

Australian Securities and Investments Commission
Answers to Questions On Notice
House of Representatives Standing Committee on Economics | Public hearing, 29 March 2021

Division/Agency	Australian Securities and Investments Commission
Question No.	ASIC20QW
Topic	Frontier Advisors
Reference	Written
Committee member	Falinski

Question:

At the Parliamentary Joint Committee on Corporations and Financial Services hearing on 18 November 2020, I asked a question about the use of the term 'independent' by an asset consultant, Frontier Advisors Pty Ltd, and whether this was compliant with Section 923A of the Corporations Act. The answer on that day suggested that different rules applied to asset consultants as opposed to financial advisers, however the response provided in writing by ASIC was that Section 923A applies equally to licensed asset consultants such as Frontier as it does to financial advisers.

The response in the [Question on Notice 009](#) did not provide a clear answer on the question of whether Frontier Advisors should be permitted to use this term, despite Commissioner Press giving a commitment at the hearing on 18 November 2020 to consider exactly where they are using that word and whether or not it contravenes the independent requirements.

I further note that ASIC have confirmed in the answers to the Questions on Notice that Frontier Advisors is licensed to provide personal advice to both retail clients and wholesale clients. I can see that Frontier Advisors are still using the term on their website "Australia's leading independent asset consultant". Therefore, if Frontier Advisors is licensed to provide personal advice to retail clients and is owned by HESTA, CBUS, Australian Super and First Super, each of whom are financial product providers and each of whom are also part owners of the holding company that owns IFM Investors, which provides investment products for the wholesale market, then how can they be compliant with the requirements under Section 923A of the Corporations Act for the use of the term 'independent'?

Answer:

ASIC is engaging with Frontier Advisors Pty Ltd about its use of the restricted term 'independent' under s923A of the Corporations Act 2001 and cannot comment further because it is an ongoing matter.

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Division/Agency	Australian Securities and Investments Commission
Question No.	ASIC21QW
Topic	ASIC's media release regarding Mr Mark Damion Kawecki
Reference	Written
Committee member	Jason Falinski MP

Question:

At the Parliamentary Joint Committee on Corporations and Financial Services hearing on 18 November 2020, I asked why ASIC had issued three media releases about the prosecution of Mark Damion Kawecki who you chose to describe as a former financial adviser. The response to Question on Notice 007 included the following:

During part of the relevant period of Mr Kawecki's offending (between 19 January 2015 and 23 December 2016), Mr Kawecki was an authorised representative contracted to provide financial services on behalf of Fiscus Capital Pty Ltd (Fiscus), the corporate authorised representative of Nexia Corporate Melbourne Pty Ltd (Nexia), the holder of Australian financial service (AFS) licence 460701.

- (a) Where was Mr Mark Damion Kawecki listed on ASIC's Authorised Representative register?
- (b) Did Fiscus Capital not commence operations until 7 September 2015, nearly 9 months after the misconduct commenced?
- (c) It would appear that the breach of the law was engaging in dishonest conduct related to attempts to artificially satisfy the minimum spread requirement for companies seeking to be admitted to the ASX, is that correct?
- (d) Is it correct that the breach in the law was not related to Mr Kawecki's role as a financial advisor, and that at best, he was providing some form of financial service to wholesale clients?
- (e) Did Mr Kawecki, at any stage, during this time (ie. 19 January 2015 to 23 December 2016) provide personal financial advice to clients?
- (f) Did ASIC rely on the fact that he was a securities representative as far back as 2004, in order to call him a 'former financial adviser' in the three media releases?
- (g) Given all this recently revealed information, does ASIC still maintain that it was appropriate to refer to someone as a former financial adviser when the misconduct was totally unrelated to financial advice? And further that there is little evidence of him providing financial advice in the last 11 years before the misconduct occurred?

Answer:

- (a) ASIC's Authorised Representative register is updated when an Australian financial services licensee notifies ASIC of appointments of authorised representatives. No such notification was received by ASIC in relation to Mr Kawecki's appointment. As a result, Mr Kawecki did not, and does not, appear on ASIC's Authorised Representative register.
- (b) Fiscus was authorised as a corporate authorised representative of Nexia from 7 September 2015. As previously stated, during part of the relevant period of Mr Kawecki's offending, Mr Kawecki was an authorised representative contracted to provide financial services on behalf of Fiscus, as the corporate authorised representative of Nexia.
- (c) Mr Kawecki was charged and convicted of two counts of engaging in dishonest conduct in relation to a financial product in the course of carrying on a financial services business, contrary to sections 1041G and 1311(1) of the *Corporations Act 2001* (Cth). The financial services business carried on by Mr Kawecki, and to which the offending related, included assisting companies seeking to be listed on the ASX to comply with the ASX Listing Rules in relation to the minimum spread requirement.

- (d) As stated above at (c), Mr Kawecki's breach of the law related to his conduct in assisting companies seeking to be listed on the ASX to comply with the ASX Listing Rules in relation to the minimum spread requirements.
- (e) ASIC's investigation identified that Mr Kawecki provided financial product advice related to sourcing investor participation in initial public offerings from both retail and wholesale clients, in connection with the offending conduct. The scope of ASIC's investigation did not focus on whether Mr Kawecki provided personal advice (within the meaning of the term in s766B(3) of the *Corporations Act 2001* Cth)) to clients during the relevant period.
- (f) In referring to Mr Kawecki as a 'former financial advisor' in the three media releases, ASIC had regard to the fact that for part of the offending, Mr Kawecki engaged in the conduct in the course of, and in connection with, his role as an authorised representative of Nexia, by whom he was authorised to provide financial product advice, as well as Mr Kawecki's position as a securities representative in 2004.
- (g) Mr Kawecki's offending related to his conduct in assisting companies seeking to be listed on the ASX to comply with the ASX Listing Rules in relation to the minimum spread requirements. In the course of engaging in this conduct, Mr Kawecki also provided financial product advice relating to sourcing investor participation in initial public offerings, from both retail and wholesale clients. During part of the relevant period in which Mr Kawecki carried out the offending conduct, Mr Kawecki engaged in the conduct in the course of his role as an authorised representative of the Australian financial services licensee, Nexia, by whom he was authorised to provide advice in relation to financial products. The description 'former financial advisor' reflects Mr Kawecki's role within the context of his offending.