

To:

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"Work smarter, not harder"

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Please find overleaf my brief submission focused on conflicts and in-house products.

I hope it's of some assistance in building a policy response to recent events.

Yours Sincerely,

Brett Walker LL.B.
Director
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SUBMISSION TO: REVIEW OF THE QUALITY OF FINANCIAL ADVICE

Thank you for the opportunity to offer suggestions to improve the quality of financial advice.

I intend to focus on just one issue in detail: **conflicts and in-house products**.

BACKGROUND

Recent events (e.g. Dixon Advisory) highlight the problem of in-house products on advisory AFSL approved product lists. Although consumer protections exist in legislation there is an emotional toll borne by the victims, often retirees, who have placed significant trust in an individual or a brand.

And all too often the consumer protections do not adequately compensate victims and (apart from disciplinary action) offenders appear to get off “Scot free”.

SUGGESTION

Permit in-house products to exist but regulate these situations more stringently.

1. Impose a duty to **notify ASIC** on any AFSL proposing to recommend an in-house product **each time** they recommend it. This would not be an overly onerous obligation given the duty to notify ASIC of any reportable breaches via the AFSL’s Regulatory Portal. A simple confirmation of an event (including transaction amount) would be sufficient. Failure to notify would lead to regulatory action, e.g. AFSL suspension.
2. Require ASIC to keep tally of these notifications and use them in formulating surveillance strategies aimed at minimizing negative impact of “in-house” product recommendations.
3. Require ASIC to report to the relevant Minister on the outcomes of its surveillance program from time to time.
4. Require the AFSL recommending an in-house product to clearly set out (in a discrete section of the advice, under a heading like “***We are recommending an in-house product – here’s what we’re doing about the conflict of interests that creates and why we still think it is in your best interests to follow our advice about it.***”) in its advice details of the inherent conflict, how that conflict is being managed and why the recommendation is still in the client’s best interests.
5. Require client acknowledgement of the conflict notification and comfort to proceed despite it prior to any transaction in that product occurring.
6. Define “in-house product” using “related entity” as defined in s.9 Corporations Act. So, any interest in a financial product that was related to the AFSL or a representative of the AFSL by virtue of the definition of “related entity” would be deemed an “in-house product”.
7. Exclude MDA Operators from this regime on basis that ASIC already knows which AFSLs hold this authorisation and can test compliance with conflicts management obligations independent of this regime (as required).

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OUTCOMES

1. AFSLs highly focused on the pros and cons of recommending an “in-house” product prior to recommending them.
2. ASIC better informed in real time as to quantum of “in-house” product recommendations and so better able to make resourcing decisions in a timely manner.
3. Regular feedback to Minister on the “in-house” product surveillance program.
4. Higher level of engagement between AFSL and client at recommendation stage.
5. Higher probability of client interrogating adviser as to the benefits of taking their advice.
6. A higher level of client ownership of the transaction.
7. Hopefully all the above will lead to lower probability of poor consumer outcomes in this particular advisory space.

FINAL POINTS

Q. Why not just ban in-house product recommendations?

A. Some may actually be of significant benefit to clients, so why exclude them?

A. Some “in-house” products (like MDA services) are quite benign and only regulated as financial products by virtue of their hybrid (service and product) nature.

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