

4 December 2014

The Chairman,
Senate Standing Committees on Economics
Parliament House
Canberra A.C.T. 2600

Dear Sir/Madam,

By way of my background, I have been working in the finance industry for over 45 years of which the last 31 have been as a licensed financial advisor and also the holder of a Dealer/AFSL Licence for approximately 25 years.

I have been self employed in excess of 35 years.

I have a degree in economics with an accounting major, am a certified financial planner, a member of the relevant industry bodies and a registered tax agent.

What is wrong with our Financial Advisory system?

Our advisory system is driven by greed.

ASIC has failed to properly supervise the industry and has failed to protect consumers. A typical example is the current CBA/CFP debacle.

I was extremely concerned with the inappropriate and negligent advice provided by CFP to its clients.

I advised ASIC of the problems I encountered in dealing with CFP and CFP's total disregard of their legal obligations to their clients under their AFSL Licence.

I sent this report to ASIC in excess of two years prior to CFP being requested to sign an Enforceable Undertaking.

ASIC failed to take any action against CFP and in fact condoned the incompetent and negligent advice provided by CFP to their clients.

The educational standards and experience of personnel working in the industry is just not acceptable.

Licence Holders are disregarding their obligations to consumers in order to bolster their profits.

License Holders are neglecting their legal obligations to consumers to ensure that the advice provided by them and their staff is appropriate and meets the client's requirements, needs and financial objectives.

With regard to advisors, not all are dishonest; however there are a great number of them that are not sufficiently trained or qualified to be able to provide proper financial advice and are just glorified sales people.

In a substantial number of cases they are disregarding their legal obligations under Corporations Law and fail to act in their clients best interests when providing financial advice.

This aspect is further compounded by AFSL Licence holders that set sales targets for their staff and the remuneration is also sales performance driven.

The requirements with regard to working in the industry are far too lenient with regard to qualifications. It's an absolute joke.

The current system allows applicants to apply for an AFSL License under a corporate structure with limited legal liability. This practice must be stopped.

In fact their client's financial future and well being is exposed to their advice which in many instances may not be appropriate and not in their client's best interests.

An AFSL Licence should be seen as a privilege and should be granted to persons of the utmost honesty, integrity and competence who are of financial means.

Licenses should not be granted to persons who have been convicted of an offence in the industry and must be barred for life even after having served their time

Leopards do not change their spots and there are too many of these persons currently engaged in the market place with prior convictions and again have been provided with another opportunity by the Regulator to exploit and defraud investors.

How can we address these issues?

Cancel all existing licenses.

Licenses should only be granted to **individuals**. This is a fundamental and necessary change if the government is serious with regard to consumer protection.

Licence holders should also be exposed to financial risk with their assets, just like their clients are. Implementing this change should ensure that financial advice provided by license holder's addresses their client's needs.

Licence holders can appoint representatives (corporate, individuals or other entities). However Licence Holder to be legally liable for all advice provided or given under their license.

Tightening up the requirements to qualify for a licence, such as the financial standing of the applicant, qualifications and work experience are also essential elements to being granted a License.

All licence holders must provide a Security Bond to the Regulator based on the size of the enterprise.

The amount of the Bond to be calculated as a multiple of the gross income of the business, say a multiple of five times turnover.

e.g.: Gross income \$100,000 multiple applied, say 5 times, amount of Bond \$500,000.

The amount of the Bond should be adjusted periodically and topped up as required to maintain appropriate level of cover.

All financial advice provided by employees/sub-contractors of Licence Holders to be vetted and authorized by the License Holder or his/her delegate.

Licence holders to be legally liable for inappropriate financial advice.

These measures would ensure that, not only consumer's assets are at risk but also those of the licence holders.

This aspect will ensure that appropriate financial advice is provided to consumers as licence holders will now have a vested interest in ensuring that they act in the best interests of their clients.

This will provide an additional benefit to the industry as a whole. The fact that licence holders will have to exercise greater care in providing clients with appropriate advice will ensure that there will be fewer problems requiring the Regulators attention.

All industry workers, whether employees or subcontractors to be licensed and approved as Representatives by the Regulator.

Representatives must be suitably qualified, holding tertiary qualifications in an approved discipline and suitable work experience.

This will enable the Regulator to take control and have the responsibility to ensure that only suitably qualified persons are accepted to work in the industry.

Where Representatives fail the work experience test, then participation in the industry should be subject to a minimum period of 5 to 8 years supervised on the job training before being able to work unsupervised. However the advice provided to clients to be vetted by the license holder as described above.

Unfortunately schools do not teach experience and working in the industry should be about having the necessary knowledge and experience in providing appropriate financial advice and not just the knowledge of investment products or just displaying a Degree/Diploma on a wall.

It is important that on going training is maintained as is the requirement to undertake on going professional development courses.

Fees:

Fees that Licence holders can charge must be regulated and set on the basis of number of hours worked times an hourly rate (amount that can be charged per hour to be controlled by regulations) and not as a percentage of an investment portfolio value. In other words, a fee charged must be for services rendered.

Fees charged to be disclosed up front to clients (similar to legal fees). This will afford the consumer the ability to shop around.

It's bad enough that consumers are given bad advice, but to receive an exorbitant bill is just not acceptable

Portfolio reviews to be conducted as agreed with the client and fees charged as detailed above (fee for service)

PI Insurance:

PI insurance should also be compulsory for participants in the industry; however it does appear that going forward insurers may stop covering this type of risk.

Where advisors hold PI insurance, a compulsory clause should be inserted in the policy to provide power to the Regulator to demand payment of claims from insurers if the insurers were to contest such a payment or refuse to pay out on any claim made.

Audit:

An Audit Team to be established by the Regulator to carry out random audits of licensees on a regular basis and based **on a user pay system**.

This type of system is in existence in the market place with other professions.

Auditors to be suitably qualified and experienced as financial advisors with a substantial number of years of work experience in the industry and a sound knowledge of the requirements of corporations law and regulations.

Audits are to ensure compliance with Corporations Law and Regulations and that all financial advice provided to clients is appropriate and complies with client's needs and objectives.

Licence Fees:

Licence Fees of industry participants to be set so as to self fund the Regulator.

Abolition of the external dispute resolution scheme:

The Financial Ombudsman Service (FOS) should be abolished. It is an outdated system which does not go far enough in terms of consumer protection and its employees show a bias towards their members when dealing with claims.

FOS to be replaced by:

Let's say an Administrative Appeals Tribunal with greater powers to strengthen compliance and increased limits on claims that better reflect increased investment portfolio values.

All claims lodged to be based on the total amount of losses incurred and not split into a financial loss and legal costs.

If this practice of splitting claims is to be continued then, legal fees to be paid out as the full amount incurred by the investor even if the total claim exceeds the capped limit on claims.

The Tribunal must be a user pays system with the abolition of membership fees as we currently have with FOS.

The current system requiring membership fees penalizes good advisors for the benefit of bad ones.

The Tribunal to set up and run a claims register.

All claims for compensation to be sent to the Tribunal for processing.

Tribunal to record claims and on forward to licence holders to reply within designated time. Failure of licence holder to comply, pecuniary penalties to be imposed.

Replies to Tribunal processed through Register, if claim is settled no further action, other than a processing fee to offset Tribunal cost.

Claims that remain unsettled, Tribunal to advise consumers of their rights and what steps to take to proceed with a claim.

To eliminate frivolous claims, consumers should be asked to pay a small fee, refundable if claim is successful otherwise service to be totally free to consumers.

License Holders to be required to pay all expenses to the Tribunal for processing the claim.

These fees to be substantially increased from present levels as currently apply under FOS. This will assist in ensuring compliance.

For claims that remain unsettled it may also be appropriate to have mandatory mediation as a first step and the Tribunal to have powers to order and enforce settlements. Cost to be borne by Licence Holders.

The Banking Ombudsman /Financial Ombudsman:

The Ombudsman's service to be retained and staff employed in the service to transfer to the Government as employees.

The purpose is to ensure that the Ombudsman Service can deal with industry consumer complaints.

Replace ASIC as Regulator:

ASIC has let itself down as well as consumers due to its lack of supervision and law enforcement.

ASIC seems to have overlooked that their supervisory role is to protect retail consumers and not large corporations as they have been found out to do.

ASIC has shown a leave us alone attitude when advised of concerns in the industry and an unwilling attitude to take these issues on.

Given that ASIC has been burdened with the additional workload in taking over the ASX responsibilities, it may be appropriate that a new body be established and the Financial Advisory Industry be separated out of the ASIC jurisdiction. A similar scenario to that with APRA and the ATO regarding the supervision of the Superannuation industry.

The new body to be given additional powers to enforce industry compliance with regard to Corporations Law.

The Regulator should be given powers to name and shame non compliant advisors and be given legal protection to do so. As an example the current, CBA/CFP debacle, ASIC should have made a public announcement warning consumers against seeking advice from those institutions.

Summary:

With regard to the recommendations made, the primary objectives have been:

Licenses to be granted only to individuals.

Ensure appropriately qualified persons of financial standing to be eligible as License Holders.

Licence holders to review and approve all advice provided to their clients under their license.

Approved license holders to pay a security bond to the Regulator which will be held and applied to cover financial losses incurred by consumers.

Introducing these measures will ensure that a higher standard of financial advice will be provided by the industry as a whole to consumers.

It is appropriate that licence holders should no longer be able to structure their financial affairs so as to minimize or avoid their legal responsibilities to consumers or as an alternative, should be requirement to maintain a certain amount of assets in their name as determined by the Regulator.

All industry workers, whether employees or sub-contractors to be registered as Representatives of the License Holder with the Regulator.

The Regulator to vet and approve applicants for registration as Representatives of the AFSL License Holder.

All entrants to the industry to have appropriate tertiary qualifications and work experience.

Ongoing training and professional development is also a must.

Fees chargeable by licence holders to be regulated disclosed up front and based on actual work done for the client, not as a percentage of the investment portfolio.

Additional consumer protection to be by way of PI insurance.

Annual licence fees to be increased.

An Audit team to be set up by the regulator to carry out random and regular audits of license holders to ensure compliance. Audit fees to be paid by the license holder.

Abolition of FOS as the external dispute resolution body and it to be replaced by a Tribunal with better and more appropriate legal powers.

Abolition of FOS membership fees.

The Tribunal to be required to establish a central complaint register and deal with all complaints.

Tribunal to self fund based on a user pay system.

The Banking/ Financial Ombudsman's service to be retained as a separate entity to deal with industry complaints, other than Financial Claims. This service to be provided by the government.

Replace ASIC as the Regulator of the Financial Advisory System. The new Regulator to be provided with greater powers to enable it to better enforce compliance.

Over many years the protection afforded to consumers under corporations law have been greatly disregarded by ASIC.

Licence Holders have taken advantage of this situation and have carried on their business' to maximize their profits without any concerns or regards for their client's best interests.

In this submission I have mentioned CBA/CFP as an example of the above statement; however there have been a substantial number of other organizations where the financial welfare of consumers has been greatly affected.

Unfortunately a great number of these affected consumers have been ones that could least afford to suffer the financial losses which were caused by the greed of license holders and the no care attitude of ASIC.

Should you require additional information please contact me.

Yours faithfully

Silvio Crisafi, B Ec. CPA, NTAAF, ACIP.