

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into the Future of Financial Advice

Written Questions on Notice for Treasury

Carve out for basic banking products

ASIC Regulatory Guide 146: Licensing: Training of financial product advisers, includes general insurance products except for personal sickness and accident as a Tier 2 product (p. 17).

Why is general insurance not included in the definition of a basic banking product as it pertains to the carve-out for employees or agents of an ADI that are providing advice on basic banking products?

Answer: General insurance is not included the definition of a basic banking product because the carve out for general insurance products does not just apply to employees or agents of an ADI. It applies to any licensee or representative who receives a benefit in relation to a general insurance product.

Consumer credit insurance

Consumer credit insurance (CCI) is a combination of life and general insurance under one insurance contract and is typically jointly issued by a life company and a general insurer.

Can you clarify how CCI fits in with the proposed exemptions, and whether it is deemed a general or a life insurance product?

Note: ANZ request clarity and Joint Consumer Groups believe that the Bill does not consider incentives for CCI as conflicted remuneration

Answer: Treasury is exploring this issue with industry.

Volume-based shelf-space fees and anti-avoidance measures

Vanguard note that some platforms currently pass the benefit of volume-based payments on to the consumer and that the Bill creates a risk that these practices may

cease.¹ In contrast, Macquarie Bank understands that the Bill *will* allow for volume-based payments to be passed on to the end consumer.²

Can you clarify whether volume-based fees will be allowed if passed to the end consumer under the Bill?

Answer: The Bill does not prohibit volume-based fee rebates that are not otherwise banned being passed from the platform provider to the end consumer.

Extending the carve out to non-ADI representatives

AMP Financial Services suggests that the carve-out for basic banking products should not be limited to representatives of an ADI, and that the 'simplicity of the product and the advice should not be complicated by who is giving the advice'.³

What is your response?

Answer: The basic banking ADI carve-out merely recognises that where an ADI is directly advising on and selling their own products, it would not be unreasonable for the consumer to assume that the employees of the ADI are being rewarded to sell their employer's basic products. However, a consumer has a right to expect that employees of non-ADIs (for example, non-ADI financial advice firms) are not receiving conflicted remuneration to sell a third party's product, even if that product is a basic banking product.

The annual fee disclosure statement

There appears to be some confusion over the practical application of the fee disclosure requirements. This uncertainty stems from the obligation that all clients must be sent a fee disclosure notice on the 12 month anniversary of their agreement. The EM (paragraphs 1.20 & 1.21) states that this notice must contain the fees charged for the previous 12 months and the fees that will be charged for the forthcoming 12 months.

However, in relation to existing clients, the time period that needs to be included in the notices remains ambiguous. For example, if a client entered into a relationship with an adviser on 21 July 2011, does this adviser then need to issue a disclosure notice on 21 July 2012, or the 12 month anniversary of the introduction of the legislation on 1 July 2013?

If the answer is the 12 month anniversary of the contract, does the fee notice need to include all fees for the entire previous 12 month period, or is it only applicable to fees charged from the date the legislation takes effect? Using the above example, would

1 Vanguard Investments Australia Ltd, *Submission 60*, p. 2.

2 Macquarie Bank Limited, *Submission 65*, p. 2.

3 AMP Financial Services, *Submission 43*, p. 21.

the fee disclosure statement only include the fees charged for the period between 1 and 21 July, 2012?

Answer: Under the provisions in the Bill, fee recipients of existing clients will need to disclose fee and service information for the prior 12 months, even where such information relates to a period before the FOFA reforms came into effect.

Definitions of risk commission and product fee

Given that the terms 'risk commission' and 'product fee' are central to the carve-out provisions in the bill, why are they not defined in the Explanatory Memorandum? Are they defined elsewhere in statute? Will they be defined in the regulations?

Answer: The Bill does not attempt to define 'risk commission' or even 'commission'. Rather, it makes reference to the receipt of conflicted remuneration.

In the context of ongoing fee arrangements, it is the intention to define or identify product fees which are carved-out in the regulations.

Questions taken on notice during the hearing (24 January 2012)

Regulatory Impact Statements and OBPR Reports

Senator CORMANN: I have here what I understood to be the most recent assessment from the Office of Best Practice Regulation, which is dated 8 August 2011. It says that all of the regulatory impact statements you prepared were inadequate, other than the one in relation to volume rebates—and I quote: 'not assessed as adequate for the decision-making stage'. You now say you have a whole heap of regulatory impact statements that are adequate. I would like to see, on notice, the report from the Office of Best Practice Regulation to that effect.

Mr Murphy: I am saying that they were provided and the fact of the matter is OBPR ran out of time. I am thinking the best way through this is to get the whole thing released.

Response: Treasury are considering some options including an updated cost-benefit analysis.

Opt-in provisions

Mr FLETCHER: Just to make sure that I understand your response, you cannot identify another situation where there has been a restriction placed upon the period for which a client can contract with a service provider?

Mr Murphy: Commercially there could be, but not through legislation.

Mr FLETCHER: Not as a matter of legislation.

Mr Murphy: We will research that for you.

Response: The Bill does not restrict the period for which a client can contract with a service provider.