

AUSTRALIAN DEMOCRATS SUPPLEMENTARY REPORT

Inquiry into the Financial Services Reform Bill 2001

Senator Andrew Murray - August 2001

Issues raised by authorised deposit taking institutions (ADIs)

I do not agree with the recommendation of the majority on this issue.

Under the Bill in its present form, basic deposit products that are for a term of 2 years or less and have no management or break fees still fall within the definition of 'financial product' but are not subject to all of the disclosure requirements.

The majority have recommended instead that the Bill should exempt from the definition of financial product all simple, well known basic deposit product and related non-cash payment systems. That would remove from the Bill all safeguards in relation to these products.

The Democrats are prepared to accept the concessions that the government have already made in the draft Financial Services Reform Bill on this issue and believe that the Bill in its current form is appropriate.

Disclosure of Ethical Investment Policies

As outlined in Chapter 5 of the majority report, the Australian Conservation Foundation, Ethical Investment Association and a number of other submitters advocated that the seller or issuer of a financial product disclose:

The extent (if at all) to which environmental, social or ethical considerations are taken into account in the selection, retention and realisation of the investments.

Part 7.9 of the Bill could be amended to include this requirement.

KPMG/Resnik Communications in a survey last year showed that 69 per cent of Australians would consider socially responsible investing if given the opportunity. The Democrats are of the view that the investing public would welcome being given

the information necessary to allow them to know when an investment is environmentally, socially and/or ethically responsible.

The Democrats are not attempting to prescribe ethically or socially responsible investments, but we would like to encourage a marketplace, which is well informed about which funds include socially responsible considerations in investment decisions.

Ms Wade of the Ethical Investment Association gave evidence to the Committee that:

We believe the amendment will do two things. First of all, it will facilitate good choice by consumers, by virtue of giving them information. Secondly, it will facilitate the growth of the social responsible investment industry.

Mr Erik Mather, Senior Manager, Institutional Business, Westpac Investment Management, was very supportive of a basic level of disclosure. In evidence, he commented:

In terms of Westpac Investment Management, the support is for a basic level of disclosure. In fact, it would be in our best interests to oppose this disclosure, because we could try to carve out some sort of a commercial advantage, but in reality the long-term view is that people are wanting information in relation to this issue, and therefore we are supportive.

The argument against mandating this disclosure, contained in the majority report, is that market forces will deliver consumers the most transparent disclosure of socially responsible investments. The suggestion is that making the requirement mandatory is unnecessary. The Democrats would like to actively progress the advent of these types of products. It will be useful to start this process by asking in law that those who do take into account ethical, environmental or social considerations to state that unequivocally. In that way the interest in the availability of ethical investments will be heightened.

Any company making a claim that it considers environmental, social or ethical matters when making an investment should be required to substantiate that claim, which conveys a marketing value to the product.

ASIC should be tasked with providing a guidance note on what would constitute reasonable substantiation.

Recommendation:

That the Bill be amended to require that the seller or issuer of a financial product, with an investment component, disclose to a retail client at the point of sale, the extent (if at

all) to which environmental, social or ethical considerations are taken into account in the selection, retention and realisation of the investments.

Ownership of the ASX and clearing and settlement facilities of national significance

As outlined in Chapter 3 of the majority report, the current limit of a 5 per cent shareholding in the Australian Stock Exchange is to be replaced by a 15 per cent limit on ownership of financial market and clearing and settlement facilities that are prescribed as being of national significance.

Additionally, it will be possible for the Minister to approve a larger shareholding in relation to a market or facility where this is in the public interest.

I do not object to the maximum ownership limit on a financial market or clearing and settlement facilities being increased from 5 per cent to 15 per cent.

However, I do not agree that the Minister ought be given a discretion to approve a larger shareholding than 15 per cent.

I think that it is appropriate that if a person is seeking to take their shareholding beyond 15 per cent and the relevant Minister approves of that intention, it should be incumbent on the Minister to return to the Parliament with amending legislation.

Recommendation:

That the Minister's power to approve a shareholding larger than 15 per cent in a market or clearing and settlement facility be removed from the Bill.

Disclosure of Commission

I disagree with the majority report in respect of the disclosure of the quantum of commission on risk products.

It was suggested to the Committee that agents are not influenced by commissions paid, but are concerned with business considerations like competitive premiums and efficient claims departments. It was further suggested that the main customer issue is that commission is payable rather than the amount of the commission.

I can understand the argument for complete exclusion of risk-based products from the commission disclosure regime. If that is a view that is carried so be it. However partial disclosure seems inappropriate.

If it is accepted that the payment of a commission is significant to a customer then surely full disclosure of the quantum is also important. Presumably the quantum determines the degree to which any agent is likely to be influenced by the existence of the commission.

Given a choice between requiring disclosure and not, the Democrats will almost invariably err on the side of disclosing, unless that is likely to cause too great an administrative burden, or is unnecessary.

The vast majority of submitters who opposed disclosure of commission on risk products did so on the basis that the move would not benefit clients because that commission was not a factor in making their decision. There was no recurrent suggestion that disclosure would cause significant harm or inconvenience to any group.

Senator Andrew Murray

