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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL
SERVICES

Reference: Disclosure of commissions on risk products

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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Wednesday, 12 March 2003

Members: Senator Chapman (*Chair*), Senator Wong (*Deputy Chair*), Senators Brandis, Conroy, Murray and Mr Byrne, Mr Ciobo, Mr Griffin, Mr Hunt and Mr McArthur

Senators and members in attendance: Senators Chapman and Wong and Mr Griffin

Terms of reference for the inquiry:

To inquire into and report on:

The requirements under the Financial Services Reform Act 2001 to disclose commissions on risk insurance products.

WITNESSES

FOTHERINGHAM, Mr John Alexander, Chief Executive, Royal Automobile Association of South Australia Inc., Royal Automobile Club of Queensland Ltd and Royal Automobile Club of Western Australia Inc.....65

Committee met at 3.23 p.m.**FOTHERINGHAM, Mr John Alexander, Chief Executive, Royal Automobile Association of South Australia Inc., Royal Automobile Club of Queensland Ltd and Royal Automobile Club of Western Australia Inc**

CHAIRMAN—I call the committee to order and declare open this hearing into the disclosure of commissions on risk products. I welcome Mr John Fotheringham from the Royal Automobile Association of South Australia to our hearing. The committee prefers all evidence to be given in public but, should you at any stage wish to give part of your evidence in private, you may request that of the committee and we will consider that request to move into camera. We have before us your written submission which we have numbered 30. Are there any alterations or additions you want to make to the written submission itself?

Mr Fotheringham—No, Mr Chairman.

CHAIRMAN—I invite you to make a brief opening statement, at the conclusion of which we will move to questions.

Mr Fotheringham—Thank you. There is no point in going through the written submission again in great detail, other than to say the reason this is a joint submission is because the three clubs and their joint venture insurance companies, because of the nature of their structure, have the same issues with FSRA. The joint venture insurance companies in each case are 50 per cent owned by the respective club and 50 per cent owned by another party. In the case of RAA and Queensland, that is Suncorp. In the case of Western Australia it is the Royal.

My comments are against purely selling of general insurance products, not more complicated financial service products such as superannuation, investment advice et cetera. It is purely motor vehicle, boat and home insurance and, in the case of Queensland, CTP insurance—that is bodily injury insurance. In each case the nature of the structure is that the club owns and manages the sale and distribution of the product, whereas the insurance company which the club owns 50 per cent of does the underwriting and handles the claims. The club does the sales, marketing, distribution, call centres, branches, the whole bit. Here we have two legal entities and they are not related bodies corporate. That is a fairly key point I will come to shortly.

In each case our employees, whether they be club employees or agents in the country, will be trained to the T2 level. They will be authorised to provide factual information only and not to give personal advice. They will be providing a sales service for general insurance products only for one licensee—that is, the club insurer. They will not be authorised to sell competing products, whether that be competing motor vehicle, home or whatever. That is a fairly key point. Finally, in each case they are paid a salary. In Queensland there is a small incentive commission paid on volume of business written but it is not paid as a commission on any individual sale. In the other cases staff might get a theatre ticket if they have done a good job, or they might get a voucher for Myer's or something. The commissions and incentives are very small; predominantly staff are remunerated by way of salary.

Our issue is that we see, because of our structure, we are going to be disadvantaged in the marketplace. An example of that is because the club and the insurer are not related bodies corporate. I understand there is some relief available under the definition of 'related body corporate'. Because we are not into that situation we will not get that relief. For example, in

Queensland Suncorp competes head to head with the RACQ and RACQ Insurance. It is a competitive market, notwithstanding the fact that Suncorp is a 50 per cent shareholder in the Queensland club insurer.

Suncorp can sell direct to its client base. It employs its own people, therefore it will not have to provide an FSG. It will not be declaring issues such as remuneration of individual employees, whereas the club—because of the structure—will have to provide an FSG. It will have to provide ASIC with notification of all authorised representatives, so there is going to be this distinction. That is an example in Queensland. In Western Australia there is a similar thing where the Royal owns brands like AAMI and Australian Pensioners. Yet it is also a 50 per cent shareholder in the club insurer.

The Royal, under AAMI and API brands, will be selling direct through employees. It will not be bound by FSGM and it will not be bound by notification to ASIC but the club will be bound by those sorts of provisions. The same sort of thing happens in South Australia. In our view we do not have a level playing field, purely because of the nature of our structure between the club and the insurer. If you are a direct insurer the issue does not arise. Chairman, that is the basis of the problem we have with this. We would like to be treated in exactly the same way as if we were a body corporate. Then we would be competing on the same grounds as our competitors who are direct insurers.

There are other complexities, because we also have a travel operation and sell travel insurance. That is underwritten by QBE. In effect, under this legislation we become a multi-agent, even though we are not selling two motor vehicle insurance products which are supplied by different suppliers and competing. We sell one travel policy or we sell one household policy but I think under this definition we are a multi-agent. My understanding is that because we are a multi-agent, we cannot issue generic FSGs. We would then have to start issuing personal FSGs. It becomes complicated.

As to the issue of remuneration being disclosed on FSGs, as I indicated, our staff are essentially salaried. We are not selling competing products. Our members come in to our respective organisations; they know if they are dealing with RAA, whether it is RAA or RAA Insurance, and the same in the other states. It is the one entity and we are quite clear, in terms of our documentation, that the policies are underwritten by RAA Insurance. There is no issue, in my view, of trying to hold out or not disclose the nature of the relationship.

We see little point, on an FSG—if we have to do that—in saying that our staff are purely salaried within a range of \$32,000 to \$33,000 and they might get a theatre ticket. I do not see what that is going to achieve in terms of better informing our members, our clients or our policy holders.

When it comes to the nature of the expenses and how that is allocated between the insurance company and the club, again our competitors will not be disclosing, for example, the nature of the marketing fee which the insurance company might pay to the club for the marketing expense or the branch expense. I have had further discussions, since this submission, with ASIC on that issue. Clearly we will be able to differentiate what are true expenses and what are commissions. Declaring commissions is fine if we have to go down the FSG path.

In essence, our view is that if we were treated as a related body corporate we would come under the same terms and conditions as AAMI, the API, the SGIC in South Australia, NRMA Insurance et cetera.

CHAIRMAN—Thanks, Mr Fotheringham. The issue really arises because the RAA—and the other motoring organisations which you represent—is not regarded as a related body corporate to Metway or to RAA Insurance? Or RAA Insurance is not regarded as a related body to—

Mr Fotheringham—To either party. It is not a related body corporate to RAA, nor is it a related body corporate to Suncorp Metway. It is a stand-alone entity because no one party has controlling interest. The board is equally three and three. The chairman does not have a casting vote. We have had legal advice that it is not a related body corporate. If one party owned 50.01 per cent or if the chairman had a casting vote, then you could start arguing that maybe it is a related body corporate of one party or the other.

CHAIRMAN—It is really that exact fifty-fifty split that creates the problem.

Mr Fotheringham—As I understand it.

CHAIRMAN—It does require a special exemption then?

Mr Fotheringham—In my view, yes.

CHAIRMAN—Is that required by legislation or regulation or an ASIC policy statement? Which is the lowest level it can be successfully dealt with, if the problem was to be fixed?

Mr Fotheringham—ASIC or Treasury might need the final say on that. My understanding is that it might be able to be fixed through a form 10, which is seeking relief from ASIC. I understand ASIC may well be able to do that.

Senator WONG—Under the existing legislation it would not require amendment to that, from your understanding?

Mr Fotheringham—Yes, that is my understanding.

CHAIRMAN—What has been their reaction to the proposition that they should do that?

Mr Fotheringham—ASIC has been really good in terms of discussing this, so there is no criticism of them in any way. But I had some conflicting advice from ASIC, as recently as a couple of weeks ago, to the effect that our competitors are going to have to issue an FSG. That is contrary to the advice I have, so that is a key point that has to be fixed. ASIC was of the impression that, irrespective of direct insurers having direct employees and not requiring authorised representatives et cetera, they were still dealing in that product and accordingly would need to issue a generic FSG. My advice is that is not the case, so we need to clarify that.

CHAIRMAN—If that is the case then you are in exactly the same position.

Mr Fotheringham—I do not believe so because we will still be required to notify ASIC of, between the three clubs, about 1,000 of our staff who will be authorised representatives of the insurance companies' third parties. Direct insurers will not have to do any of that. ASIC was going to charge quite a high figure—I forget what it was—for every batch of nominations and I think it had to be notified within 10 days. Just keeping a database up to date was going to cost us and ASIC money. We did not really see the point in that. We are responsible for our own people, whether they are staff or agents under the Insurance (Agents and Brokers) Act. We see little point in having to notify ASIC of 1,000 staff and notifying them every time there is a turnover. I do not think our competitors will have that issue.

CHAIRMAN—There is also this issue you have raised of being regarded as a multi-agent. If your first issue is fixed, does that still remain an issue, or does the one solution fix both problems?

Mr Fotheringham—I think that is still an issue. The fix there again needs to be clarified. There is really only a conflict if any party is selling products from competitors where there might well be different commissions being paid by various suppliers. That would influence what is sold. Where an entity is only selling one product, and it might be selling a different insurer's product in another completely different range—for example, travel versus household—the legislation should be such that that does not constitute a multi-agency.

We are going to have another problem in some of the country areas where our agent, for example, might be a Holden dealership in Kadina or the Barossa. A Holden dealership could sell Holden insurance or Holden finance as part of the whole package, yet that Holden dealership might be our road service contractor and also selling RAA insurance. Those people are going to be multi-agents. Their staff, I understand, would have to give individual FSGs. That would come down to how much money each of them is being paid et cetera.

Our fix on that is that the agency is going to have to choose whether they want to deal with us or they want to deal with somebody else as the supplier. It is our intention only to authorise those staff to sell our product. If we get into the multi-agency problem we have a problem, but we would train those people to the same sorts of standards that we train our own people. They are the sorts of issues we have.

Senator WONG—One of the things you say in your submission is that you support the notion of providing an FSG where there is a choice of competing products; that the consumer has a right to know, if you are recommending product A as opposed to product B, what your commission is on product A as opposed to product B. Is that the only circumstance, from a policy perspective, where you see an FSG in terms of risk products being appropriate?

Mr Fotheringham—Disclosing the nature of the relationship of who people are acting for also should be on the table.

Senator WONG—Is that something you would do?

Mr Fotheringham—Yes. We do not see an issue with that.

Senator WONG—It is essentially a joint venture arrangement, is it, between you and the various insurers?

Mr Fotheringham—Yes. That has clearly been in our magazines and our annual reports. There is no attempt to hide it.

Senator WONG—What about the certificate of insurance or when people ring up? Is that something you are happy to disclose?

Mr Fotheringham—Yes.

Senator WONG—You answered this but perhaps for my benefit you could clarify it again. You contend in your submission that many of your competitors who also do not provide financial product advice will not have to provide an FSG although they are selling the same type of products in the same manner. Can you elaborate on that for me?

Mr Fotheringham—Take, for example, Queensland. Suncorp owns 100 per cent of GIO. In Queensland Suncorp is selling Suncorp general insurance and GIO general insurance. Because GIO is 100 per cent owned by Suncorp, it is a related body corporate or it is going direct through salaried employees. My understanding is they are not bound by the FSG or ASIC notification requirements. The club, on the other hand, is bound by FSG and ASIC notification et cetera. The club will be required to issue at least generic FSGs now.

Senator WONG—And you say that is only as a result of the particular equity arrangements you have with Suncorp in relation to provision of that insurance product in Queensland?

Mr Fotheringham—Yes. I believe under draft regulations there will be relief granted for that FSG requirement for a related body corporate.

Senator WONG—In circumstances where insurer A uses corporate body B to sell their products and the people are just on salaries, they will not have to provide FSGs.

Mr Fotheringham—Correct.

Senator WONG—In response to Senator Chapman's questions you said you have raised this with ASIC and there has been some prospect of this being dealt with via a form 10.

Mr Fotheringham—ASIC has not indicated that they would agree to this.

Senator WONG—A possibility, I am sorry.

Mr Fotheringham—No, they have not. That is my belief, that ASIC would have the power to do that.

Senator WONG—In your discussions with them, is their unwillingness to agree a legislative issue in terms of what they think they can do, or is there a policy issue where they say, 'Yes, we could do it but we're not willing to do it'?

Mr Fotheringham—They have not indicated either way.

Senator WONG—You also emphasise that the people who are selling your product are on salary. But I think in your verbal submission you said you also have commission arrangements.

Mr Fotheringham—My understanding is WA does not, South Australia does not, and in Queensland there can be sales volume incentives which, I am told, would be less than two per cent of their total remuneration. That would be for selling maybe a couple of thousand policies in a year, not because they sell an individual policy. There is not an incentive on an individual policy basis.

Senator WONG—But there is an incentive to sell more.

Mr Fotheringham—Yes.

Senator WONG—And your position is that that sort of performance related commission does not have to be disclosed?

Mr Fotheringham—Yes, because it is not an incentive for the staff to sell product A as compared with product B. Any of our clients who have come in to inquire about insurance know they are getting RAA insurance, Queensland insurance or WA insurance.

CHAIRMAN—The earlier exploration we had when you met with me, plus what we have been able to explore today, I think clarifies the situation. Thanks very much for appearing before the committee and raising the issue with us.

Mr Fotheringham—Thank you for the opportunity.

CHAIRMAN—That closes the hearing.

Committee adjourned at 3.45 p.m.