

24 June 2009

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email: corporations.joint@aph.gov.au

Dear Sir/Madam

Inquiry into Agribusiness Managed Investment Schemes

Snelleman Tom is a firm of Consulting Accountants (both CA and CPA) and financial planners. We hold our own Australian Financial Services Licence (#239166).

We make this submission in the broader public interest to put forward the case for clients, and to assist members of the Parliamentary Joint Committee to see through the biases created by such a high revenue industry.

I personally, have been in the financial planning industry for 21 years, and the firm Snelleman Tom was established 25 years ago. My comments are meant to assist members of the Parliamentary Joint Committee with background on how a practitioner comes into contact with Agribusiness Managed Investment Schemes (MIS) and how we have chosen to deal with them.

Generally, as a business, we do not go looking for agribusiness managed schemes. Rather, it is likely that we are contacted by a fund manager, promoter or responsible entity with a view to presenting their story to us, so that we are able to promote their product to our client.

Over the last 21 years I have had nearly 30 face-to-face meetings with promoters, and most likely three-fold more email, letters or information kits sent to me about Agribusiness MIS.

In all cases there has been equal time spent on the following:

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- a) The product structure and the offering
- b) The taxation aspects of the product
- c) The business opportunity in terms of commissions that can be earned

On all occasions we have asked the promoter how a client would be financially better off by investing in Agribusiness MIS, rather than making an ongoing and sustainable commitment by contributing to superannuation. In generalising all responses a statement akin to the one below was made:

"Lots of people don't want to lock their money up inside superannuation. It's just too far away. This product is for someone who wants to avoid the tax now, with a view that they might get their money back in 7 years"

I would ask you to consider the ethics of what I have seen over the last few years. I base these comments on what I have heard at conferences, industry gatherings and forums, Friday night drinks with financial planners and fund managers and simple observation with my own ears and eyes.

In general, many participants in this industry have seen Agribusiness MIS as a legal product, with tacit endorsement from both the ATO and ASIC. Given the legality of the product and the tremendous revenue opportunities, many have chosen to hide behind the veneer of legality and accept the positive effect that a product paying 10% commission provides to their business.

The 12 submission points and our response are listed below:

1. Business models and scheme structures of MIS

No additional comments

2. The impact of past and present taxation treatments and rulings related to MIS

As an adviser we have an obligation to provide advice that is appropriate to the client's circumstances. In simple terms we have equated this as something that makes sense from a taxation perspective and a wealth creation perspective.

I am aware that Agribusiness MIS promoters find it almost impossible to arrange large placements of monies into schemes that do not have a relevant tax ruling that supports the deduction.

I believe that financial planners and indeed AFS Licence Holders do not normally have the skill to interpret the forecasts and the opinion of the independent primary producer expert that is contained in most Product Disclosure Statements.

As an industry participant, I put it to the Board that the tax issues were the second most important factor in the promotion of Agribusiness MIS.

3. Any conflicts of interest for the board members and other directors

No comment

4. Commissions, fees and other remuneration paid to marketers, distributors, related entities and sellers of MIS to investors (including accountants and financial advisers)

I have been exposed to the thinking that it was necessary for financial planners to receive 10% commission on these products, as the financial planner will need to report on the investment for the next 10 years. I encourage the members of the Parliamentary Joint Committee to ignore this vacuous and self-serving position for what it is.

The issue of commissions and fees continues to be an area that the financial services industry has great difficulty in justifying.

Whilst tax was the second most important factor in the promotion of Agribusiness MIS, I am of the opinion that the high commission structures were the main reason for the volume of business written.

5. The accuracy of promotional material for MIS, particularly information relating to claimed benefits and returns (including carbon offsets)

With our limited agricultural knowledge we found it difficult to believe or disbelieve the promotional information.

6. The range of individuals and organisations involved with the schemes, including the holders of the relevant Australian Financial Services Licence

Any analysis of the writers of business into Agribusiness MIS will show that there were many different organisations involved. This type of analysis is unlikely to yield any additional information or provide an opportunity for reform.

Rather this question should be directed at ASIC and why it is not in a position to provide information to the relevant Ministers and ultimately to parliament itself, that the wrong outcomes are occurring, albeit within the law.

Once again I call for ASIC to consider meeting with practitioners (behind closed doors) that are at the coal-face and ask them this question:

What products and selling practices concern you?

This should provide an input into where ASIC should be “supervising and monitoring” before the event rather than when clients money has been lost.

7. The level of consumer education and understanding of these

Given my previous comments that it is difficult for professional advisers to understand the costs, structures and implications of Agribusiness MIS, I suspect that clients have even greater problems in interpreting the information provided by the promoters.

8. The performance of the schemes

No Comment

9. The factors underlying the recent scheme collapses

No Comment

10. The projected returns and supporting information, including assumptions on product price and demand

No Comment

11. The impact of MIS on other related markets

No Comment

12. The need for any legislative or regulatory change

The table below is a summary from the ASIC website of its role to consumers

An important part of our legislative objectives is to promote the confident and informed participation of consumers in the financial system. We are striving to do this by:

- ensuring that consumers receive adequate and appropriate information to make informed decisions about financial products and services;
- maintaining a vigilant oversight of the marketplace to proactively identify, stop and deter misleading and fraudulent conduct;
- ensuring that consumers have access to appropriate redress systems when things do go wrong;
- adopting a flexible approach to regulation to ensure that unnecessary impediments to business are removed where consumer protection goals are not compromised; and
- applying the knowledge and experience we acquire as the regulator to consumer education initiatives and policy debates so as to improve the system of consumer protection across the regulatory spectrum - from self-regulation initiatives to legislation.

We recognise that to achieve these goals in the rapidly changing environment within which the financial services sector operates, ASIC must continue to develop an integrated risk-based approach to compliance. That approach must focus on identifying and responding to emerging regulatory problems, patterns of conduct and financial services sector issues - and must be underpinned by effective enforcement. This involves us increasingly in:

- **adopting a risk based approach to compliance** involving systemic identification of important regulatory risks (i.e. regulatory problems, patterns of non-compliance or emerging financial sector regulatory issues) and then putting in place regulatory responses designed to address the specific regulatory concern. For more information see pages 15-18 of our [submission to the Senate Select Committee on Superannuation and Financial Services, January 2000](#);
- **engaging in collaborative partnerships** with industry, consumers and their representatives, our staff, the media and other regulators to produce a shared sense of purpose through collaborative agenda setting; more effective interventions through engagement of multiple parties and optimal leveraging of scarce public resources. For more information see pages 22-29 of our [submission to the Senate Select Committee on Superannuation and Financial Services, January 2000](#); and
- **focusing on results**, persevering in the search for meaningful impact measures to complement other efficiency, output and outcome measures. For more information see pages 33-61 of our [submission to the Senate Select Committee on Superannuation and Financial Services](#).

Additionally Regulatory Guide 175 Licensing: Financial product advisers – Conduct and disclosure (RG 175). This guide sets out ASIC’s policy for administering the law on:

- Providing financial product advice
- Preparing and providing suitable personal advice

Having re-read the law and its application, I believe that there are only two possible courses of action, namely:

- a) a complete review of the law, the outcome of which would ban commissions and brokerages to external parties as well as ban the payment of salaries to internally employed salespeople and customer service staff from the resources of the trust or fund itself;

OR

- b) no additional regulation, but rather that ASIC uses its current powers to remove the excesses that have been seen in recent times, such as Opes Prime, Westpoint, Great Southern etc.

Conclusion

When balancing the needs of the various participants it will be difficult for the Parliamentary Committee to meet all of these needs. We hope that when push comes to shove that the interests of clients are put first.

Sincerely


Martin Kerrigan