

Parliamentary Joint Committee on
Corporations and Financial Services

Inquiry into the regulations and ASIC
policy statements made under the
Financial Services Reform Act 2001

Supplementary 14A
Submission No.

Submittor: Association of Financial Advisers
 Mr Joe Nowak
 National President
 PO Box 132
 Deakin West ACT 2600

Telephone: 02 6285 1986

Facsimile: 02 6285 2022

EMAIL:

Attachments? No Attachments



Date: May 10, 2002

To:
Michael Murphy
EmpPhone*: 08 8224 0602
EmpFax: 08 8224 0604

From:
Dugald Mitchell
EmpPhone*: 02 6452 3424
EmpFax: 02 6452 3896

Pages:

Subject: CFS letter

I have been talking with Joe about this letter.

Before I did anything about this, I needed to protect my back ie the income to my business, and so I went to Canberra yesterday and saw Hugh Crawford with whom Marg Russell and I developed the concept of the Co-Op Dealership, which though a good idea did not come to being. Hugh, for business requirements of a big account now needs to have a License, and Hugh is happy that I should become a third Authorised Rep of that new Dealership.

I think that this letter from CFS is just too good to be true, especially its non regard for continuing advice to the client or consumer, absolutely no arrangements made; the keeping of the trail commissions, and the obvious twisting that will take place probably through the local branch of the Commonwealth Bank. And it also has the FPA's name on the front page.

I think that this should go to Chapman's Committee as soon as possible with a covering letter of our concerns.

Let me know what you think

Cheers Dugald

Copy to Joe Nowak



30 April 2002

Dugald Mitchell
151 Vale Street
Cooma NSW 2630

Colonial Financial
Services Pty Ltd
ABN 18 007 047 645
Licensed Securities Dealer
52 Martin Place
Sydney NSW 2000
Telephone: 1800 672 867
Facsimile: (02) 9226 8703

Dear Dugald,

Re: Proper Authority with Colonial Financial Services

I refer to your proper authority agreement with Colonial Financial Services Pty Limited ('CFS').

We have conducted one of our regular reviews of distributors to assess the level of support being provided. You may be aware that under the Financial Services Reform Act, CFS will be required to make a significant additional financial commitment to meet its obligations. As a result, we are only prepared to make this commitment for those agents who continue to maintain a reasonable level of support for us.

In accordance with our commercial rights under your proper authority agreement, we give you notice that we intend to terminate our agreements with you. This means that the agreements signed by you will terminate on 30 June 2002. You will appreciate that under the agreement we are only required to provide seven (7) days advance notice of termination.

If you wish to discuss our decision to terminate your agreement, please contact the Dealership State Manager, Simon Gibbons on (02) 9226 8209.

Please note that from 30 June 2002 or an earlier date if requested by you, you may in no way represent or purport to represent CFS in any transaction. As a former proper authority holder you are required to inform CFS immediately of any current, future or anticipated claim that may result in legal action against CFS. Furthermore, under clause 7.1 you are required to indemnify us against any loss we suffer as a result of you breaching your Proper Authority Agreement. In particular, you must continue to maintain professional indemnity insurance and give us access to your client files if required.

As a result of your impending cancellation, please note that any business you intend to lodge prior to the cancellation of your proper authority must first be presented to Simon Gibbons for prior approval.

Pursuant to clause 9 of your proper authority agreement and the Corporations Law, CFS does not pay trailing commission to terminated representatives. However, if you



obtain a proper authority from another Licensed Dealer, we are prepared to transfer such commissions to that dealer provided the statement of intent and new dealer agreement are completed and sent to Compliance Administration at the address noted below.

There are some continuing obligations by which you may continue to be bound, as well as requirements under laws and codes of practice with which you must continue to comply after the termination of your Proper Authority Agreement.

To draw a close to our business arrangement, CFS will require the following:

- return of your proper authority
- return of your CFS adviser stamp
- return of your compliance and research manual; and
- return of any unused dealer stationery and business cards

prior to 30 June 2002

Compliance Administration
Distribution Services
10th Floor
52 Martin Place
Sydney NSW 2000

In the event that the Authority has been lost, please contact Compliance Administration on (02) 9226 8055, so that a Statutory Declaration can be sent to you for completion.

On 30 June 2002 we will notify the Australian Securities and Investments Commission that your proper authority has been withdrawn. This will be done in accordance with the requirements of the Corporations Law.

Please find enclosed a Form 715, which you are required to sign and lodge with the Australian Securities and Investments Commission together with a fee of \$30. You are personally responsible to attend to this matter under section 883(2) of the Corporation Law, and you will incur penalties if you choose not to satisfy this requirement.

Should you have any queries please do not hesitate to contact Simon Gibbons.

Yours sincerely



Jerome Blecic
General Manager Dealerships

Meredith, Bronwyn (SEN)

From: Dugald Mitchell [mitchds@acr.net.au]
Sent: Tuesday, 21 May 2002 12:34 PM
To: Meredith, Bronwyn (SEN)
Cc: Vicki O'Loughlin AFA; Bernie Neville; Bernie Toohey; Bill Haywood; Hugh Crawford; Jodie AFA; Joe Nowak; Michael Murphy; Robin Yates; Wayne Clarkson
Subject: Reply to Colonial Financial Services from Dugald Mitchell

To Bronwyn Meredith

This is the reply made to the letter (submission 21) of CFS to Dugald Mitchell. This was forwarded to Colonial last Thursday. Colonial told me in a phone conversation on Monday that they would reply to this letter "within a few days." We think that both these documents should be attached to the AFA submission not to the Murphy submission. Thank you Dugald Mitchell

To Simon Gibbons
Dealerships State Manager
Sydney NSW

Dear Simon,

Thank you for returning my phone call of Thursday 9 May on Monday last. The Colonial Financial Services letter dated 30th April was delivered here on Wednesday 8th May, 9 days later, it was addressed to my street address not to my Post Box address and was ordinary mail. I am addressing this letter to you because you are the one to whom the letter directs me to respond to in Colonial.

I would like to note that in the conversation on Monday, you indicated that I should have been contacted before the letter was sent, and that you regarded my doing the NIBA competency assessment as being unacceptable to CFS even though I had checked with Gwen Jones some months ago about the correct course of action, and that I have an Email from Troy Majsoski copy to Gwen Jones dated the 14 December stating that such an assessment would be totally acceptable to CFS.

You indicated that I had been contacted twice by Michael Gordon about signage. However, I was told by Anna Hamann on the 17 December that this was going to happen, and that I sent emails on the 11 February and the 16 April saying that I had not been contacted by Michael Gordon, and would still like to be contacted. To date I still have not been contacted.

The letter from Colonial Financial Services dated the 30 April terminates my Proper Authority with you on the 30th June, and it also effectively stops the submission of New Business before that time, as the conditions for submitting any New Business are not stated in the letter.

These requirements by you interrupt the activity of this small business and my right to work. There is little time given for me to arrange for a new Proper Authority. I think to do this properly, a six month timeframe would be adequate not six weeks. In addition you have curtailed immediately my right to writing New Business. I do not regard this action by you as being reasonable, and so not acceptable.

I should point out that 97% of my business is being written with Colonial products. These requirements by you curtail the use of your products as well as curtailing the advice that I can give. It also means that our mutual clients will not receive the advice that they have been receiving, as I understand that no Proper Authority means no advice can be given. I have loyally supported Prudential and Colonial for over thirty years.

In our telephone conversation you indicated to me that I could continue to provide advice under my agency agreement with Colonial as the CPSL Master Fund Personal Superannuation business could be written now under my life agency agreement. I questioned this in my conversation with you, and afterwards made a number of inquiries as to whether changes had been made about which I had not heard. Colonial does not, I believe, communicate well.

21/05/2002

After 24 hours of asking, I was able to speak to Matt Engund in the NSW Sales Support office, who told me that there had been consideration of this idea, but that it had been rejected. I have received an Email to this effect. The CPSL Master Fund is still considered a Securities product. I asked Matt to communicate this to you, as I thought that as the Manager of Dealerships in NSW for Colonial, this information would be important to you.

I was unaware that "level of support" was a condition of holding a Proper Authority. I do not seem to have received from Colonial a definition of this term.

We would therefore ask Colonial Financial Services for an extension of the timing of the termination of the Proper Authority to 31st December, with the full right to submit New Business up to that date, without any changes to the present conditions of our contract, so that proper arrangements can be made to transfer the Proper Authority, without loss of income or new business to this small business.

I would appreciate a response to the this request in writing at your first opportunity.

Yours sincerely

Dugald Mitchell OAM FAFA