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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Reference: Regulations and ASIC policy statements made under the Financial Services Reform Act 2001

WEDNESDAY, 7 AUGUST 2002

SYDNEY

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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Wednesday, 7 August 2002

Members: Senator Chapman *(Chair)*, Mr Griffin *(Deputy Chair)*, Senators Brandis, Conroy, Murray and Wong and Mr Byrne, Mr Ciobo, Mr Hunt and Mr McArthur

Senators and members in attendance: Senators Brandis, Chapman, Conroy and Wong and Mr Ciobo and Mr Griffin

Terms of reference for the inquiry:

To inquire into and report on:

The regulations and ASIC policy statements made under the Financial Services Reform Act to ascertain the extent to which they are consistent with the stated objectives and principles of that Act.

WITNESSES

Committee met at 2.32 p.m.

FRENCH, Mr Philip, Senior Policy Manager, Investment and Financial Services Association

GILBERT, Mr Richard, Chief Executive Officer, Investment and Financial Services Association

ACTING CHAIR (Mr Griffin)—I declare open this public meeting of the Parliamentary Joint Committee on Corporations and Financial Services. This afternoon the committee will hold its fourth public hearing into the regulations and the ASIC policy statements made under the Financial Services Reform Act. Before we commence taking evidence, I reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. Parliamentary privilege refers to the special rights and immunities attached to the parliament or its members and others necessary for the discharge of parliamentary functions without obstruction or fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by that witness before this committee is treated as a breach of privilege. These privileges are intended to protect witnesses. I must also remind you, however, that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Unless the committee should decide otherwise, this is a public hearing and, as such, all members of the public are welcome to attend. The committee prefers all evidence to be given in public but should you, at any stage, wish to give any part of your evidence in private, you may ask to do so and the committee will consider your request. The committee has before it a written submission from you. Are there any alterations or additions you would like to make to your submission at this stage?

Mr Gilbert—No.

ACTING CHAIR—Do you have an opening statement?

Mr Gilbert—The submission speaks for itself. We have appeared previously in this inquiry and gave evidence on the size of the industry's role in this regard. Very briefly, we support these regulations. We do so because we were involved in a long and quite involved set of negotiations with Treasury officials and, whilst we did not win all of the things that we wanted to win from this for our industry, the result is largely satisfactory to us. This industry at this time needs certainty of the regulations. To that end, I would like the committee to know that our members—our retail members, at least—have got product disclosure statements on the market, and to change those in the middle of this inquiry would be unfortunate and costly. Other sectors do not have those requirements, because they can wait until the end of the two years before the legislation takes effect for them, whereas my members have documents which roll out of currency during the next two years. Our industry is particularly affected by the start date and these provisions. That is why—but it is not only reason why—we have supported this set of regulations. That is all I wish to say.

CHAIRMAN—Mr French, do you have anything to add before we move to questions?

Mr French—No. That summarises our position. We are fully in support of the regulations.

Senator CONROY—Is IFSA aware that Australia operates a bicameral parliament?

Mr Gilbert—Absolutely.

Senator CONROY—Does IFSA believe that simply because the government of the day tables regulations in the Senate, the Senate should automatically rubber-stamp whatever the government does?

Mr Gilbert—That is why we are here today.

Senator CONROY—It is just that the tenor of your submission seemed to imply that the role of the Senate was merely to rubberstamp whatever the government told it to.

Mr Gilbert—We certainly have not used those words, nor would we ever. We have never presumed that the parliament was not supreme in this issue. The parliament is supreme, and if the parliament struck down these regulations our members would comply accordingly.

Senator CONROY—It has been speculated in the newspapers that IFSA, as with many others, had a role in commenting on the regulations before they were tabled. You might not have had the opportunity to clear that up the record. Are you aware if any consultations took place between the governments, the Treasury or anybody else with any of the other parties involved in the Senate before the regulations were tabled?

Mr Gilbert—Our discussions with the government were via the processes that the Treasury had initiated. When the regulations were tabled, we made contact with your official and also Senator Campbell's official to say that we could work with these regulations. Is that the time frame that you are talking about?

Senator CONROY—No. There were two parts to the question. One was to allow you, as there has been some speculation in the media about this, to have your say on it—

Mr Gilbert—If you would like me to clear that up, I will. I have no problem with that.

Senator CONROY—I am offering you the opportunity, if you want to take it.

Mr Gilbert—Thank you, I will. The comments made in the media were strange, because during the process in which the regulations were being formulated we had no contact with any minister, not the current parliamentary secretary or his predecessor, Minister Hockey. We had no contact in relation to those regulations with any advisers working for those ministers in Parliament House. To the best of my knowledge, the only contact that we had was sending Mr French to Canberra with eight other groups who were there at the table. The submission that we made was on the web site. If you have the opportunity to look at our submission, it does not necessarily reflect what the regulations are, but we understand what compromise is about, and we understand the need for a commercially viable and certain future for us. That is why we supported the regulations.

Mr French—Perhaps I could just add to that. I was present at all the consultative group meetings. I can say in all honesty that there was no spare room at the table because of the very broad representation—every conceivable stakeholder from both the industry and the consumer side was there. In fact, before we made our own submissions and went to those consultative meetings, our own consultation processes involved quite intensive meetings with consumer groups. Each of them was very thorough and very well attended by all stakeholders.

Senator CONROY—That was the first half of the question. This is the second half of the question: are you aware whether the government, before tabling the regulations, consulted with any other political party that is represented in the Senate?

Mr Gilbert—Again, I do not know because I have not asked anybody in the government on that front.

Senator CONROY—Are you aware whether the regulations were issued in a draft form before being tabled, as were all the other FSR legislation along the way and the ASIC working notes, which first were working documents before becoming the final documents?

Mr French—I could not swear to them all having been issued in draft form but certainly, to my recollection, all ASIC policy was and most of the regs were. The regulations were coming fairly thick and fast between October and March.

Senator CONROY—The ones tabled on 27 or 28 February, I think it was. Are you aware whether that particular set, which covered the issues where a disallowance was moved, was out in the public domain as a draft?

Mr French—My recollection is that they were issued in draft form and there will be a meeting to talk about them. We had a specific consultative group meeting which basically—

Senator CONROY—No. I can assure you that the consultative group meeting is not a public forum; it is an invitation only forum. I put that just to make sure you are aware of the distinction regarding the consultative process. In this particular case, I do not know whether you had to sign any confidentiality agreements there.

Mr French—No.

Senator CONROY—I know that the government does that with other legislation. But are you aware that the public discussion papers were issued in a public form?

Mr French—Beyond the formal consultative arrangements, I am not aware either way.

Senator CONROY—Treasury are here; we will be able to ask them shortly. Would it come as a surprise to you that other political parties were completely unaware of the content of those regulations until after they had been tabled in parliament or via the process?

Mr French—I would not comment on that. I think that is a matter for the minister and the government to comment on.

Senator CONROY—To avoid the concept of the Senate being a rubber stamp, do you think it is helpful if people are aware of things before they are jurisdiction st thrown on the table in an attitude of 'take it or leave it'?

Mr Gilbert—I go back to my initial statement that IFSA would never presume the Senate to be a rubber stamp.

Senator CONROY—Are you aware of whether Treasury or your association did any marketplace testing of the OMC?

Mr Gilbert—I have thought long and hard about that issue, and I think that is a good question. All I can say is this: this industry has used a thing called a management expense ratio for the best part of the last 15 years, and I do not think anybody has been able to say that it has not been a good comparator between funds. Except for one difference, the management expense ratio essentially is the same as the OMC, and that one difference now is investment management charges. It used to have stamp duty attached to it; but, now that stamp duty has gone, the only difference is investment management charges. The MER is a worldwide best practice measure to compare funds. In looking at some web sites I noticed that the Canadians and the US have that particular model. We support the OMC because it has worked for us in the old superannuation regime, which had regulations which were promulgated by Labor when they were doing key feature statements post-1994 with the SG, and we believe that going forward it should work. It does what it says it is going to do: it is the ongoing management charge. It is not the charge going into a fund or the charge going out of a fund; it is the charge of staying in a fund.

Senator CONROY—Were you surprised that the OMC was being mandated only for the superannuation industry? Some of your members have indicated that they will be putting OMC in for both managed investments and super. Did it surprise you that there was a separation, given that this bill was designed for a single licensing regime with one fit?

Mr Gilbert—On that front, the OMC will be working for the superannuation industry and currently, via an industry standard, we are working on the MER. I would advise the committee that we are reviewing our standards post-FSR and we will be introducing the OMC for all nonsuperannuation products that our members offer. As we cover about 95 per cent—probably more—of the retail investment management market, there will be an OMC across both sectors. The advantage is that, by virtue of its products and the people going into it, the nonsuperannuation environment moves more rapidly and has far more innovation in it than the superannuation environment. I believe it is acceptable for us to run those standards as we have done for the last 10 years because it means that we can more readily adapt to the changing marketplace.

Senator CONROY—Will your MER be based on total cost to the consumer?

Mr Gilbert—No. The MER will be, as per the OMC, the ongoing management charge. So, if any charges are incurred through being in the fund on an ongoing basis, they will be in there.

Senator CONROY—Is it reasonable to exclude exit and entry charges? I think you also mentioned one other type of charge.

Mr Gilbert—There is no reason to exclude any ongoing charges. The reason for excluding entry and exit fees is that they do not fit into the pure definition of an OMC. I would advise the committee also that you can have a five per cent entry fee, but it is industry practice that that percentage be much lower. You can also have a five per cent exit fee and, again, that varies from customer to customer and fund to fund. But the constant here is the ongoing management charge. The other charges are disclosed under the PDS arrangements on a schedule and in the prospectus, and individuals can tailor those particular charges to their needs and their circumstances.

Senator CONROY—Obviously 'OMC' represents ongoing management charge. There is no particular reason for those three initials; they are not sacrosanct. MER does not necessarily immediately stand out as meaning 'this is ongoing'. You have referred to 'the purer model of OMC'; why are you drawing a line between entry and exits costs to a consumer?

Mr Gilbert—Because all investors incur the ongoing management charge. In a trust, all investors have to be treated equally. But coming into the fund you might have an adviser who charges you five per cent, and that would be a charge peculiar to you. But you might not have an adviser and you might come in through Commonwealth securities, the web site funds manager, and all of those customers come in at zero.

Mr French—Or your adviser might rebate all the entry fees. Our information and understanding is that it is just not possible to include those in the OMC. The OMC is a calculation about, as Richard says, ongoing charges.

Mr Gilbert—Just to correct Mr French: the point is that, if you did, you could well be misleading half or three-quarters of the investors about the level of charges they are paying.

Senator CONROY—Explain that, please.

Mr Gilbert—If half the investors are coming in with a five per cent entry fee and that is then applied to the lot, the charge will go up for everybody and you will end up with an inflated OMC. The OMC is peculiar to those people who are in the fund. The OMC is for all people who are in the fund, whereas entry fees and exit fees will be selectively applied depending on the person's circumstances.

Senator CONROY—Will your MER for the managed investment side and, hopefully, the OMC side eventually be in dollar terms, where possible?

Mr Gilbert—That is what we are working towards. The $10,000 example is a good illustration of an average superannuation investor. As an industry, we have to work out whether that is applicable to the people in our particular nonsuper fund. So the average superannuation fund account, in the contribution sense, is only about $5,000 to $10,000, and I think that is why the $10,000 was struck. But in the nonsuperannuation environment the average balance is about $40,000. So we might have to look at that otherwise, if we use exactly the same methodology, we may well be misleading our customers.

Senator CONROY—I know you are aware of the Consumers Association's evidence, both to this committee and at its presentation to your own conference last week, which I congratulate

you on. I think that association and ASFA described the OMC as dangerously misleading. Is that a fair description or an unfair description?

Mr Gilbert—I think there is some irrational exuberance in that statement. The OMC does what it purports to do: it tells the investor what they are paying, on average, for being in that fund. I would suggest that, if entry fees and exit fees were incorporated into that equation, the word 'dangerously' would be inappropriate; it would be 'very dangerously' or 'highly dangerously' misleading. I think it was a very unfair statement.

CHAIRMAN—As there are no further questions, Mr French and Mr Gilbert, I thank you very much for appearing before the committee and answering questions.

[2.53 p.m.]

RAY, Mr Nigel, Acting Executive Director, Department of the Treasury

ROSSER, Mr Michael John, Manager, Consumer Protection Unit, Financial System Division, Department of the Treasury

VROOMBOUT, Ms Susan, Manager, Market Integrity and Payments Unit, Department of the Treasury

WILESMITH, Mr Brett Anthony, Analyst, Financial System Division, Department of the Treasury

CHAIRMAN—Welcome. The committee prefers that all evidence be given in public. But, if at any stage you wish to give any part of your evidence in private, you may request that of the committee and we will consider such a request. An officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of him or her to superior officers or a minister. We do not have a written submission from you. Before we proceed to questions, do you wish to make an opening statement?

Mr Ray—No, thank you.

CHAIRMAN—In that case, we will proceed to questions.

Senator CONROY—I asked ASFA about the level of consultation. Were the set of regs, which the disallowance applies to, put out in draft form before being promulgated?

Mr Ray—Yes. An initial draft of the regs were posted on the Treasury site on 27 August last year.

Senator CONROY—I said the final draft. Let me rephrase that. Did that occur with the final draft?

Mr Ray—Following a meeting of the implementation consultative committee and written submissions, a revised draft was posted to the web site. I do not have the date in front of me but it would have been later last year.

Senator CONROY—Would it have been before Christmas?

Mr Ray—I think so, but I can take the question on notice to check the date. The second draft was published on the web site and, then, the final draft was posted to the web site in February.

Senator CONROY—When were they tabled in parliament?

Mr Ray—Before they went to the Governor-General and counsel. It was posted as a final draft—

Senator CONROY—Was it a week before or the day before? There seems to be some last minute changes in them.

Mr Ray—It would have been at least a week before.

Senator CONROY—So they were available one week before if you knew they were on the web site?

Mr Ray—That was the practice adopted for all the tranches of the regulations for FSR. So they were posted to the web site at least three times.

Senator CONROY—I am well aware that things were posted regularly on the web site, but it is the final draft that makes the difference. In terms of the changes made from the early drafts to the final that was promulgated, the cold-calling hours were broadened from the early discussion to the final discussion. Could you give us a run-down on the thinking behind that?

Mr Ray—We received several submissions on the early draft on the cold-calling hours. Those submissions suggested that there did not seem to be any reason why the government should adopt hours that differed from the accepted industry standard for direct marketing, which were agreed by state and federal ministers.

Senator CONROY—The first draft had narrower hours, what was the thinking behind that? Was it that the government did not agree with them but that Treasury still put them out? Or did the government agree with them and then change its mind? I am trying to understand what led to the initial hours and you saying that the government decided that this was the final one—help me out.

Mr Ray—You are testing my memory because it is so long ago. The first draft hours were narrower on the day. I think the hours started later, by a half-hour or so, and finished a little earlier.

Senator CONROY—I think the other ones had days excluded—Sundays, for instance.

Mr Ray—I beg your pardon?

Senator CONROY—I do not think that Sundays and other public holidays were included in the early stages. I do not think we are talking about a difference of a half-hour per day.

Mr Ray—Are you talking about Sundays?

Senator CONROY—We are talking about some substantial broadening of the hours between the first draft and the final draft. We are not talking about a half-hour difference per day.

Mr Ray—Yes. The broadening was to match the hours used in the direct marketing field.

Senator CONROY—Is flogging pens over the phone the same as flogging insurance and other forms of financial services?

Mr Ray—No, it is not. That is why we have a range of licensing and disclosure requirements for financial products that do not apply to pens.

Senator CONROY—Where did you get to in trying to find a single figure for disclosure, in terms of the debate you heard earlier about an individual dollar comparator? Are you doing some work on that? I thought that, initially, there was an attempt to do some work to try to come up with a figure.

Mr Ray—Are we talking about superannuation?

Senator CONROY—Obviously not the other side. You have said to me that it was a government decision to separate superannuation from the rest of the managed investments.

Mr Ray—It goes back a long way.

Senator CONROY—I think I have asked you about that during Senate estimates and I think that is what you said.

Mr Ray—The approach we adopted was to build on the established practice of disclosure for superannuation products. I think that, in terms of the legislative requirement that dates back to 1994, we took the MER prescribed under the SI(S) regulations and considered possible ways to enhance that. As you have already heard, one of those enhancements was to prescribe the inclusion of investment management charges.

Mr Wilesmith—There was an ongoing management charge included in the key features statement for superannuation funds. It was prescribed under a determination from the SI(S) Act.

Senator CONROY—So are you saying that your final decision was based on the SI(S) Act?

Mr Ray—No, that was our starting point.

Senator CONROY—How much have you varied from the SI(S) Act?

Mr Wilesmith—There have been a number of things there. For example, we have included an indicative dollar amount. That was something that came out in submissions. People were concerned that consumers may not understand percentages so we have looked at adapting the model to include that there. We have also broken up the OMC there to distinguish between investment related and non-investment related management charges. We have also sought to ensure that underlying investment costs are included in the model as well, so that where parties go out there and outsource expenses and only receive a net return the costs associated with that outsourcing are also incorporated in the model as well.

Senator CONROY—You also heard during earlier evidence the question of whether or not you had a chance to do any testing in the marketplace. I appreciate you are working to very tight

deadlines and that there was an enormous amount of work that still needed to be done after the legislation was passed. You had the election. I am sure trying to get the new ministers up to speed on a whole range of issues would have slowed down the process—and that would have happened no matter who won the election or who lost the election. So I appreciate there were significant time constraints following the passing of the bill in terms of producing the regulations. Did you get a chance to do any consumer testing at all?

Mr Ray—We consulted with about 40 different stakeholders, which included a number of consumer organisations.

Senator CONROY—Did any consumer organisation support the model that you were testing?

Mr Ray—That is not a straightforward question. One consumer association argued that there should be no prescription of the method of disclosure. The Australian Consumers Association made no submission. I am not sure about other consumer organisations.

Mr GRIFFIN—Were they consulted about it?

Mr Ray—They were.

Mr Rosser—They were part of the strategic consultative committee.

Senator CONROY—What was that consultative process? Did you go to them specifically and say, 'This is the model we are looking at,' or did you just send them a copy and ask for comment back?

Mr Ray—We met with the Australian Consumers Association individually, but that is a separate issue. In terms of these regulations, they were included in the consultative committee. They were sent the drafts and they attended that particular consultative committee meeting.

Senator CONROY—Coming back to my original question as to whether any of the consumer groups you consulted endorsed your model, you commented that one said, 'We actually do not want any model,' and one you did not receive any feedback from. But you have not indicated that any of them supported your model.

Mr Ray—But none of them opposed it, either.

Mr GRIFFIN—You said that the ACA were at that consultative committee meeting. I gather there was a discussion at that consultative committee. Are you saying they did not put forward a view? You mentioned they did not put in a submission in.

Mr Ray—Correct; they did not make a submission.

Mr GRIFFIN—But did they make comments at the hearing? How many people put submissions in?

Mr Ray—From my recollection, they did not make comments. It is really a question that you need to ask them. I do not think it is fair. The nature of those consultative committee meetings is not a formal process. But they certainly did not put a strong view opposing the model that was on the table. I think that is a fair comment.

Senator CONROY—You left the meeting thinking that you had support for it? Is that a fair way to describe your perception of it?

Mr Ray—We left the meeting thinking that, while there were significant sections of the industry that were opposed to the prescriptive approach and there was one consumer organisation that did not like the prescriptive approach, in general the consensus was that there was a degree of acceptance for the model.

Mr GRIFFIN—Acceptance on the basis of what? You do not recall any criticism being expressed?

Senator CONROY—Are you saying there was consensus?

Mr Ray—No. There was dissent, but the dissent at the meeting was that there should be no additional prescription for superannuation.

Mr GRIFFIN—Can you think of any consumer group at all who actually expressed approval for what you were doing? If so, who?

Mr Ray—Not in submissions. Again, at the meeting there was at least one consumer group who said that 'If you are going to go this way …' but that is not—

Mr GRIFFIN—The one expression you have had from any consumer group seems to be in opposition to what was being proposed.

Mr Ray—Correct, in the initial statements. But the opposition was that there should be no prescription.

Mr Wilesmith—General concerns were expressed there that fees and charges were important and parties were interested in having a dollar comparison. Hence, if I recall correctly, at the ICC meeting the focus was on the dollar amount that was associated with the OMC model. The original model had an amount of $5,000. It was argued there that parties did not believe that to be realistic. So we put forward $10,000, and I thought we had general agreement among people present at that meeting to that amount.

Senator CONROY—I am not sure at what stage of the process it was, whether it was purely extra disclosure for superannuation or all of managed investments; I don't think it matters too much when this happened—but, in terms of the discussion around the table, when you sat down and said, 'Right, the government has said we are only going in this direction for superannuation,' were there views around the table?

Mr Ray—The government said that in the explanatory memorandum to the bill when it was introduced into parliament in April. That is when the government said that that was the approach it was going to adopt.

Senator CONROY—In terms of the discussions, did anyone raise with you why that was the case?

Mr Ray—It is my recollection that that was a major point of discussion at the ICC and that there were views put from industry and, as I said, from one consumer group to say that there should be no additional prescription for superannuation.

Senator CONROY—So industry opposed prescription for any of it at all?

Mr Ray—The position that was put by certain representatives of industry was that they would prefer no additional prescription—that is, that they wanted the full degree of flexibility that the act provides in order for them to meet their obligations—but that they could understand the government's basic policy position, which is that superannuation is a bit different because it is preserved, because there is a large compulsory component and because there is no choice. They were the reasons behind it. Given that, they were happy to work with us to find a workable disclosure, a more prescriptive model for superannuation.

Mr GRIFFIN—Who was the consumer group that actually expressed no support for prescription?

Senator CONROY—You may not be in a position to answer that, as to the individual.

Mr Ray—I am not sure.

Senator CONROY—I have tried to avoid answering that question myself. You would be aware that a lot of discussion at the committee was around how the regulations and the legislation and working notes cover the role of accountants. Are you familiar with that?

Mr Ray—Yes.

Senator CONROY—I am sure you are. If you read the *Hansard* you saw that there was a discussion at the last committee hearing about what an accounting service is as opposed to a financial planning service. If I can use a term just for the sake of using it—I do not want to be tagged with it—the difference was 'pure accounting' work. Is any work on that issue going on at the moment?

Mr Rosser—At the moment we are in active discussions with the accounting professional bodies in relation to the regulation that was drafted in consultation with those bodies. As you know, they feel that it does not go far enough. We are in discussions with them about something that might be more workable in terms of defining the activities of an accountant which might not be totally included in the regulation.

Senator CONROY—I found the discussion we had with them last time to be very helpful in trying to work our way through what fell within the 'pure accounting' sense and what fell straight across a line into something else. I am not for a moment suggesting that it was definitive, but I found it very helpful. When do you think you might have a further draft to put up on your web site?

Mr Rosser—At the moment the ball is largely in the accounting bodies' court. We are basically waiting for guidance from them about the sorts of specification and description of the types of activities they feel should be excluded.

Senator CONROY—Are you balancing that with discussions with the Financial Planning Association and other organisations of that ilk?

Mr Rosser—We are certainly aware of their interest in this topic. I guess once we get something from the accounting professional bodies—and you would appreciate that there are several of them and they do not necessarily all support exactly the same approach—we would certainly be contemplating talking with other parties.

Senator CONROY—So there will be a consultation process—

Mr Rosser—That is a matter for the government to decide.

Senator CONROY—in terms of getting all the perspectives on the issue? I get confused after talking to each party. I end up completely agreeing with them all.

Mr Rosser—We certainly would not contemplate doing it in isolation from other viewpoints.

Mr Ray—I think the regulation that was tabled in the parliament was drafted in close consultation with the accounting bodies.

Senator CONROY—I will leave others to comment on that.

Mr Ray—I think that they would agree.

Senator CONROY—Should I ask you questions about the level of training contemplated for basic deposits or should I leave that with ASIC? I am not sure whether that quite falls within your purview.

Mr Ray—That is in PS146; it is a matter for ASIC.

Senator CONROY—Good handball. They looked very excited when you said that.

CHAIRMAN—Isn't that part of the legislation? It comes within that.

Senator CONROY—I will be guided by Mr Ray on whether I should waste the committee's time by asking him questions about the level of training.

CHAIRMAN—It is consequent on the definitions of 'advice' and 'financial product', isn't it?

Mr Rosser—If I could respond to that, it is in relation to the way in which qualifications, experience, knowledge and so on are measured, I suppose. That is a matter in which ASIC has had a longstanding interest.

Senator CONROY—You are not working with them and consulting on it in your spare time to give them a hand?

Mr Ray—We work very closely with ASIC all the time.

Senator CONROY—I bet you do not have any spare time to help them with this one.

Mr Ray—We are aware of this issue and we have had some discussions with ASIC about it, but it is primarily a matter for them.

CHAIRMAN—The issue that has been raised with us is the extent to which front-counter staff—bank tellers—may be required to be licensed and the level of education they have to reach. You are saying that that issue can be resolved without any changes to the legislation?

Mr Ray—Perhaps someone can help me here, but the legislation requires that, in this case, employees be trained to be able to do what they do. In broad terms, ASIC has issued some guidance on what it considers to be adequate training for certain categories of activity. As I understand it, the concern is with that second limb. I could be corrected here, but I do not think that anyone is submitting that counter staff in banks should not be qualified to do what they do.

CHAIRMAN—No, I do not think the banks themselves are even suggesting that!

Mr Ray—In broad policy terms, that is essentially what the legislation says. That is certainly what the policy intent is. Then it is a question of the detail of it, which is more a matter for ASIC.

CHAIRMAN—This has been an ongoing issue; this committee has considered it in relation to the draft legislation, the final legislation and the other regulations. The committee recommended that it be dealt with through the definition of 'product' and that simple deposit products effectively be excluded from the regime. The government did not go down that path but, at the time the legislation went through, I was assured by the then minister that it was being dealt with via another path. From the representations that we have received, it seems that it has not been dealt with. Whatever has been done has not achieved the solution that this committee certainly recommended—

Senator CONROY—It could be the government's legislation, couldn't it?

CHAIRMAN—or that the banks sought in that regard. They are still being caught up in this training requirement.

Senator CONROY—You cannot ask Treasury to criticise the minister.

CHAIRMAN—No, I am trying to clarify whether—

Mr GRIFFIN—I think the chair was criticising the minister.

Senator CONROY—I was confused there for a minute! I thought it was you!

CHAIRMAN—Order, Senator Conroy! I am trying to clarify whether it is indeed an issue of legislation or whether it is purely an issue of the way ASIC are regulating that legislation.

Mr Ray—I am not sure that I can add much to my previous answer, but the framework of the legislation is that all employees of a financial institution need to be qualified to do what they do. Particular guidance on that is a matter for ASIC.

Senator CONROY—In your view, are ASIC consistent with the legislation at the moment?

Mr Ray—I do not think that is a matter for me to have a view on.

Senator CONROY—Hopefully, it is. You drafted the legislation; they are implementing it. Are they implementing it consistently with Treasury's view?

Mr Ray—I am sure that ASIC endeavour to apply the law at all times. I can only reiterate the policy.

CHAIRMAN—Another issue that has been raised with us throughout our consideration of the draft legislation, the final legislation and our regulations is the issue of the financial advisers. Under the previous regime I guess you would call them insurance brokers.

Mr Ray—Brokers or agents?

CHAIRMAN—Agents rather than brokers; yes. They are concerned that the new regime is, in effect, depriving them of a capital asset they have built up over many years, because it changes their relationship with their clients. Again, I know that we sought to ameliorate that in amendments to the legislation, but it does not seem to have had the beneficial effect we were seeking to achieve. They still seem to have this concern that the capital value of their business has been destroyed.

Mr Ray—I cannot recall the exact provision, but I remember that the government moved an amendment to include a provision which says that nothing alters the pre-existing contractual relationship. So, as far as we know, this legislation does not change that.

CHAIRMAN—There is certainly a perception that the problem persists.

Mr Ray—I am aware that that is the perception but, as I said, I do not think that the contractual relationship that the licensee had with the agent has been changed. The capital asset, which is the trails and all that sort of thing, has not been affected.

Senator CONROY—Are you aware of the evidence that Mr Murphy gave to the committee—he has appeared a couple of times, so it is the most recent appearance—where he gave us some examples of how the new contractual negotiations were taking place with significant cutting of value in the new regime? Have you or has someone had a chance to read Mr Murphy's evidence that raises this issue?

Mr Ray—We have not read Mr Murphy's evidence.

CHAIRMAN—Could you take that on notice?

Senator CONROY—Yes, take that on notice and come back to us. It is really down to this issue that because they now have to renegotiate—and the key is they have got to renegotiate because of the legislation—saying you have pre-existing rights was fine except when you move to a new regime saying you have zero rights to start with under the new regime in terms of negotiation with them. So they become price takers, if I can use an economic term, and the sorts of terms that are being offered by the insurance companies appear to be significantly less than under the old regime. They had an existing position, but even though you say, 'Yes, if you stay in the existing position you keep all your rights,' the problem is they cannot stay in their existing position because they cannot operate.

Mr Ray—After two years.

Senator CONROY—Yes, after the two-year transitional period. Could you take that on notice and come back to us after someone has had a chance to peruse Mr Murphy's evidence.

Mr Ray—Certainly. But it is possible that there is structural change occurring in the industry. That is possible, and we need to be careful to make sure what is the cause and what is the effect.

Senator CONROY—Sure, that is a fair point. The other problem that the committee has is that Mr Murphy has been around long enough and has sufficient financial strength that he can stand up publicly and say this, but it is clear from other private conversations and discussions that a lot of people are very afraid to come forward for fear of jeopardising the contract negotiations, if I could use that phrase. They do not want to publicly get into a slanging match with the people they are going to have to finally reach a position with. Both sides of that argument are valid, in terms of not wanting to get caught up in just one side of a negotiation. Equally, many people are afraid to say anything.

CHAIRMAN—Can I raise with you an issue that has only come to my attention in the last 10 days or so. It is an issue I also need to raise with ASIC, because they have the responsibility of licensing this activity. This is the licensing of spread betting in relation to financial products. In fact only yesterday we received a submission from IG Index to this committee in response to the public statement that I made on Monday in relation to the issue.

Senator CONROY—What did you say? I did not see your comments. Tell us what you said, first.

CHAIRMAN—I basically said that if the current definition of a derivative allowed this activity to be licensed then we needed to change the definition of a derivative. They have, in

their submission, claimed that under the legislation not only do they comply with the definition of derivative but in fact section 1101I of the Corporations Act says that:

> Despite any law of a State or Territory in this jurisdiction about gaming and wagering:
>
> (a) a person may enter into a contract that is a financial product—

that is, a derivative—

> and
>
> (b) the contract is valid and enforceable.

So is this organisation, this activity, masquerading as a financial service when really it is a gambling service—particularly when you look at the advertisement they placed in the *Financial Review* last week, which says, 'The tax free alternative to normal share trading—spread betting comes to Australia'? It does not really describe it in any way as a financial service. It talks about spread betting. It talks about being world leaders in spread betting. This clearly, to me, is a gambling product not a financial product or a financial service. Is there a loophole in the legislation that is allowing them to get around what are in fact restrictions at the state level on spread betting? I understand that in New South Wales spread betting is illegal and that in other states you would have to get a licence to undertake spread betting and the advice I have received from the state gambling authorities is that it would be unlikely that such a licence would be issued.

Mr Ray—There are a lot of questions in your question, Senator. We became aware of this after you did. We became aware of this issue when you issued your press release. The short answer is that, because we have become aware of it so recently, it is something that we have under active examination. That is, we are trying to get to the bottom of the facts before we can consider the policy. But, quickly, my understanding is that this product meets the definition of financial product in the act and that that is why they have been issued with an AFSL, that section 1101I of the Corporations Act does provide that a contract that is a financial product may be entered into and is valid and enforceable despite any state or territory law relating to gambling or wagering. So it does do that. But that does not mean that the state and territory gaming laws would not be applicable and, for example, were there to be a requirement under a state gaming law that an institution offering this product needed a licence, would need to occur.

We have not yet got to the bottom of what the various state gaming laws say in relation to this product. The other comment I would make is that at Commonwealth level obviously there is a question about what the policy should be. But before that stage, there are several regulators involved, one of which is ASIC and the other obvious one is the tax office. We are consulting with them on what the situation is before we can form a view to put to government.

CHAIRMAN—In response to the statement I put out, Mr Matthew Wilson, the managing director of IG Australia, is reported in Tuesday's *Australian* as saying:

> … spread betting was used by sophisticated traders to reduce risk through devices such as hedging and short selling.

Again, if it was to be used by sophisticated traders, would you expect that they would be undertaking a major advertising program? And, given the nature of that major advertising program and also the fact that on their web site they say—and I am paraphrasing—that if you

don't understand this system we will explain it to you, someone who was a sophisticated trader and investor would hardly need explanation of how the system works, I would have thought. Also, would it be likely that such as system would prove to be profitable simply by offering a service to the relatively limited number of people you might regard as sophisticated investors rather than the public at large? Is that, again, a bit of a masquerade?

Mr Ray—The short answer is that we probably don't have the information to provide much help to you on those questions, although, as I understand it, the web site does disclose and has disclaimers et cetera on it.

CHAIRMAN—It does. It has disclosures. But, again, as I recall the web site, it says that they only offer advice on the product; they do not offer advice on the personal circumstances of the client. Does that go against the legislation requirement for people licensed to provide financial services to have to know their client, to know their client requirement?

Ms Vroombout—The legislation makes distinctions between two types of advice. One is general advice, which is basically what they are doing—talking about the product and not personalising it—and the other is personal advice. Those provisions about the reasonable basis for advice are ones that apply to personal advice.

CHAIRMAN—In a sense, it is at an early stage in your investigation of the issue, so perhaps you can provide the committee with further advice when you have done more investigation.

Mr Ray—My understanding is that you have written to one of my bosses, at least, and I am sure you will get a response.

CHAIRMAN—Thanks.

Senator CONROY—Do you have a basic opinion on whether it is a derivative or not?

CHAIRMAN—Can you help us with a definition of a derivative. Can someone give us that? I understand that warrants and options and so on are regarded as derivatives, and they have a valid purpose in hedging. But they seem to me to be quite a different product from this, which is a pure bet.

Ms Vroombout—The basic definition of a derivative is something where the value of the product varies by reference to something else. So, in the case of a warrant, it varies by reference to the underlying security. In relation to a bond future, it varies by reference to the price of the bond. In this case, it varies by reference to the—

CHAIRMAN—It varies by the spread in the score in the basketball match?

Ms Vroombout—Yes. For any of those sorts of things, the legislation does not limit the factor by which the value of the product varies. It just says, 'If it varies by reference to the value of something else, then it is a derivative.'

CHAIRMAN—But there is a qualitative difference between this product and a warrant or an option which has some intrinsic value, because you actually purchase the derivative and you can trade it. At the end of the day, if you do not exercise it, it then loses its value but there is a period where it has an intrinsic value. Whereas, a bet is a win-lose situation. You could never have a win-win situation out of a bet, whereas you could out of a warrant or an option.

Senator CONROY—Would you say you own the warrant when you say you purchase it?

CHAIRMAN—That is what I am asking.

Mr Ray—All derivative markets are zero-sum gains but—

Mr Rosser—In relation to things like put and call options, it shares some similarities with those sorts of products, which could be portrayed as being a bet on—

Senator CONROY—You are betting on where the share market is going to move.

Mr Rosser—And a share price index, for example, so it does have some characteristics that are not dissimilar to other financial products, as defined under the law.

CHAIRMAN—Are there any other products that have, in effect, an open-ended commitment? With a put or a call option, you have a fixed price. You have a put option at such a price or a call option at such a price, so you know what your liability is, in a sense. With this, you do not.

Mr Ray—I do not think you always know what your loss will be.

Senator CONROY—You don't know what the spread bet on Collingwood beating Carlton by 108 points on Friday was, do you? I could have made a killing!

CHAIRMAN—As there are no more questions, thank you very much for your responses.

[3.55 p.m.]

HUGHES, Mr Sean, Director, FSR Regulatory Operations, Australian Securities and Investments Commission

JOHNSTON, Mr, Executive Director, Financial Services Regulation, Australian Securities and Investments Commission

RODGERS, Mr Malcolm, Executive Director, Policy and Markets Regulation, Australian Securities and Investments Commission

VAMOS, Ms Pauline, Director, Licensing and Business Operations, Australian Securities and Investments Commission

CHAIRMAN—Welcome. The committee prefers that all evidence be given in public but if at any stage you wish to give evidence in private you may request that of the committee and we will consider such a request. We have before us your written submission. Are there any alterations or additions you wish to make to that submission?

Mr Johnston—No.

CHAIRMAN—If you wish to do so, I now invite you to make a brief opening statement.

Mr Johnston—Thank you, Chairman. We will not make an opening statement. We covered many of the issues at the last hearing, and we are happy just to take questions from the committee. I would point out that I will certainly be directing the traffic in terms of the questions but I propose to make sure that my colleagues share the burden.

Senator CONROY—Are you aware of the controversy around training? Are you familiar with the debate that the committee has been having and the evidence the witnesses have given?

Mr Johnston—I think it is important and instructive to remember where all the training requirements came from, because Wallis did deal with this. It was provided in the Wallis report, among other things, that there should be minimum competency and training standards for people who are getting financial product advice. That was then carried through into the legislation, so there is a legislative requirement which was referred to in earlier evidence about there having to be standards for people who were involved in financial services business. It then fell to ASIC to devise what those standards should be. We have reminded the industry that there is an overall obligation to for training to perform any of the functions that are being performed by financial service providers and then to devise some more detailed standards in terms of those who are giving retail advice or advice to retail clients. So there is a line that needs to be drawn from what started with Wallis right through to devising those standards.

There were several approaches that could have been taken by us. We could have said that you have to pass a certain exam—and some other jurisdictions have chosen to do it that way. After a significant period of consultation, we thought that the better approach was to build on what was

already training that was undertaken within the industry. We came up with a two-tiered model for people who are giving retail financial product advice whereby that a higher standard needs to be achieved by those people who are dealing in, if you like, more complex products and a lower standard for less complex products, which would include most general insurance products and basic deposit products.

Whenever you impose a training standard, there will always be people within the industry who say, 'This is now imposing something on us that we didn't have to do before.' There will always be people who think that they should be at one level rather than another, and there will always be people who say 'We shouldn't have to incur the cost of going through the training or having our people go through the training.' But there is an obligation to have competency in training standards, so that was our starting point. The controversy has been largely with the deposit takers. There have been some others as well, but I think the area of deposit takers is of most concern. They are in the lower of the two tiers. I will ask Ms Vamos to cover just what sort of training they need to undertake and some of the discussions that we have under way with them just now.

Ms Vamos—A lot of the discussions we have been having with the banks and smaller institutions such as credit unions has been around the level of training. In policy statement 146, we make it clear that the training should be appropriate for the service that is being proved by the institution. Many of the training courses around are not geared so as to ensure a scaled approach to the delivery of the training.

Senator CONROY—The existing training is one-size-fits-all, essentially?

Ms Vamos—With much of the tier 2 training, that is correct. The banks and deposit institutions have been saying, 'We want training that is more appropriate to the fit, to the service we provide.' We certainly have been working with them in relation to that. One area in particular is the skill level in the provision of that service. We have been trying to identify the types of skills required in providing general advice as well as advice with tier 2 type products. That negotiation is continuing. We are talking with them as well as with NFITAB, which regulates the registered training organisations that provide the training. There was always the option—we keep on reminding industry of this—for individual assessment, and many providers in the industry have taken up that option. Also, many providers have been developing their own training courses and then asking a registered training organisation to review them. So it has been addressed in that way.

Mr Johnston—I think it is fair to say that we are not revisiting the substance and underlying ethos of the policy, because we think that is right. But we are seeing whether or not in the delivery of the training, particularly to that sector, there may be some work we can do with the training providers and the supervisors of the training providers to make sure it is tailored appropriately. Some would see it as overburdensome at the moment, and we are trying to make an assessment as to whether it is and, if so, whether it can be made less burdensome, whilst still protecting the integrity of saying, 'If you're giving advice, you must be trained.'

Senator CONROY—The ABA appeared last night—I am sure you are having your own discussions—and we had quite a lengthy discussion about this. Essentially, they seem to be

arguing that they should just be able to get accreditation for their existing training regime for their tellers.

Ms Vamos—That is an option open to them, again with them taking their training courses to a registered training organisation. Standards have been issued by NFITAB that courses must align to, and so that option is there. It does take a bit of time. But, again, we are working with NFITAB so that the standards being shown to the industry are appropriate for such services. There is that flexibility there.

Senator CONROY—They claimed that there would be a lot of extra costs with that. They would have to bring people in from outside and they would have to change all their manuals—and they said that you had not even looked at their manuals. Is that a fair statement of fact?

Ms Vamos—We are not and do not pretend to be trainers. That is why, across the industry, we have registered training organisations, and that is why there are standards for courses that are provided to the financial services industry. So we use the expertise in the industry to provide that service and that consistency to all financial service providers.

Senator CONROY—But at some point presumably you will have to pass judgment. It is a new piece of legislation, and there would be an existing menu of training there. At some point you have to be involved in a process whereby you say, 'We think that tier meets this new legislative requirement.'

Mr Rodgers—Perhaps I can comment about the architecture of what we have decided to do here. In the FSR context and indeed before, we have been concerned to make sure that people are adequately trained, particularly in the personal advice area. We have acknowledged from the beginning that we are not in the training business. Mr Johnston talked about choices such as whether we might, as some other regulators have done, prescribe exams and say, 'Everybody has to pass exams.' We were trying to build on the national training framework and the method of accreditation that is embodied within it, and that does not involve us in making judgments about individual courses. Effectively, we have said that there is a national training framework that creates an accreditation method, and that applies to the financial services industry just as it applies to other industries. We should build off the back of that and, if people were offering—whether in house or buying from outside—a course that is accredited in that framework, we would not inquire behind it. So it is open to individual institutions to have their own courses accredited. But giving us the comfort that minimum standards of training have been met is that overall accreditation process rather than any judgment we might make about whether the training is adequate, and an essential part of the policy is to lock into the national training framework.

Senator CONROY—I know that Senator Chapman, in particular, has felt very strongly about this issue probably from the first day. We talked last time about the chemist shop in outback Australia with the 17-year-old, who works Friday nights and Saturday mornings, who tries to sell me a mortgage. I think we all agreed that that would be not the way we wanted to go. But, as for the claims that this would drive the agency to stop being an agency because too much training would be required, what training will be required for the 17-year-old to do other than just open, at request, a basic deposit account?

Ms Vamos—It gets down to whether or not the 17-year-old is providing advice. We have provided quite a lot of guidance to the industry in relation to what is advice and what is arranging and assisting applicants to complete applications. Providing factual information about a particular product is not considered advice. So, in our view, a lot of these activities would not be caught anyway. If they are providing advice, then 146 does kick in. In providing that service, they may be giving just general advice. But we say that the person should be trained in order to provide that general advice, including ensuring that the customer receives any disclaimers.

Senator CONROY—In your view, if I walk into the chemist shop and say, 'Look, I have $5,000 and I want to open an account; where is the best place for me to put this money?' it is the intent of the legislation that, if that person answers that question, they have to have some training.

Ms Vamos—Yes.

Senator CONROY—I got accused of being ageist last time, and so I am happy to talk about the 60-year-old chemist owner as opposed to the 17-year-old employee. So the chemist would also have to have some form of training. If I asked, 'Where's the best place for me to put $5,000?' and they said, 'In this two-year term deposit,' will that be okay?

Ms Vamos—If the person was making personal recommendations as to where and with what product that money should be placed, then that is likely to be the provision of personal advice; they would need to be training accordingly to provide that. But, again, it is understanding the product and understanding the skills required to obtain information from the customer so that that advice can be provided appropriately.

Senator CONROY—So, even I have been a chemist for four years, you do not think that makes me qualified to give financial advice about where the best place is to put $5,000. I would not have just naturally acquired that.

Ms Vamos—If their only training has been in relation to being a chemist, then there may be some gaps there, yes.

CHAIRMAN—Instead of my coming in and asking, Where's the best place to put this?' what if I came in and said, 'What do you have that gives me the best interest rate and maybe withdrawal flexibility with it?' and you were to reply, 'Well, this is 3¾ per cent or four per cent and you can draw this at 30 days,' or 'you can draw this at call'?

Ms Vamos—The legislation again does provide exemptions. Certainly, in our advice to the industry concerning the definition of 'advice', we also say that the provision of factual information—which I think is what you are alluding to—is exempt; that is not advice. Again we warn that you have to look at the whole situation; and, on the whole, the provision of factual information is not caught. But, with the relationship between the parties, all the circumstances are such that the amount of reliance may move it towards, in that instance, general advice; again certain training and skills are required to provide that advice.

Mr Rodgers—In this area we have tried to say that there are ways you could confine what somebody does in those circumstances so that advice probably would not be involved. If you

said, 'There are four accounts here; this one has these features, this one has those features and this one has those features,' you would probably be doing nothing more than describing something that exists as a matter of fact, and that is factual. But you do not need to go far in those circumstances to be saying, 'This one is the one for you.' That is where there is the question of whether you have crossed the line.

Senator CONROY—You are not saying that you just slide one towards them?

Mr Rodgers—Really it is a reading of the law. If you give factual information effectively in a way that is designed to push or may have the effect of pushing people in a particular direction and making a particular choice, you are almost certainly giving them advice.

As well as the work that we are presently doing, we have also tried to deal with the notion of people in remote situations by saying that in some circumstances we will not require the person who is actually doing the face-to-face work to have the training. For example, if they stick to a script that has been prepared and is, in effect, monitored by someone who does the training, this does not answer everybody's need either. I think that in the example that you are using it may be that there will always be an irresistible temptation to go beyond a script because this is a rural pharmacy.

CHAIRMAN—This is the problem. Therefore is there a grey area and as a result the banks are saying, 'We are going to have to train everyone and that is going to cost us these zillions of dollars'?

Senator CONROY—A factual description can be scripted. As soon as you go beyond a factual description, obviously a script is not going to be flexible enough. It seems fair to say, 'What are all the products the chemist can supply in terms of financial service products? Here are your descriptions of each of them.' If someone says to you, 'What products have you got?' you can give a factual description off a script. If they then ask the question, 'What do you reckon is best for me?' It is at that point where you would be departing from the script and you would be giving financial advice. If it is possible to come up with a script that does that it seems to me you are complying with your position and if the chemist wants the people to go further then they have crossed the line.

Mr Johnston—My understanding is that it was considered at some stage that these type of products should be exempted but the parliament did not take that view.

CHAIRMAN—It was our recommendation.

Mr Johnston—Yes, and the parliament did not take that view and we therefore have to prescribe the training standards in respect of people who give advice in respect of financial products. There will always be examples at the margin where that is more difficult.

Senator BRANDIS—Mr Rodgers, presumably the notion of giving advice is a broader thing than the notion of making a recommendation? In the sense that any recommendation, I would have thought, necessarily would be embraced within the concept of providing advice but the reverse is not necessarily true. Would you agree?

Mr Rodgers—I am not sure I understand the distinction you are making.

Senator BRANDIS—Let me give you an example. If one were concerned with the historical performance of a particular product arguably that is a question of fact but if a registered person were to say, 'Over time this product has performed better than that product according to these nominated criteria.' On one view that is merely the recitation of historical fact but it would seem that there is an element of assessment or a conclusory nature of a statement like that which would put it into the realm of advice, but not necessarily carry it over the borderline into recommendation. Would you agree with that?

Mr Rodgers—The law distinguishes between general advice and personal advice. It envisages that personal advice is advice given to a particular person about a particular product, normally with some knowledge of that person's individual circumstances. The definition itself is in a sense purposive because it makes reference to whether a reasonable person might expect it to influence what is said in those circumstances and to influence a decision whether to purchase the product or not.

Senator BRANDIS—I think you said a moment ago that it was either purpose or effect that was the test.

Mr Rodgers—I withdraw the word purpose. I am struggling with the exact text of the legislation here, so I am paraphrasing—if you like, let's call it information in a special sense. A reasonable person would expect it to influence a person's decision in relation to a financial product. It does have in it that notion of influence and it is conceivable that you can give a set of information, each element of which arguably is factual information but in the circumstances you are in fact giving advice.

Senator BRANDIS—Again, in a hierarchy of modes, an effects test is going to be wider than a purpose test. A lawyer would say that you are drawing a distinction in what you have just been saying between an objective and subjective purpose. So a subjective purpose is the narrowest, an objective purpose is broader and an effect is broader still. What is this?

Mr Rodgers—Without the text of the legislation in front of me, my recollection is the test makes reference to a reasonable person and we are talking about that middle bracket.

Senator BRANDIS—So it is an objective purpose test.

Ms Vamos—The definition of general advice involves providing an opinion about a financial product that may influence a person or a person may be influenced reasonably. Personal advice is about an opinion or recommendation in relation to the person's particular circumstances where they are influenced, and that is the second part of it.

Senator BRANDIS—I understand that, but—and this goes back to an earlier question I asked—the provision of an opinion does not necessarily include a notion of futurity. It may also include a notion of past performance or historical features.

Ms Vamos—Yes.

Senator CONROY—Are you having a chat with Treasury about the issue to do with accountancy versus financial planning? Are you involved in those discussions that Treasury indicated are taking place as to a menu of what I defined as pure accounting work that would perhaps be exempt?

Mr Johnston—Treasury have asked for our view on some of those matters.

Senator CONROY—Are they complying with the law?

Mr Johnston—Sorry?

Senator CONROY—We will give you the same opportunity that we gave them to back them up. I tried to make the point that I suspect the problem is essentially for legislation rather than the way that ASIC have been interpreting the existing arrangements. Generally, I think, there is a concession that that seems to be the case, which is why the Treasury regulation is probably the more important discussion that is taking place. I was wondering if you had any commentary on that.

Mr Johnston—We issued some guidance on it but we are not going to issue further guidance because we are aware that the regulation is under reconsideration, and we will be a part of those discussions, I presume.

Mr Rodgers—Just to flesh that out, slightly, Senator; I do not understand anybody to be taking issue with our reading of the law as we have expressed it in the guidance. So in a sense the debate has, as we have already heard, shifted to a debate that is between the accounting professional bodies and Treasury, which does suggest that it has moved into a law reform debate rather than a debate with the regulator.

Senator CONROY—I think that is a fair way to describe it. We look forward to the outcome of those discussions and I look forward to daily searching their web site, just in case I have missed 5,000 regulations before they promulgate.

CHAIRMAN—A number of submissions have suggested that the licensing requirements, particularly in relation to PS164, indicate a bias towards the big end of town and do not take into account the limited resources that small businesses have available to make the transition. These submissions are particularly in relation to some of the small business operators claiming they are having difficulty in determining exactly what the licensing requirements are under PS164. Is that the sort of feedback you have been getting too? If so, is there a solution to that issue?

Mr Johnston—We have been getting that feedback in parts; I would not say that that was universally the case. We have tried to make it clear in all of our consultations—and these are extensive consultations that we have had with industry—that the whole concept of satisfying ASIC about capabilities and obtaining a licence is a scalable concept. We have heard the sort of comment that you have made. Our experience in licensing so far has meant that we have not really had enough experience of people coming through the door to form a view as to whether some are finding it difficult or not.

Ms Vamos—We have had discussions with a couple of new associations that have been put together by the smaller end of town. You have to remember that policy statement 164 has been drafted so that it contains a lot of flexibility and, because of that flexibility, it contains a lot of information. In particular, it reminds people of the types of questions they need to ask, but it does not provide the answers because, of course, the answers will vary as to the size and complexity of the business. What the smaller end of town is asking us to provide are some of the answers, and our approach has been, 'Well, we're happy for you to determine the answers and we're happy to help you with that, so that we get some consistency across the industry.' That is where we are at, at the moment.

Mr Johnston—I have seen some comment about having to meet particular industry standards or compliance standards. We made it clear in our policy and in consultations about the policy that we do not have any fixed standards that people have to meet, but there are some standards to which they should aspire. For example, we have said that there is an Australian standard on compliance. People should have regard to the standard of compliance in terms of their own compliance arrangements, but we have not said that people have to be fully meeting that standard. We have said in the policy that, in terms of IT systems, for example, as with other things such as compliance plans, what we would expect to see from a conglomerate is not what we would expect to see from a two- or three-person operation and that we would take all of those things into account. It really depends on the nature, the scale and complexity of the business that is undertaken. We do not have any fixed standards that we have to meet.

Senator BRANDIS—Do you have a set of criteria to make those assessments as to the appropriate level of compliance among businesses of different size and scope?

Ms Vamos—We certainly have some internal indicators. We do not have fixed benchmarks but, for example, if you had an institution with 100 authorised representatives and there was no form of reporting in relation to the types of products those representatives might sell, we would ask questions like, 'How can you ensure that your authorised representatives are providing appropriate advice?' That is the way we approach it. We say, 'Okay, you have an obligation to provide appropriate advice and to supervise and monitor. How do you do it? How do you know they are doing the right thing?'

Senator BRANDIS—Are those benchmarks a public document?

Ms Vamos—They are not specific benchmarks as such. We do state publicly the questions that we ask. All we ask you is to explain to us how you know you are complying and what measures you have put in place to ensure that you are complying. There are industry benchmarks, such as mystery shopping. The benchmark that we use is the Australian standard and we apply that flexibly, and, again, it is public. Policy statement 164 does have those questions in it.

Senator BRANDIS—What is the gravamen of it? Is it, essentially, a best endeavours test?

Mr Rodgers—I will describe in colloquial terms what policy statement 164 is intended to do. It is intended to say, 'When you make an application, here are the things that the law requires you to demonstrate to us and that we have to be satisfied about. Here are the sorts of things that we will think about when we receive an application from you, but we will always bear in mind

that these things will vary according to, as Mr Johnston said, the nature, scale and complexity of your business. We will also have some questions in mind which we think it might be useful for you to have in mind when you make the application, and we have set those questions out in the policy statement.' We are not saying that you must meet a fixed standard which is determined by us, but we have tried to make the doorway to a sensible dialogue with us in the application process as open and as clear as possible.

Senator BRANDIS—Do you have any internal checks or standards to ensure consistency between the treatment of businesses of comparable size and comparable circumstances?

Ms Vamos—Yes.

Mr Johnston—Yes, we do. We have an internal compliance reporting mechanism for our licensing.

CHAIRMAN—That question in relation to small business leads me into the other issue which I raised with Treasury of the insurance agents situation. I know that you are aware of this. Have you had a look at the way in which this issue might be resolved or their concerns might be resolved consistent with the intent of the legislation, particularly this concern about the value of their business that they seem to believe is being undermined?

Mr Johnston—There are two comments I would make—one quite specific and the other general. The specific one is that the committee did ask us to look at a piece of correspondence in relation to an individual. We had a look at that correspondence and we have spoken to the people who are involved. The arrangements whereby this person had their proper authority terminated were under existing contractual arrangements that predated FSRA. So in that case, I do not think it would be right to draw any picture about how FSRA has impacted upon that individual, because it was an existing arrangement.

CHAIRMAN—Notwithstanding that the organisation used that as the reason in the letter.

Mr Johnston—I saw the reference that the organisation had made, and I will not express a view on that, but it was an existing arrangement and the termination was made under those existing terms and conditions. More generally, I think it is more a commercial matter; I do not think it is a regulatory matter. If there is another element to it, it is probably the structural element that you were discussing with Treasury—and I noted that they are going to look at the structural impact—but I do not think there is a regulatory impact that we can really give a strong view on.

CHAIRMAN—The concern they have seems to be that although the legislation as amended provided protection under FSR for their existing contractual relationships, it would seem that a new contract is required and therefore the protection that we gave them is not effective. Would that be your assessment?

Mr Johnston—I do not know, but Ms Vamos has had further discussions with them.

Ms Vamos—Are we talking about proper authorities or life insurance agency agreements? Because there are two different issues here.

CHAIRMAN—Is it not the fact that those who hold life insurance agency agreements will have to become proper authority holders to continue in the business, and that is where the disjunction seems to be occurring?

Ms Vamos—That is right. Each contract has to be looked at individually and agents need to take their own advice. There are some views that the existing agency agreements can be amended to take account of the new authorisation. The law, unlike the old Corporations Law, does not prescribe what is in these contracts. Whilst it is different regulation and different legislation as far as the nature of the contract between the parties—instead of agent and principal, it is authorised representative and principal—it may be that a lot of the terms of the agreements may be continued. It is a commercial issue, but there is no prescription and no limitation in the law as to what should be in these agreements. If there are facilities in the existing agreements where businesses may be purchased, there is nothing under the FSRA that says you cannot have that type of provision again.

CHAIRMAN—There is also nothing in the FSRA that says if you have that type of agreement it must be continued into your new agreement.

Ms Vamos—That is correct.

CHAIRMAN—Would that be a viable way of solving what they perceive to be the problem?

Ms Vamos—Again, it is very much a commercial issue.

Mr Johnston—I am hesitant to express a regulator's view on it. I think it really is a commercial matter. It is open to them to negotiate whatever commercial terms they are able to negotiate and we do not regulate that type of activity.

CHAIRMAN—I think maybe that is the nub of the problem. What they are saying is that—and I suppose I am interpreting this—in a sense, under the current or the old regime, they have some position of negotiating strength because they hold the clients, but under the new regime they interpret that the clients have this direct relationship with the product provider or the intermediary, the licensed body.

Ms Vamos—I think that that is where a little of the confusion has arisen. Under the existing arrangement with agency agreements the client belongs to the insurer or the principal; under the new law the situation is the same. What has changed for many of these people is that, instead of having the agreement direct with the insurer, they are looking at negotiating with other principals. That is where they feel their bargaining position is not strong. Again, the law allows you to be an authorised representative of more than one licence holder, so they can still maintain that contract with the insurer if they wish or if the insurer wishes.

CHAIRMAN—They have raised difficulties about that as well, though; they seem to think that is not going to be a viable option.

Mr Johnston—I think it is too early to say what will happen in the multi-agency environment, but certainly our indications are that there will be reluctance to do 'cross-endorsement'—as it is referred to—and have multiple consents and endorsements.

CHAIRMAN—So you acknowledge that that is seen to be a problem?

Mr Johnston—Yes, it is certainly something we have observed. But it is too early to say how it will play out.

Senator WONG—I go back to PS146; this question might have been asked, but I would have missed it. As I understand it, the tier 2 training under PS146 would apply to staff engaged in dealing with basic deposit products and NCP facilities. That is correct, isn't it? It has been put fairly strongly to this committee that that training is excessive for those functions. I am interested in what you have to say about that.

Mr Johnston—That is something that we were at least alluding to in an earlier answer. We are in discussion with the industry bodies for the deposit takers as to how the training is being tailored and delivered. Our position is that it has to be appropriate training. Industry is telling us that the training requirement is all very well, but some of the registered training providers are providing a level of training in a package bigger than is needed for those people.

Senator WONG—For those functions; yes.

Mr Johnston—We are working with NFITAB to try to ensure that more tailored training is delivered and we are having discussions with industry about how that can happen. So it would not be a watering down of our standards, but it might be a more tailored delivery of appropriate training. Therefore, it would presumably be cheaper.

Senator WONG—One of the submissions spoke of a proposed tier 3, which was not an option that was considered to be appropriate.

Ms Vamos—Again, it is more about making sure the training is appropriate. Whether there are three tiers, two tiers or five tiers, it is about making sure that there are courses out there that fit the services being provided. Certainly, a lot of entities that only provide services in relation to tier 2 products have raised the issue of the skills required to provide those products. Even for tier 2 training, many of the courses train people at the skill level of providing a financial planning type service—'know your client' and that sort of thing. It is a matter of pulling that back. Again, that is covered in PS146; it just has not translated in many of the courses being provided.

Mr Johnston—The overall message we would give there is that we will maintain the integrity of the two-tier system. But we understand that there may be some difficulties in various areas, and we will work to try to be flexible and tailor things as much as we can.

Senator CONROY—Getting the ITABs to, if you like, change their structure to conform is the challenge, isn't it?

Mr Johnston—Yes, that is a fair way to describe it.

Senator WONG—Would that be your response to the ADI's argument as to the cost imposition of that?

Mr Johnston—That would be part of our response, because one would imagine that that would reduce the cost.

Senator WONG—Would you like to elaborate on the rest of your response?

Mr Johnston—I am moving away here from the example of the very small agencies into a branch environment. A model has been put to us that everyone in the branch will have to be trained to meet PS146 standards. When I walk into a bank at the moment and ask a teller about opening an account or to speak to someone about opening an account, the teller usually refers me to someone else within the branch and I go to an inquiry desk and do that. I would have thought that if you were dealing with a branch environment it would be unlikely that everyone would need to be trained to meet PS146 standards. There might be a number of people within the branch who have to meet those standards and customers would be referred appropriately.

Senator CONROY—You are not suggesting the banks have been running a scare campaign?

Mr Johnston—I am just giving you my view.

CHAIRMAN—I turn to the issue of what Mr Matthew Wilson, the Managing Director of IG Australia, calls 'an innovative new product,' that is actually the sort of innovative product that the Financial Services Reform Act envisaged when it was considered by a committee initiated by the government. Do you either know or perceive whether there is a gap in the marketplace for financial products that provide a facility for genuine investors to hedge their investments where required, which they would normally do through warrants or options or whatever that would give this product any sense of being a genuine financial product for investors rather than, as it seems to be being advertised and I think if you generally look at it, simply a gambling product disguised as a financial product?

Mr Johnston—I do not think there is a gap in the market, I think the Australian financial services market is diverse. I think that it was made clear in the explanatory memorandum for the FSRA that one of the objectives of the legislation was to encourage innovation and diversity. We do have a diverse market at the moment.

CHAIRMAN—I would like to thank ASIC for providing for me last week—and it was Mr Larcos who is at the rear of the room—the process that was gone through to license this organisation. Perhaps for the benefit of the committee you might like to summarise that and how they were able to get a licence under the existing legislation.

Mr Johnston—As I think was covered in earlier evidence from Treasury, the product that they are offering does come under the definition of a derivative. They are offering a financial product and therefore need to be licensed to do so. ASIC does not have discretion as to whether or not to issue a licence providing all of the licensing requirements are met. This organisation is dealing in a financial product, is giving advice in respect of a financial product as defined under the act and has met all the licensing requirements. They are similarly licensed and authorised in the UK by the Financial Services Authority—the FSA—and one of the checks that we did in considering their application was go to the FSA and ask whether there were any concerns as to whether these were fit and proper people. The answer came back that there was no concern in

that regard. Having met all of the legal requirements and dealing in a product that is covered by the definition of derivatives, the law then requires us to issue a licence, which we did.

CHAIRMAN—Did your investigations in the UK reveal any concerns, not about the organisation as such, but about the product?

Mr Johnston—We noted that in the UK spread betting is regulated by the FSA and the FSA have put some messages on their web site about spread betting. I will clarify that here we are talking in Australia about spread betting on a financial index, it is not my understanding that they are seeking to operate spread betting on other activities. If they are it could not be licensed under FSRA. We have only licensed them in respect of spread betting on financial indices.

CHAIRMAN—All financial products as I understand it, like shares and interest rates and the ASX index itself.

Senator CONROY—I could not have bet on Collingwood last week?

Mr Johnston—No.

CHAIRMAN—This is where I see the disjunction because in the UK the same firm is offering spread betting on sports.

Mr Johnston—It is not my understanding of doing that here but it certainly would not be regulated by ASIC because that would not be within the definition of a derivative. I would also confirm our understanding as being the same as Treasury's, in that the fact that they are licensed under FSRA does not necessarily mean that they can then operate outside of the jurisdiction of the state legislation in respect of gambling activity. Something that we are looking more closely at is just what requirements they might need to meet to be regulated under state legislation.

Senator CONROY—Would that depend on where they were domiciled, state wise? If they were fundamentally an Internet site domiciled in Vanuatu, could they apply for an FSR licence without having to meet any of the state licensing regimes?

Mr Johnston—I do not think I know the answer to that.

Mr Rodgers—That is a matter of the operation of state gaming and wagering laws.

Senator WONG—It is an issue of whether there is an inconsistency between the federal licensing regime and whatever regulatory regimes there are in the state.

Mr Johnston—I think Treasury said they would then investigate.

Mr Rodgers—As the chairman read out earlier, the protection they derive from the Corporations Act flows from the fact that it is a derivative. It is possible for the same thing to be both a derivative under the Corporations Law and a gaming and wagering contract. That has been traditional in the futures market. That is why there is a provision of that kind in the Corporations Act to resolve the potential conflict between the common law position which is

reflected in state legislation—which is that gaming and wagering contacts are generally not common law enforceable and under state law they are generally not enforceable unless they are brought within the purview of the state regulatory regimes. That conflict applied to futures contracts under the old law, as it applies to derivatives, so it is possible for the thing to be both. The provision in the Corporations Act preserves the enforceability of the contract, but it does not make it immune from other regulatory regimes. I think that is our view. We are still to look at that a little more carefully, but certainly my own preliminary view is that it is not immune from state gaming and wagering laws merely because it is caught as a derivative under the Corporations Act.

CHAIRMAN—So what you are saying, if I can put it in layman's terms, is the fact that it has been licensed under FSR does not make it universally legal; it simply means that the contract is enforceable.

Mr Rodgers—No; any more than an activity that we licensed that involved, for example, a breach of state taxation laws or environmental laws. The fact that we issued a licence to someone that enabled them to engage in the activity does not legalise what would otherwise be a breach of state law. But I stress we have not completed our analysis of that—I am giving you my own preliminary reading of the law. But I am trying to articulate that there is quite a long history here. The provision that is now—I think—section 1110L or 1101L was carried forward from the old law, and it was designed to preserve the validity of some types of futures contracts which might otherwise fall foul of that general position about the enforceability of gaming and wagering contracts.

CHAIRMAN—I understand the New South Wales Department of Gaming and Racing has written to you, raising concerns about the issue. You may be able to elaborate on the concerns they have raised. One of the issues that they have raised in discussions with me is—notwithstanding what might be a possible conflict between state wagering laws and Commonwealth law—their view is that the advertising of this service as a bet is definitely contrary to state gambling laws in that, as I understand it, only registered bookmakers can advertise betting.

Senator CONROY—Is that a matter for the ACCC—false and misleading?

Mr Johnston—If it were false and misleading it would be something we would be interested in. False and misleading would be an ASIC matter. If it is a breach of any of the state gambling legislation, that of course is not something that we can pursue, but we do have under our attention the sorts of representations that they are making in their advertisement.

Ms Vamos—They basically asked us, in their letter, to confirm that we have issued a licence and whether we are reviewing the issue of that licence.

CHAIRMAN—Are you reviewing the issue or, in the absence of any change to the legislation, are you prevented from reviewing it?

Mr Johnston—We cannot review the licence without just cause to review the licence.

Senator CONROY—Senator Chapman looks like just cause to me!

Mr Johnston—But I did say that we have some matters under our notice in terms of advertising that we are looking at.

CHAIRMAN—My understanding of the statement—and again I am paraphrasing the advice that has been given to me—is that the state laws in relation to gambling effectively outlaw all gambling unless something is approved by regulation or by the minister so that each gambling instance—

Senator CONROY—The word bet would fall into that category.

CHAIRMAN—Horse racing, gambling, or whatever—there is a general prohibition and then there are specific forms of gambling that are permitted by regulation and certainly this form has not been. I understand that state gambling authorities have taken a dim view of spread betting generally.

Mr Rodgers—I am generally—in a slightly other capacity—aware that there has been some spread betting of sporting events. City Index, which is also a UK based firm has been, I think, active in that market in Australia—certainly in some parts of Australia.

CHAIRMAN—I received some advice, for instance, from South Australia that an application was made to provide and I am not sure whether it was spread betting or just betting generally on the Commonwealth Games which was refused a licence in South Australia.

Senator CONROY—That wasn't a contest, was it!

CHAIRMAN—The Australian Bookmakers Association contacted me yesterday to raise their concern about the licence having been issued and they said they have never really sought to have spread betting authorised. I think it is because of the open-ended nature of it compared with normal bets where you can put $5 or $10 on a horse or $10 in a pokie machine and that is in a sense the limit of your loss. With this it is a potentially open-ended loss.

Mr Johnston—I think all those are justifiable concerns and one would expect that the state gambling authorities or the state governments would take whatever action was appropriate, certainly not action that we could take. We will be happy to speak to and liaise with the various state authorities on this matter.

Senator CONROY—You could issue a health warning that said, 'You may be only betting $5 but you could lose $500.' That might be helpful.

Mr Johnston—To be fair I think that they do have some quite good health warnings on their material.

CHAIRMAN—They do. The warnings are there but it is a matter of whether people would take notice of them. On the one hand they claim that they their market comprises purely sophisticated investors. You have said from your perception that there is no gap in the market in terms of the products that sophisticated investors would need to manage their financial investment circumstances. On the other hand they are also widely advertising the service and it would seem to me, just as common sense, that if they are limiting their activity to sophisticated

investors that would not provide them with a large enough customer base for it to be a worthwhile business enterprise.

Mr Johnston—Mr Hughes has seen their promotional material and might have a better view on that.

Mr Hughes—Both in relation to the advertisement and also their product disclosure statements there are the health warnings that we have referred to which do indicate that this is not an investment which is suitable for—if I might use the phrase—mum and dad investors. However, it would be fair to say that in relation to the issues that we have under notice we are giving some consideration to the profile of the clients of IG Index just to see to what extent these products are being promoted to people for whom it is suitable.

CHAIRMAN—Do you have any information from the UK as to the numbers of people that have been involved in spread betting in the UK—the numbers of clients?

Mr Johnston—We have been trying to undertake these sorts of inquiries but—with the matter recently coming to notice that we are looking at—it is not easy to get that material very quickly. I do not have that material.

CHAIRMAN—You have referred to the warnings that are included particularly in their web site documents. One of the things that I read was that there are various terms that are used and it seemed to me that there was a significant capacity for people to misunderstand the terminology and in fact get themselves into a type of deal that they thought might be some other type of deal. That is another problem with it. Have you got any comment on that?

Mr Hughes—Certainly in relation to sophisticated or novel products and that may indicate a higher risk issue that ASIC would want to follow up on in terms of our surveillance and compliance monitoring activities. However, I would remind you that both the PDS and the advertisement does strongly suggest that potential investors should seek independent financial advice before entering into these contracts which we think to be an appropriate warning.

CHAIRMAN—People are getting warnings day after day about the problems with pokie machines but we still seem to have a very significant gambling problem.

Mr Johnston—We are not advocating this as a product—far from it—but it is covered by the definition. They did apply for a licence, they met the requirements, and we issued a licence.

CHAIRMAN—I understand that. What you are saying is that the ball is really in our court.

Mr Johnston—I think it becomes a matter for government—for the appropriateness of that type of product to be considered.

Mr Hughes—As Mr Johnston said, we are liaising with the state authorities and to the extent that there are concerns either about the adequacy of disclosure or indeed the extent to which the product is being held out to be something that it is not, we would certainly follow up on that.

Senator CONROY—I have one question on a different issue. It is an old favourite of mine that I think I have raised with you a number of times. I was watching the Sunday night movie the other day and eChoice came on, yet again, advertising in prime time that they provide a free service for their placing of mortgages. Surely that has got to be in breach?

Mr Johnston—In breach of what?

Senator CONROY—In breach of disclosing in their advertising in some way. Firstly, it is false and misleading because they are not providing a free service, it is commission based, it is ½ a per cent, but it is a financial product and they are not disclosing in their advertising what the costs to consumers are. Maybe you say, 'Okay, the person makes the phone call and they are going to have to be provided with the PDS.' But at some point this has to be dealt with.

Mr Johnston—There is an issue as far as jurisdiction goes here. Under FSRA, credit and the provision of credit as such is not a financial product. We however can regulate the false and misleading aspect but the actual transaction, the actual product itself—

Senator CONROY—Do you believe mortgage brokers provide a free service to customers?

Mr Johnston—If they say that there is no the fee payable by the client and if they are explicit about that.

Senator CONROY—This is an ad on television. It says it is a free service.

Mr Johnston—If it truly is a free service inasmuch as the customer is not paying anything to the mortgage broker you would expect that they would adequately, properly and accurately disclose that. We do not regulate the provision of information in respect of mortgage products. That is not covered under FSRA. The only part of that conduct that you are talking about that we could have an involvement in is whether it was false and misleading. We do not regulate the mortgage product itself.

Senator CONROY—Do you believe that because they are paid a commission by the bank that receives the loan after being placed by the mortgage broker that that constitutes free? You were quite succinct in talking about, 'if no money is paid by the customer to eChoice.' The impression I got was that that seem to pass your test of not being false and misleading.

Mr Johnston—I said it would depend on the accuracy of the disclosure because I am not aware of either the claim that is being made or what the actual arrangement is. I do recall—and I must confess—that you mentioned this at the last hearing and it frankly went out of my head and I still haven't seen the advertisement to be honest.

Senator CONROY—I am sure Mr Larcos can chase up a copy.

Mr Johnston—I am happy to take it on notice and we will look at it.

Senator CONROY—Thank you.

Mr Rodgers—Can I just confirm it was *West Wing*?

Senator CONROY—Last time it was *West Wing*, this time it was the Sunday movie.

CHAIRMAN—One last question on the spread betting issue. Are you aware of any providers of warrants, futures, or options that have embarked on the widespread general public promotion campaign to take up their products in the way that the spread betting product has been advertised?

Mr Rodgers—The short answer is yes—from time to time and not recently. Warrants are themselves, as you are probably aware, an extremely popular retail level product, and they have been supported from time to time by quite intensive advertising campaigns by the ASX and by warrant issuers. I recollect that, for example, some years ago Macquarie ran a very intensive advertising campaign, including 4½ page advertisements in at least the *Financial Review*, and some of the other morning papers, when they were early in the warrants business. From time to time the futures exchange has also run public advertising campaigns—they certainly market their products towards retail customers from time to time, and have open days and so on. If there is any analogue in the existing suite of financial products, it probably is whether those products are futures contracts or other derivatives traded over indices. That is probably the closest of the existing financial products to the kind of products that IG is talking about. I am not aware of advertising of that kind recently, but it has occurred from time to time.

Mr Johnston—Chairman, I know we did not make an opening statement, but I want to make a final statement. I saw in *Hansard* comments made in relation to statements that were attributed to Ms Vamos by someone who had given evidence a month or two ago.

CHAIRMAN—It was an accountant, as I recall, wasn't it?

Mr Johnston—I would not like that to go uncommented on, or uncorrected. It is probably easier for me to say this than Ms Vamos, but the comments that were attributed to Ms Vamos were made in a public forum and I think it would only take a brief reading of those comments which were attributed to her to realise that would certainly not be something which Ms Vamos had said. It is certainly not in the way that it is recorded in *Hansard* because it was not a public forum that Mr Hughes and many other people attended. I would not want that to go uncommented on. While we might understand the sentiment that the witness was expressing, those comments are not accurate and Ms Vamos did not make the sort of statement that is attributed to her.

CHAIRMAN—Thank you for that assurance. Thank you for appearing before the committee today. That concludes our taking of evidence and I declare the hearing closed.

Committee adjourned at 4.36 p.m.