Published in October this year, a joint report from ASIC and the Dutch Authority for Financial Markets (AFM) looks at the effectiveness of disclosure for financial products on consumers. Lawyer Sandhya Susindar reports that it concludes disclosure and warnings can be less effective than intended, or even ineffective, in influencing consumer behaviour. In some cases, disclosure and warnings can backfire, contributing to consumer harm.

The report identifies the inherent limitations of disclosure supported by 33 case studies across five jurisdictions, including:

- Disclosure does not 'solve' the complexity in financial services markets. Despite extensive disclosure, financial products and services continue to be complex and consumers struggle to differentiate between good and bad products. Some firms deliberately make product disclosures complex as part of their strategy.

- Disclosure must compete with other strategies for consumer attention and influence. Many firms use several approaches to effectively attract, distract and influence customers. Customers usually ignore disclosure documents as they are too complex and fall prey to the other strategies adopted by firms to influence customers.

- One size disclosure does not fit all: the effects of disclosure are different from person-to-person and situation-to-situation and it is hard to predict how consumers will behave, make decisions, and engage with and process information.

- In the real world, disclosures can backfire in unexpected ways and negatively affect consumer outcomes. For example, disclosure by a salesperson of a conflict of interest can increase the trust consumers place on them as they would perceive the salesperson to be more honest.

- A warning about warnings: warnings do not always work as intended and can often be ignored or misunderstood.

ASIC and AFM take the view that disclosure is necessary as it contributes to market transparency and enhances competition, but it is not enough to drive good consumer outcomes. ASIC has said it is taking a more consumer outcome-focused approach and won’t hesitate to use its new product intervention powers to secure better outcomes for consumers of financial services products.

DISCLOSURE IS NOT ENOUGH

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