Dear Sirs,

I am a small business investor, with relatively moderate losses from recent financial malfeasance. Whilst I have a specific problem with one bank and their allied finance division, I think that it might be worse than with other financial service providers.
But with my somewhat limited experience it seems that most financial providers were doing much the same thing.

The role of financial advisers; from my dealing with 5 individuals is one of structured duplicity. They seek to charge the customer for their service, via charges and fees, but they seek to direct the customers investment in the way most profitable to themselves and their employer.
This is an obvious conflict of interest.
My view (in considered retrospect) was that the information I was given was so limited, slanted, and edited as to be without value for the purpose of selecting an investment, and that the advisors had the same suggested “offering”, whatever the investor needs.
Usually a product of indecipherable complexity, where they received payments, the client took every risk, and the money went to a scheme that was opaque, for which only the client was responsible.
Unitised funds must be close to a closed black box, and yet that is where many financial advisors directed investors funds. These are so complex, that repeated inquiries (for my own lost investment) have failed to ever give the same data twice, as to where the money went.

5 out of 5 financial advisors I consulted refused to acknowledge financial alternatives that were in fact part of their banks suite of offers, as they did not have as high a fee.
At best that is highly selective with truth, and is seeking to disadvantage the client, who pays for the service.

The general regulatory AND ENFORCEMENT environment for these products and services, seems limited, apparently offers no penalty for repeated offences, and moves with the speed of a glacier.
The same issues seem to keep coming up, and after long delay are finally acted upon, only to resurface in the next inquiry.
The attached articles deal with one bank, ANZ. They show the sort of problems this inquiry is looking at in:

31st May 2001 ASIC Concludes ANZ Bank review
8th November 2000 (ANZ Bank Commissions)
18th July 2006 ANZ Representative permanently banned by ASIC
3rd April 2007 Former ANZ employee jailed.
7th March 2009 ANZ faces hefty bill
11th March 2009 ASIC’s deal with ANZ fails to provide a disincentive for wrongdoers

Now it may be that ANZ are “slow learners” at the standards that ASIC finally enforce, but I ask the inquiry to consider the option that it is a deeply entrenched culture.
Eric Johnson in The Age (ASIC’s Prime directive will force huge overhaul at ANZ) comments that ASIC **“exposed a raft of operational shortfalls across its equities financing business, including inadequate risk management and a "poor compliance culture".**
My description would be more blunt, so I’ll just quote his bold words.

The role played by commission arrangements relating to product sales and advice, including the potential for conflicts of interest, the need for appropriate disclosure, and remuneration models for financial advisers; set an architecture where the investor is most likely to be misdirected into investments that are of least value to the investor, and greatest value to the financial institution.

Which is what has happened. Small investors have be parted from their investments. The financial institutions took the profits, the investors the losses. It is hard to envisage the supply of professional services or consumer durables to be made under such unfavourable conditions for the consumer, and such protected conditions for the operator.

The role played by marketing and advertising campaigns, was misleading. It encouraged a belief that the market could only go up, and that the risks were so negligible as to be unworthy of consideration. The financial institutions took profits without responsibility, the customers got responsibility without limit , control or profit…but those sort of things never show in an ad campaign. The marketing and advertising for financial investments largely showed great wealth being accumulated without risk, and a future lifestyle of choice and luxury…exactly the opposite of the performance of the products.

I found the appropriateness of information and advice provided to consumers considering investing in those products and services, to be duplicitous, self serving, and unconnected with reality.
The interests of consumers can best be served, by transferring responsibility for complex financial products from the ill informed consumer to the banks and agents promoting the complex schemes; which are designed, managed and controlled by the banks.
When the banks are 100% responsible for the losses, I think their risk management will improve dramatically. This legislation should be retrospective.

Financial providers, have little interest in consumer education and understanding of these financial products and services. They profit from ignorance and trust. The ignorance remains, but I'd say the trust is gone.
If the Australian Government believes there is benefit in a trusted banking and finance system, then there is urgent need for any legislative, regulatory, and enforcement change.

Without making any specific allegation, I would note that Butterworth's Australian Legal Dictionary defines fraud as:
"an intentional dishonest act or omission done with the intention of deceiving".
Obtaining a benefit by deception is to obtain an advantage or a profit or a gain by deceit.
Deception is defined as "misleading by deliberate misrepresentation; intentionally inducing in another a state of mind which the offender knows does not accord with the fact … deception includes deception (whether deliberate or reckless) by words or conduct as to fact or law, including deception as to the present intentions of any persons ….
It does not include innocent misrepresentation as the misrepresentation must be made fraudulently (that is with knowledge of its falsity), recklessly (without an honest belief in its truth), or carelessly (of whether it is true or false)"

It is for the Inquiry to resolve wether the systemic actions and practices of financial providers fall within the definition.

Yours faithfully

Alan Tomlinson