

September 2009 E-Bulletin

Inquiry into financial products and services in Australia

Background

On 25 February 2009 the Parliamentary Joint Committee on Corporations and Financial Services resolved to inquire into and report by 23 November 2009 on the issues associated with the recent collapse of financial product and service providers such as Storm Financial and Opes Prime.

The terms of reference for the inquiry are quite broad and cover a range of issues from the role of financial advisers and commission arrangements; to the general regulatory environment and consumer education.

The committee has received over 400 submissions since the inquiry began. A large number of the submissions have been lodged by aggrieved former Storm Financial clients.

A number of the more high profile submissions have commented the collapse of Storm Financial and Opes Prime do not represent a systemic failure of the financial planning industry and therefore it does not require wholesale legislative change. Despite this, those same submissions also suggest improvements are required to the ongoing supervision and monitoring of licensees to make it more effective.

ASIC's submission

The Australian Securities and Investments Commission (ASIC) has recently lodged its submission to the committee. The main proposals from ASIC's submission are as follows:

1. AFS licence arrangements

Increasing the financial requirements that must be met by non-APRA regulated licensees (which may include a capital adequacy). ASIC has also requested greater powers under the financial services regime to do the following:

- (a) To grant and remove licensees.
- (b) Ban individuals and impose 'fit and proper' assessment requirements. This will allow ASIC to consider both civil and criminal convictions (i.e., not just convictions for serious fraud) and lower the standard of proof that ASIC is currently required to establish to ban an individual.

2. Role of financial advisers

ASIC have recommended the obligations placed on advisers be extended so they must act in good faith in the best interests of their clients; and where there is a conflict, give priority to their clients' interests.

ASIC have confirmed the imposition of this fiduciary style duty will not require advisers to provide the 'best advice' or to require the advice to have considered every possible option theoretically available to the client. However, it would require the adviser to consider every product available in the market (or at least those products on their approved product list) that would offer the same benefits at the lowest cost for the client.

3. Remuneration practises

ASIC is of the view that commission based remuneration structures create potential and actual conflicts of interest that may be inconsistent with the provision of quality advice, in particular where financial advisers are associated with a product issuer.

ASIC has suggested prohibiting commission based payments, in particular for personal advice. This prohibition would prevent the payment of up front commissions, trail commissions, volume bonuses, sales target bonuses and fees based on a percentage of funds under advice.

4. Marketing and advertising campaigns

ASIC has also requested the power to require product issuers to include specific content in their advertising and marketing material, e.g., information about who a product is suitable for. This may result in issuers of complex high risk products, such as contracts-for-difference, being prohibited from marketing their products.

5. Other proposals

ASIC has also put forward the following additional proposals for the committee to consider:

- (a) Prohibit the sale of certain financial products to retail clients or place limitations on the design of products sold to retail clients, such as high risk or complex products.
- (b) Require product manufacturers and distributors to take responsibility for ensuring products are sold to the right investor, i.e., that the product is suitable for the retail investor.
- (c) Licensing of investors, e.g., to only allow specified categories of sophisticated investors to acquire complex and high risk products.

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