly presented above the fold. Qualifications presented at the bottom of a webpage, which consumers have to scroll to view, are unlikely to be sufficient, as they are likely to be overlooked.

For press ads, relevant terms and conditions should be included within the ad, with qualifying text linked via an asterisk at a minimum.

Paid-for ads on search engines, online display and social media ads

Unlike the paid-for ads on search engines and online display ads, the social media ads assessed in the rulings were not considered constrained by time or space. Therefore, material information should appear within the ad itself. We would expect advertisers to try and use creative ways to ensure material information is included in the ad itself by, for example, including such information within an image.

Where ads are genuinely constrained by time and space, further material information should be listed clearly and prominently on the landing page.

1.3 Returns rates claims



Any claims for rates of return (e.g. 'x% p.a') must be representative (and supported by documentary evidence), and make clear how the rate is calculated. If the claim is a per annum increase, then the evidence should support that and not a percentage over the lifetime of holding a whisky cask investment. The evidence should also reflect the products being advertised and not be based on the price of bottles of whisky.



An “up to X%” and an “average X%” return rate claim will be interpreted differently. “Up to” claims represent the maximum return possible, whereas, “average” claims suggest there is potential to receive even greater returns at times.

1.4 Qualifications cannot always override the overall impression of an ad



Qualifications may be used to clarify claims, but they must not contradict those claims to the extent that consumers are likely to be misled. If a qualification is likely to contradict the claim it qualifies in a way which is likely to mislead, the main claim is likely to be considered misleading.

2. Endorsements should be genuine



If you include the logo of an award in your ad, consumers are likely to infer you have won it, so make sure that's the case.

You should also ensure that if your ad states you have been 'Featured' in the national press, or other publications, that those publications have chosen to run editorial features about your company. If you have paid to be featured, that is likely to be considered misleading.



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3. Ads should be socially responsible



Ads for whisky cask investments must state that the value of investments **can go down as well as up**. This also means that ads should **not suggest** that outcomes are **guaranteed**.

Therefore language implying that consumers will obtain defined sums from their investment, such as “**Earn up to X % per annum**”, should be avoided.

Other phrasing which may suggest that investing in whisky casks is a safe and reliable way of making money or a method for being able to **enjoy an early retirement**, give an irresponsible impression of the risks involved, and downplay the fact that value of investments could go down.



The average consumer is unlikely to be experienced in understanding whisky cask investments, and ads must ensure they do not irresponsibly take advantage of consumers' lack of experience or credulity; they must be made with a sense of responsibility to consumers and to society.



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Appendix: Code rules and useful reading. Relevant CAP Code rules:

1.3 *Marketing communications must be prepared with a sense of responsibility to consumers and to society.*

3.1 *Marketing communications must not materially mislead or be likely to do so.*

3.3 *Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible ambiguous or untimely manner.*

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means.

3.7 *Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.*

3.9 *Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.*

3.10 *Qualifications must be presented clearly.*

CAP has published Advertising Guidance on Misleading advertising: use of qualifications.

3.45 *Marketers must hold documentary evidence that a testimonial or endorsement used in a marketing communication is genuine, unless it is obviously fictitious, and hold contact details for the person who, or organisation that, gives it.*

14.1 *Offers of financial products must be set out in a way that allows them to be understood easily by the audience being addressed. Marketers must ensure that they do not take advantage of consumers' inexperience of credulity.*

14.2 *Marketing communications should state the nature of the contract being offered, any limited, expense, penalty or charge and the terms of withdrawal. Alternatively, if a marketing communication is short or general in its content, free material explaining the offer must be made readily available to consumers before a binding contract is entered into.*

14.3 *The basis used to calculate any rate of interest, forecast or projection must be apparent immediately.*



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14.4 *Marketing communications must make clear that the value of investments is variable and, unless guaranteed, can go down as well as up. If the value of the investment is guaranteed, the marketing communication must explain the guarantee.*

14.5 *Marketing communications should make clear that past performance or experience does not necessarily give a guide for the future; if they are used in marketing communications, examples of past performance or experience should not be unrepresentative.*

Advertising Guidance: Guidance on the use of qualifications in ads

Advice Online: Substantiation

Advice Online: Financial products and services

Misleading Advertising

Qualifications

Social responsibility

Or contact the CAP [Copy Advice Team](#) who offer a free confidential bespoke pre-publication advice service for non-broadcast ads.