



**Mr Steven Münchenberg**  
Chief Executive Officer

**AUSTRALIAN BANKERS' ASSOCIATION INC.**  
Level 3, 56 Pitt Street, Sydney NSW 2000  
p. +61 (0)2 8298 0401 f. +61 (0)2 8298 0402  
[www.bankers.asn.au](http://www.bankers.asn.au)

5 December 2014

Committee Secretary  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
[economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Committee Secretary

## Financial Advice

The Australian Bankers' Association (ABA) is pleased to make this submission to the Senate Economics Committee Inquiry 'Scrutiny of Financial Advice' (the Inquiry).

With the active participation of 24 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

## Introductory remarks

The ABA recognises the value of financial advice in assisting consumers to secure a strong financial future. The substantial effects on consumers resulting from the recent examples of inappropriate conduct and poor quality financial advice serve to highlight the importance of quality financial advice given in accordance with the highest standards of professional conduct. To this end, the ABA believes that:

- Financial advisers should be part of a trusted profession;
- Consumers should receive personal advice that is in their best interests and have confidence the personal advice they receive is not conflicted; and
- Financial advice should be accessible and affordable for all Australians.

The financial advice industry is in a state of transition. The implementation of the Future of Financial Advice (FOFA) reforms, together with industry driven initiatives in relation to financial adviser education and competency have triggered a substantial and structural shift in the financial advice industry.

Since 2013, the financial advice industry has redesigned and renegotiated remuneration models across the advice value chain and implemented organisation wide programs to change the way financial advice is given by financial advisers.

The ABA and our members recognise these changes as being critical to improving the quality of financial advice, moving the financial advice industry to a profession, and ensuring better outcomes for consumers. In particular, the implementation of FOFA is an opportunity to ensure that, going forward, all consumers receive personal advice that is appropriate and given in their best interests.

The implementation of FOFA does not signal the end of continuous improvement to the education and competency levels of financial advisers, the internal policy and processes that govern the delivery of financial advice and the arrangements for managing conflicts of interest. Rather, the industry is entering into a period of 'bedding down' the FOFA compliance arrangements, testing their effectiveness, and making appropriate improvements overtime to their compliance systems and processes.

Additionally, banks will be carefully reviewing the outcomes of implementation to assess the extent to which their compliance and operational arrangements are meeting the policy intent of the FOFA reforms, namely, improving the trust and confidence of Australian retail investors in the financial services sector and ensuring the availability, accessibility and affordability of high quality financial advice.

Specific information in respect of the Inquiry's terms of reference is set out below.

## **The current level of consumer protections**

### **Legal and regulatory obligations**

The current conduct and disclosure requirements for financial advice and examples of industry implementation are set out in **Appendix A**.

These requirements set out an overarching framework that governs the way financial advice must be provided and embeds consumer protections through the financial advice process including:

- The policy and processes required to obtain and maintain an Australian Financial Services Licence (AFS Licence) to provide financial advice;
- Who may provide financial advice and the training and competency requirements for financial advisers<sup>1</sup>;
- The risk management, conflicts management and compliance arrangements that must be maintained to provide financial advice;
- The behaviour required of managers of AFS Licensees and financial advisers when providing financial advice;
- What consumers who receive financial advice must be told in connection with that advice, including information about fees and charges, related parties and conflicts of interest.

### **Industry initiatives**

Financial adviser professional associations, including the Financial Planning Association (FPA), the Association of Financial Advisers (AFA) and the SMSF Professionals Association of Australia (SPAA) have developed professional codes setting out standards of professional practice, above those prescribed by legislation and regulation.

Additionally, individual AFS Licensees have developed codes of conduct governing the professional behaviour of their financial advisers, including conflicts management and ethics considerations.

Regulated consumer protections are effectively supported by measures that contribute to the financial literacy and capability of consumers. To build the financial literacy and financial capability of their customers, banks operate programs and provide resources through community organisations, in branches and online via their websites. Banks also ensure consumers have access to clear information about the financial services they provide, and other information, including fees and charges, related parties and conflicts of interest.

---

<sup>1</sup> The term financial adviser refers to a financial adviser who is authorised to provide personal financial advice on Tier 1 financial products.

## Broader regulatory context

Banks operate in a broad regulatory environment. In addition to the consumer protection requirements outlined above, banks operate well resourced risk and compliance programs to ensure compliance with a range of compliance obligations impacting financial advice, including:

- General obligations of AFS Licensees;
- Privacy law obligations;
- Anti Money Laundering / Counter Terrorist Financing;
- Corporate governance requirements; and
- Requirements of Professional Indemnity (PI) insurers.

The ABA believes that, properly implemented, this framework of legal and regulatory obligations, including the new FOFA obligations, together with self-regulation and industry driven initiatives, represents a fulsome and adequate framework for regulating financial advice and protecting the interests of consumers.

The ABA also believes that it will be important to monitor the effectiveness of this framework overtime, including the efficacy of the FOFA reforms to ensure consumers remain protected.

Furthermore, in addition to legal and regulatory obligations, the ABA strongly supports the development of a new and improved professional standards framework for financial advisers driven by the industry. This new framework should include a new education and competency model, streamlined conduct and disclosure standards, leadership and ethical standards (which embed mentoring and ethics components) a financial adviser register, professional association membership, complaints and dispute resolution processes, and financial literacy which promotes consumer participation and consumer engagement.

***Recommendation: The existing framework of legal and regulatory obligations should be assessed by industry over time (not less than 2 years) to determine how effective it has been in protecting the interests of consumers.***

## The role of, and oversight by, regulatory agencies in preventing the provision of unethical and misleading financial advice

As the primary regulator of financial advisers<sup>2</sup>, ASIC has set a series of strategic priorities<sup>3</sup>, including “promoting investor and financial consumer trust and confidence”. Part of ASIC’s program of work to achieve its strategic priorities is set out in its Strategic Outlook 2014-2015.<sup>4</sup> We note that ASIC will be able to provide the detail of its strategic priorities, strategic outlook and program of work as it relates to the provision of financial advice.

The ABA and member banks work together with ASIC to ensure the regulatory approach and general expectations of ASIC are understood by the industry and that industry practices are shared with ASIC. For example, the ABA meets formally and regularly with ASIC to discuss key regulatory issues affecting retail banking and the provision of financial services to retail clients. Member banks also meet with ASIC and participate in ASIC industry roundtables and other formal engagement initiatives, such as the ASIC Annual Forum to better understand the expectations of the regulator.

Examples of other interaction ASIC has with the banking industry include:

- Assessing AFS Licence applications and variation applications, including reviewing the supporting proofs, and policies and procedures that outline how the AFS Licensee will operate its financial advice business;

<sup>2</sup> Note: The Privacy Commissioner and Austrac regulate some of the compliance obligations of financial services businesses, such as the use of personal information and AML/CTF requirements.

<sup>3</sup> <http://www.asic.gov.au/about-asic/what-we-do/our-role/#priorities>.

<sup>4</sup> <https://dv8nx270cl59a.cloudfront.net/media/2195181/asic-strategic-outlook-2014-2015.pdf>

- Approving Responsible Managers of AFS Licensees, including consideration of how the AFS Licensee is meeting its organisational competency requirements;
- AFS Licensees breach reporting, including review and response to breach and incident reports;
- ASIC Review Analyse Detect and Respond (RADAR) compliance visits, including assessment of business and compliance structures;
- ASIC surveillances, inspections and information requests, including assessment of organisational capacities, systems, processes and compliance programs; and
- ASIC shadow shopping exercises, including assessment of products, markets and consumer experiences.

These interactions have a preventative effect in that they require AFS Licensees to proactively demonstrate the adequacy of their compliance arrangements before or at the time of providing financial advice.

## **Whether existing mechanisms are appropriate in any compensation process relating to unethical or misleading financial advice and instances where these mechanisms may have failed**

### **Legal and regulatory obligations**

The legal and regulatory obligations of AFS Licensees in relation to complaints and compensation arrangements are set out in **Appendix B**.

These obligations require AFS Licensees to:

- Develop and maintain an internal dispute resolution (IDR) program to receive and manage consumer complaints;
- Be a member of an approved external dispute resolution (EDR) scheme that may receive consumer complaints against the AFS Licensee;
- Maintain compensation arrangements, usually adequate professional indemnity (PI) insurance cover, or other arrangements approved by ASIC in accordance with Regulatory Guide 126: *Compensation and insurance arrangements for AFS licensees* [RG 126]<sup>5</sup>;
- Maintain financial resources commensurate with the nature, scale and complexity of the business and in accordance with Regulatory Guide 166: *Licensing: Financial requirements* [RG 166]<sup>6</sup>; and

Provide evidence of adequacy of resources and arrangements as part of the AFS Licence application, including compensation arrangements and financial resources. Furthermore, banks, as APRA regulated entities, are required to meet certain prudential requirements, including capital adequacy and operational risk management obligations.

### **Complaints and compensation programs**

Where circumstances require, it is open to industry to develop and for ASIC to require or approve additional complaints, review, remediation and compensation programs. These programs can include:

- Criteria and processes for contacting potentially affected customers;
- Processes for independent review of financial advice;
- Processes for offering and making compensation.

Such programs could be implemented autonomously by the AFS Licensee, as agreed with ASIC, as part of an Enforceable Undertaking or through an AFS Licence condition.

<sup>5</sup> <http://www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rq-126-compensation-and-insurance-arrangements-for-afs-licensees/>

<sup>6</sup> <http://www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rq-166-licensing-financial-requirements/>

## Customer advocacy services

Some banks are instituting customer advocacy services that operate in addition to their IDR and EDR arrangements to review disputes from retail and small business customers in Australia, where the customer is not satisfied with the outcome of the bank's IDR processes.

## Government review of compensation requirements

In 2012, as part of the development of the Future of Financial Advice (FOFA) reforms, the Government appointed Richard St John to develop a report into Compensation Arrangements for Consumers of Financial Services (St John Report).<sup>7</sup>

The St John Report concluded that Australia has a relatively well developed system for the regulation of the financial services industry and for the protection of consumers.<sup>8</sup> The St John Report contemplated some options for strengthening current arrangements<sup>9</sup>, but concluded that it would be inappropriate, and possibly counter-productive, to introduce a statutory compensation scheme.<sup>10</sup>

In relation to the options to strengthen current arrangements, the ABA supports, in particular, the implementation recommendations 2.1, 2.3 and 2.4, specifically:

- Recommendation 2.1: Licensees to demonstrate adequacy of their insurance – Requiring AFS Licensees to provide ASIC with additional assurance that their PI insurance cover is current and is adequate to their business needs.
- Recommendation 2.3: A more pro-active stance by ASIC – ASIC should take a more pro-active approach in monitoring licensee compliance with the requirement to hold adequate PI insurance cover and any new requirement in regard to financial resources, and in targeting licensees who are most at risk.
- Recommendation 2.4: Policing the licensing system in regards to compensation – Provide ASIC with clearer powers to enforce standards and to sanction licensees who do not comply.

***Recommendation: The Government proceeds with implementing recommendations 2.1, 2.3 and 2.4, of the St John Report.***

**Mechanisms, including a centralised register, that would ensure financial planners found to have breached any law or professional standards in their employment are transparent, for both the sector and consumers**

## Legal and regulatory obligations and Standards Australia

In addition to legal and regulatory obligations for AFS Licensees appointing representatives and authorised representatives, AFS Licensees can have regard to Standards Australia's handbook, *Reference Checking in the Financial Services Industry* (HB 322-2007) and Australian Standard on *Employment Screening* (AS 4811-2006) and *Employment Screening Handbook* (HB 323-2007).

However, there remain a number of substantial issues that affect the ability of AFS Licensees to share information about financial advisers. These include:

- Privacy law obligations, and consent to disclose certain information;
- Anti-discrimination requirements;
- The terms of Fair Work Commission or other employment law processes that prevent the disclosure of termination / reasons for termination.

<sup>7</sup> [http://futureofadvice.treasury.gov.au/content/consultation/compensation\\_arrangements\\_report/downloads/Final\\_Report\\_CACFS.pdf](http://futureofadvice.treasury.gov.au/content/consultation/compensation_arrangements_report/downloads/Final_Report_CACFS.pdf)

<sup>8</sup> 7.10, Compensation Arrangements for Consumers of Financial Services.

<sup>9</sup> Chapter 4, Compensation Arrangements for Consumers of Financial Services.

<sup>10</sup> 7.42, Compensation Arrangements for Consumers of Financial Services.

Across the industry, AFS Licensees terminate employed financial advisers and authorised representatives for many reasons that may range from fraud or illegal conduct, through to breaches of AFS Licensee standards or failing to make sufficient improvements regarding compliance and work practices.

While it is clear when and why a financial adviser will be terminated for fraud and illegal conduct, it is less clear when and why a financial adviser should be terminated for poor practices, such as failing to adhere to AFS licensee standards, poor record keeping practices, etc. This may depend on the internal standards and risk management approach of the AFS Licensee.

The ABA believes that any move towards mandating the disclosure of information about, and reasons for, termination would require the development of consistent criteria across industry as to what constitutes behaviour that triggers termination.

Banks are committed to taking further action in relation to the better disclosure of information about financial advisers; however, we note there are substantial challenges to overcome.

### **AFS Licensee due diligence and onboarding processes**

Banks operate detailed due diligence and “onboarding” processes for new financial advisers. For employed financial advisers, these processes will include:

- The bank’s standard employment and onboarding processes, including reference checking, police checks, etc;
- ASIC register checks;
- Bankruptcy checks;
- Qualifications assessment and checks;
- Complaints history; and
- In some circumstances, adverse media checks and other risk assessments.

In many cases, there is additional governance around the appointment of a new financial adviser and the decision will often go to a risk management committee of the bank, rather than an individual manager and/or human resources representative.

In addition to the above, the processes for authorised representatives or other representatives bringing clients to the bank will include:

- Assessment of the financial adviser’s business model including the advice type (e.g. SMSF advice), customer demographic, exposure to frozen funds or other stressed investments, internal advice processes;
- Review of client files to assess the quality of the advice, adequacy of record keeping practices and file notes, appropriateness of the advice;
- Disputes, complaints and insurance claims; and
- Other business interests or sources of personal conflicts.

Often, this process will take place over a number of days, with compliance experts from the bank attending the financial adviser’s premises.

***Recommendation: The industry considers establishing common criteria for terminating advisers for misconduct.***



## How financial services providers and companies have responded to misconduct in the industry

### Identifying misconduct

AFS Licensees must have in place adequate arrangements to monitor and supervise the financial advice provided by their employees and representatives. Generally, banks will identify instances of misconduct through:

- Financial adviser monitoring and supervision programs including, advice vetting, advice file reviews, live observations and client feedback;
- Reporting and management oversight of key risk and compliance metrics, such as complaints, supervision program results, advice vetting program results, over and underperformance of productivity measures;
- Internal breach and incident escalation processes; and
- Formal whistleblowing processes.

### Reporting misconduct

AFS Licensees will report instances of misconduct and trends on misconduct internally through management and board reporting processes and externally through prescribed ASIC breach reporting processes<sup>11</sup>.

For banks, internal escalation processes are well documented and staff are given training on these processes. Generally, the avenues for escalation will be to the individual's manager and/or the risk and compliance teams in the bank. Banks also operate readily accessible, formal whistleblowing processes for staff to escalate concerns.

Information on compliance breaches is set out in management reporting and reports from 'second line' risk and compliance teams in the bank. Reporting from risk and compliance teams will be provided to risk and compliance committees and where relevant to the Board.

### Remediating misconduct

AFS Licensees operate internal incident and breach identification and escalation processes. Once appropriately identified and escalated, banks will develop incident and breach remediation plans, with clear deadlines and supervision of the remediation from senior management and the risk and compliance staff. The nature of the remediation plan will depend on:

- The nature of the incident;
- The number of clients affected; and
- Whether ASIC has given any instructions/guidance on remediation (for reported breaches).

Remediation for adviser misconduct will be proportional to the misconduct. Banks have in place documented policies and processes describing the consequences for advisers arising from incidents, breaches and misconduct.

Responses from the Licensee may include:

- Review of affected client files;
- Contacting affected clients;
- Review of AFS Licensee policies and procedures (to the extent they contributed to the misconduct);
- Review of the adviser's position including actions such as:

---

<sup>11</sup> s912D, Corporations Act 2001 (Cth).

- Disqualifying the adviser from participation in (FOFA compliant) performance bonuses;
- Placing the adviser under increased supervision (including additional vetting, file reviews and direct supervision); and/or
- Amending or withdrawing the adviser's authorisation; and/or
- Reporting the adviser to ASIC or the adviser's professional association; and/or
- Terminating the adviser; and
- If relevant, reporting the adviser to Police.

### **Other regulatory or legislative reforms that would prevent misconduct**

Since 2013, the financial advice industry has been implementing substantial and structural changes to the way it operates and services consumers. Among these changes is the implementation of the FOFA reforms. Implementation included:

- Redesigning and renegotiating remuneration models governing payments between product issuers, operators of investor directed portfolio services (IDPS) or IPDS like schemes (investment platforms) and other AFS Licensees to remove conflicted payments from the industry;
- Redesigning and renegotiating remuneration agreements for employee and aligned financial advisers to remove conflicts of interest driven by remuneration models;
- Wholesale changes to financial adviser processes to adopt the steps in the best interests duty safe harbour to ensure financial advice is provided in the best interests of the client;
- Development of new fee disclosure and other arrangements to better articulate and agree the fees and charges clients are paying their financial advisers; and
- Extensive training of financial advisers and other staff on the FOFA reforms, managing conflicts of interests and providing advice in the best interests of clients.

Requirements governing the provision of financial advice, including the FOFA reforms, have been implemented in stages by industry from 1 July 2013. ASIC's facilitative approach with the implementation of the reforms ended 30 June 2014. Given the relatively short time within which the industry has been operating in compliance with the new FOFA laws, the ABA strongly recommends allowing an appropriate amount of time and conducting a post implementation review before any further reforms are considered (with the exception of ensuring appropriate technical amendments and clarifications of the law).

It is important to remember that these reforms were developed over a period of years, in consultation with consumer groups, industry and ASIC with the objectives of improving the trust and confidence of consumers in the financial services industry and ensuring the availability, accessibility and affordability of high quality financial advice.

The FOFA reforms should be given more time to achieve these objectives.

### **Any related matters**

Recent commentary in the financial advice community, the Financial Systems Inquiry (FSI) interim report and the media has focussed on the concept of vertically integrated business models and the impact these structures have on the management of perceived and actual conflicts interest.

The term "vertically integrated" has come to mean a business operating model where legally related companies run financial services businesses across the financial services value chain. This is an example of vertical integration; however, some form of vertical integration is common across the financial services industry and can include:

- Superannuation funds operating in house investment management functions;



- Product issuers providing financial advice, including intrafund advice, on products they manufacture;
- Product issuers having commercial partnerships with financial advice businesses, administration services and other relationships;
- Commercial financial advice referral arrangements; and
- Financial advice businesses operating or having an interest in investment platforms<sup>12</sup> or Managed Discretionary Account (MDA) facilities.

The vertically integrated business model that has focused most attention is where one or more companies in the same corporate group manufacture financial products and one or more companies in the same group provide financial advice. It is suggested that the related entity legal relationship and the potential revenue contribution to the product issuer arising from the recommendation of its financial products by the financial advice business creates a conflict of interest.

In this circumstance, there is a well-developed set of obligations relating to the management of conflicts of interest. These include Corporations Act conflicts management requirements for both the financial advice business and the product issuer, with additional obligations for the product issuer where it acts as a superannuation or master trust trustee (Superannuation Industry (Supervision) Act (SIS Act) and general law obligations).

To comply with the law, financial advice businesses with related party conflicts must have in place adequate arrangements to manage conflicts of interests so that the quality of the financial services is not significantly compromised.<sup>13</sup> Examples of these conflicts management arrangements are set out in more detail in **Appendix A**. In general, banks implement the following arrangements to disclose, control or avoid the conflict:

- Conflicts Policy and Conflicts Register for disclosure of organisational and personal conflicts;
- Monetary and non-monetary remuneration policies governing the receipt of benefits by staff and financial advisers;
- Governance and approval processes for staff and financial adviser remuneration;
- An internal product research function to appropriately research products advised on by financial advisers;
- A product committee to approve inclusion of a product on the Approved Product List – including related party products; and
- Clear, concise and effective disclosures of conflicts in the Financial Services Guide (FSG), Statement of Advice (SOA) and branch and call centre scripts.

These arrangements are in addition to the policy and processes implemented to comply with the best interests duty and related obligations which apply to all financial advisers irrespective of their employment arrangements.

For consumers, vertically integrated business models offer a value proposition of investment, innovation, specialisation and capital strength. A relationship with a bank, across the financial services value chain, can allow the bank to develop a better understanding of the objectives, financial situation and needs of their client, and therefore provide better quality financial advice and, where reasonable and appropriate, better targeted product solutions. Consumers can also access different types of advice suitable to their needs and circumstances across different channels, including face-to-face, verbally, online and more innovative advisory solutions.

Consumers can be confident that their bank financial adviser is supported and supervised within an appropriate institutional governance structure.

---

<sup>12</sup><sup>13</sup> RG181.30, ASIC Regulatory Guide 181 Licensing: Managing conflicts of interest.

## **Broader context**

The ABA notes that the Inquiry is being conducted in the context of broader discussion and consultation on the regulatory settings for financial advice and the financial services industry.

At an industry level, banks are enhancing their internal conduct, education and competency standards and industry and professional associations are contributing to a discussion regarding the development of industry based, professional standards.

At a government level, the FSI interim report consumer outcomes chapter considers financial advice and additional regulation needed to improve the quality of financial advice; the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry may make recommendations about and further ventilate relevant issues, as may the Senate Economics Committee inquiry into managed investment schemes.

The ABA strongly supports raising the professionalism of the financial advice industry and clarifying the financial advice framework. We are mindful that the outcomes of these inquiries may introduce changes to the regulatory framework for financial advice.

The ABA would be pleased to provide the Committee with copies of our submissions to these respective inquiries upon request. Based on the outcomes of these inquiries, we may provide additional information to the Inquiry.

Yours sincerely,

**Steven Münchenberg**

**Appendix A**

Table 1.0 Financial advice: Consumer protections

<b>Legal / Regulatory Reference</b>	<b>Consumer protection</b>	<b>Industry implementation</b>	<b>Examples</b>
s961B, s961E (also refer ASIC RG175)	Financial Adviser must act in the best interests of the client	<p>Banks have implemented wide ranging regulatory change programs to embed the obligation to act in the best interests of customers in their advice and operational requirements. The programs include:</p> <ul style="list-style-type: none"> <li>• Retraining financial advisers on best interests duty requirements;</li> <li>• Updating advice tools, templates and disclosure documents;</li> <li>• Improved customer engagement and customer conversation models;</li> <li>• Improved record keeping requirements ;</li> <li>• Enhanced advice supervision arrangements; and</li> <li>• Improved product investigation processes and governance.</li> </ul>	<p>A bank updated its end to end financial advice process, explicitly including the steps in the best interest duty safe harbour. The following steps were taken to support the updated process:</p> <ul style="list-style-type: none"> <li>• A Best Interests Guide was released as part of the training rolled out to the adviser network and internal staff;</li> <li>• Advisers/staff had to satisfactorily complete an assessment to demonstrate competency;</li> <li>• Best interests obligations were embedded in the banks professional standards. New advisers joining post FoFA commencement now see this as a business-as-usual requirement; and</li> <li>• Post FoFA commencement further best interests training to assist advisers in areas where they have experienced challenges.</li> </ul>
s961B(2)(a)-(c) (also refer ASIC RG175)	Identify the advice the client is seeking and their Objectives, Financial Situation and Needs	<p>As part of developing improved customer engagement and customer conversation models, banks have developed processes to:</p> <ul style="list-style-type: none"> <li>• Clearly identify the advice the customer is asking for and any other advice needs the customer may have;</li> <li>• Identify their financial goals, including savings goals and debt repayment goals;</li> <li>• Identify their tolerance to financial risk and losses;</li> <li>• Make further investigations where the relevant information is incomplete or inaccurate.</li> </ul>	<p>A bank updated its customer investigation process, tool used to collect customer information and processes for understanding the customers tolerance for investment risk. The updated investment risk process included:</p> <ul style="list-style-type: none"> <li>• Completing a risk tolerance questionnaire with the financial adviser;</li> <li>• The financial adviser having a detailed conversation around the appropriate investments and associated risks; and</li> <li>• New arrangements for recording the customer's risk tolerance and keeping file notes of the</li> </ul>

			customer conversation.
s961B(2)(d) (also refer ASIC RG175)	Assess the Financial Adviser's competence to provide the advice	<p>Banks operate rigorous capability management processes to ensure that their financial advisers and bankers hold the required certifications and competency to provide advice in certain financial strategies and financial products.</p> <p>It is also incumbent on the financial adviser to assess, in addition to bank requirements, whether they are competent to provide the advice. If not, banks maintain processes to refer the customer to an adviser with the requisite competency.</p>	<p>For example, a bank will define the level of certification, competency and experience required (accreditation) to advise on a certain strategy or product and publish these internally.</p> <p>The adviser will be required to meet all these criteria and have their formal authority letter updated before they are permitted to provide the advice.</p> <p>Monitoring and supervision arrangements will check whether an adviser has provided advice without the correct authorisation.</p> <p>In addition to RG146 requirements, banks also require their advisers to be competent regarding:</p> <ul style="list-style-type: none"> <li>• Privacy;</li> <li>• Anti-Money Laundering;</li> <li>• National Consumer Credit Protection;</li> <li>• Licensee Professional Standards (including the advice process);</li> <li>• Compliance processes;</li> <li>• Breach and incident processes.</li> </ul>
s961B(2)(e), 961E (also refer ASIC RG175)	Conduct a reasonable investigation into financial products	<p>The obligation to investigate financial products sits with the financial adviser as part of the best interests duty safe harbour, however the AFS Licensee has an obligation to support the financial adviser to meet this obligation.</p> <p>Banks maintain skilled and well-resourced product research functions to investigate the financial products bank financial advisers provide advice on. These research functions rely on internal and external research and will consider product features such as:</p> <ul style="list-style-type: none"> <li>• product features and suitability for customer</li> </ul>	<p>For example, a bank operates a product committee comprising business, operations, research and risk and compliance staff to review recommendations from the research function and determine the products on the APL.</p> <p>The product committee reports to a board delegated committee and has a Terms of Reference which includes, among other things, conflicts management considerations.</p>

		<p>target market;</p> <ul style="list-style-type: none"> <li>• fees;</li> <li>• risk; and</li> <li>• past performance.</li> </ul> <p>Appropriately researched financial products will be added to a research list or approved product list (APL). Banks maintain formal, governance and approval mechanisms to approve additions to the APL and manage conflicts of interest.</p> <p>Where a reasonable investigation has been undertaken and it would not be appropriate to recommend a financial product, banks have in place policies that require the adviser to decline to make the product recommendation and / or refer the customer.</p>	
s961G (also refer ASIC RG175)	Financial advice must be appropriate to the client	Satisfying this requirement builds on the compliance arrangements required to ensure financial advisers act in the best interests of their customers.	For example, robust monitoring and supervision arrangements are in place to review the advice being provided by the financial adviser. These arrangements consider whether the best interests duty has been complied and will also require an assessment of whether the advice is appropriate; having regards to the objectives, financial situation and needs of the customer.
s961J (also refer ASIC RG175)	The financial adviser must give priority to the interests of the client	Together with broader training on the management of conflicts of interest, Banks have developed training to ensure their financial advisers understand the requirements of the 'conflicts priority rule'.	For example, a bank developed training on conflicts management and meeting the 'conflicts priority rule'. This training included scenario based questions.
s912A(1)(aa) (also refer ASIC RG181)	General obligation to manage conflicts of interest	<p>Banks maintain organisation wide programs to manage divergences between their interests and the interests of their customers. Consistent with guidance from ASIC, banks will manage perceived and actual conflicts by:</p> <ul style="list-style-type: none"> <li>• Disclosing the conflict;</li> </ul>	<p>For example, bank APLs will include products issued by related entities ('in-house' products); a bank clearly <i>discloses</i> the relationship between the financial planning network and the product issuer in the FSG and SOA.</p> <p>A bank also <i>controls</i> the conflicts by requiring all 'in-</p>

		<ul style="list-style-type: none"> <li>Controlling the conflict;</li> <li>Avoiding the conflict.</li> </ul>	house' products to be scrutinised through the internal research function and the Product Committee.
ss942B, 942C	Financial Services Guide	<p>The Financial Services Guide (FSG) must disclose, among other things:</p> <ul style="list-style-type: none"> <li>Remuneration to be received by the financial advisers, AFS licensee or a related entity or associate of them; and</li> <li>Information about associations or relationships capable of affecting the advice.</li> </ul>	<p>For example, a bank discloses remuneration arrangements for staff as follows:</p> <p><i>"Remuneration or other benefits received by Bank staff members</i>  <i>Bank staff members are salaried employees of Bank and in most cases do not receive any proportion of any fees or commissions paid to Bank or any other company in the Bank Group in connection with the financial services or financial products referred to in this FSG.</i>  <i>Staff members may be entitled to receive additional monetary or non-monetary benefits and/or rewards resulting from participation in programs conducted by Bank. Monetary benefits or rewards may include an annual bonus, the level of which may depend on the overall performance of the Bank Group of companies. Non-monetary benefits or rewards for staff members and their partners may include gift vouchers, film tickets, restaurant meals, attendance at an annual conference or other functions.</i>  <i>Whether staff members receive any such benefits and rewards depends on a number of balanced performance and behavioural factors. In some situations these may include the level of remuneration generated for Bank from sales of products as a consequence of the staff member's advice."</i></p> <p>For example, a bank discloses relationships with product issuers as follows:</p> <p><i>"What relationships do we have with product issuers?"</i></p>



			<p><i>Many of the products offered by Bank are issued by us and companies related to us. Related companies in the Bank Group that are product issuers include:</i></p> <ul style="list-style-type: none"> <li>• X</li> <li>• XX</li> <li>• XXX</li> <li>• XXXX</li> </ul> <p><i>Bank acts on behalf of other product issuers when it sells the following products:</i></p> <ul style="list-style-type: none"> <li>• A</li> <li>• AA</li> <li>• AAA”</li> </ul>
ss947B, 947C	Statement of Advice	Financial advisers must provide customers with a statement of advice. In addition to FSG disclosures, the Statement of Advice (SOA) will disclose information about the basis on which the advice was given.	These statements will generally link the customer's objectives, financial situation and needs with the advice recommendation. It is not possible to provide a template example as these statements are discretely relevant to each customer.

**Appendix B**

Table 2.0 – Financial Advice: Complaints and Compensation Requirements

Legal / Regulatory Reference	Consumer protection	Industry implementation	Examples
S912A(2) (also refer ASIC RG165)	General obligation to have dispute resolution systems	Banks operate diligent and well-resourced complaints handling and dispute resolution processes. Many banks operate customer advocate services that act as an independent representative for the customer in managing a complaint or dispute with the bank.	For example a bank has established a Customer Advocate role to review disputes from retail and small business customers in Australia, where the customer is not satisfied with the outcome of the bank's internal dispute resolution processes. The Bank is bound by the Customer Advocate's findings in all cases. The Customer Advocate operates separately from the bank's business and reports to the Chief Executive Officer.
s912B (also refer ASIC RG126)	General obligation to have adequate compensation arrangements	Banks must maintain adequate professional indemnity insurance, or other arrangements approved by ASIC to meet future liabilities arising from professional negligence and breaches of the law.	For example; a bank maintains a global professional indemnity insurance policy with a deductible up to \$X,000,000. Each subsidiary that holds an AFS Licence will hold PI Insurance up to the deductible amount
AFSL Licence condition (also refer ASIC)	Financial Adequacy	Where the bank entity is not regulated by APRA, it will select one of the methods of calculation available in the licence and RG166 to ensure it holds a reasonable value of financial resources cover any risks the business faces.	For example, a bank subsidiary financial advice business elects to comply with the audit requirement for financial resources. The bank must then include information about how it has complied with its financial requirements in the audit report compiled by an independent auditor and lodged under s989B(3).