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Advice and Investment Branch
Retirement, Advice and Investment Division
Treasury
Langton Cres
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QUALITY OF ADVICE REVIEW

Background

Since my retirement from active legal practice in 2019, I work as a non-executive director and adviser to a considerable number of financial services business. Most relevantly to this Review, I am chairman of Aware Super Financial Services Pty Limited, the advice arm of Aware Superannuation and a member of the Advisory Board of Ignition Advice, a digital advice technology provider.

Between 2002 and 2019, I was the founder and Managing Director of The Fold Legal, a specialist financial services regulatory advice firm. In that capacity, I was deeply involved in intricacies of regulation of the financial advice industry through the following activities:

- Authored and edited the Financial Adviser Manual, a comprehensive compliance and operations manual for financial advice licensees and authorised representatives;
- Advised c.100 financial advice AFS Licensees on regulatory matters;
- Served as Honorary Counsel to the Institute of Managed Account Providers (2014-2018);
- Personally appeared for the Association of Financial Advisers and represented Sam Henderson at the Financial Services Royal Commission; and
- Presented at multiple industry conferences (AFA, FPA, IMAP, AIOFP etc) on regulatory matters, facilitated c.20 Responsible Manager Training workshops and authored numerous blogs and magazine articles on financial advice regulatory issues.

This submission is made in my personal capacity; not on behalf of any organisation, including those mentioned above.

Terms of Reference

I commend the comprehensiveness of the Terms of Reference, which comprehensively outline the issues impacting the quality and affordability of advice.

I submit that the Review should also investigate how the regulatory framework addresses vertical integration. This may not require an extension of the Terms of Reference, but I submit that it requires examination for the reasons explained below.

Between 2002, when the Australian Financial Services Licensing regime was first enacted via Chapter 7 of the *Corporations Act 2000* (Cth) and 2020, institutionally owned advice businesses dominated the financial advice marketplace. Those businesses purported to provide unconflicted advice, and yet, predominantly recommended products provided by their owners.

ASIC first identified this problem in its Report 251: *Review of financial advice industry practice*, Sept 2011 which examined the top 20 licensees. It monitored it over the next 7 years, culminating in Report 562 *Financial advice: vertically integrated institutions and conflicts of interest*, January 2018 and Report 474: *Culture, conduct and conflicts of interest in vertically integrated businesses in the funds management industry*, July 2018.

Much of ASIC's guidance on financial advice delivery addresses the conflicts of interest inherent in these types of businesses, probably because they appeared to be unwilling to be transparent with their clients about their product provider affiliations.

ASIC has provided little, if any, guidance for the significant and growing number of advice businesses who are avowedly vertically integrated, i.e. who are not pretending to offer unconflicted advice. These include:

- Superannuation funds who provide comprehensive advice services to their members;
- Advice businesses who operate their own (or a preferred) managed discretionary account or separately managed account service. This is now c. 35% of the advice industry with $111 billion in funds under management, and growing rapidly; and
- To a lesser extent, advisers who construct and recommend model portfolios (usually administered through a preferred platform); and
- Going forward, it seems likely that large financial institutions who have divested their advice arms will also need to provide general, if not personal advice, to assist their clients to purchase or remain in the financial products they provide.

These businesses have no desire to offer products or solutions other than their own. If they are transparent about the fact that they provide an inhouse or preferred solution, much of ASIC's guidance on quality financial advice and compliance with the best interests duty is unsuitable for their business model. Such businesses experience particular difficulty with the requirements that:

- Advisers require a broad based Approved Product List;
- Advisers must consider alternative products; and
- Advisers must be able to demonstrate a tangible additional benefit for the client when recommending an in-house product.

These requirements are manifestly inappropriate for an avowedly vertically integrated business. But in the absence of guidance on "what good looks like", many of these businesses are tying themselves in knots trying to comply with them. This is significantly contributing to the compliance burden, the profusion and complexity of advice documents and the cost of advice, and is detrimental to both advisers and client.

Vertical integration is not illegal. It is widespread in the financial services industry. The Financial Services Royal Commission did not recommend separation of product and advice, and even a cursory examination shows the impracticality of doing so.

I submit that additional guidance on fulfilment of the best interests duty is required for vertically integrated business who are not purporting to be otherwise.

Having considered this topic extensively, I will be able to provide a detailed submission on appropriate regulatory settings for avowedly vertically integrated business in due course.

Yours faithfully

Claire Wivell Plater LLB.