Submission
to
Parliamentary Joint Committee on Corporations and Financial Services
Inquiry into Financial Products and Services in Australia
as a preliminary submission to this inquiry
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A review of recommendations for UK Regulatory Changes by UK Financial Services Authority (FSA) in its publication "Retail Distribution Review", November 2008

The UK FSA's proposals discussed in this document, represent a very important next-step towards better consumer outcomes. Australia needs to adopt recommendations in the UK FSA's proposal and go even further. This document focuses on what Australia can learn from the UK FSA's proposal. A subsequent submission will focus in more detail on how Australia's regulatory system might be modified to achieve better outcomes for consumers.

It is time to give consumers of financial advice a fair go. Remuneration practices and conflicts of interest in the financial planning industry are very complex and it unreasonable to expect consumers to appreciate how these can and do taint the advice. The Financial Services Reform Act attempted to address this issue through disclosure – but clearly this has not achieved the desired outcome – particularly when we see 70-page Statements of Advice that the average consumer has no reasonable chance of comprehending.

Therefore it is time to take the next regulatory step. Consumers need to be empowered by 1) giving them greater control over advisor remuneration, 2) giving them greater control over commissions that are paid from their account balances, 3) ensuring that ALL payments by a product provider to the advisor (and all other conflicts of interest) are disclosed in a manner that the consumer can understand, 4) enabling financially naïve consumers to be able to readily able to distinguish a financial product salesperson from an advisor who is acting in the clients best interest, 5) ensuring that all advisors properly disclose all relationships with any product provider – in a clear concise and effective manner.

Consumers want conflict-free advice. The regulatory system needs to be adjusted to facilitate, accommodate and encourage the provision of conflict-free advice. Many outside the financial planning and funds management industry can see the need for conflict-free advice. But clearly many (if not most) of the participants in the financial planning "industry" refuse to recognise or acknowledge or facilitate this need – vested interests – conflicts of interest.

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Attachments:
- FSA's "Retail Distribution Review" November 2008
- AFR 4/4/09 "Sort advisers from product sellers" former high court chief justice, Sir Anthony Mason "criticises Australian laws for allowing a financial product seller to describe themselves as a financial adviser".
- AFR 4/4/09 "Why your adviser got it so wrong" - including calls for separation of product sales from advice.
- BFPPG 23/3/07 Submission about disclosure of factors which might influence under the FSRA – Sir Anthony Mason says "clear disclosure of factors which might influence in itself, is not sufficient". Explanation provided

Reference: For a discussion of conflicts of interest http://www.puzzlefinancialadvice.com.au/conflicts.htm

Executive Summary:

The UK FSA's objective is *"to ensure consumers can distinguish between:*

- *independent investment advice and*
- *financial product sales."*

If ***Storm Financial*** was clearly identified as a financial product sales business (with adequate warnings of the risks of this style of "advice"), fewer consumers may have lost money. We agree with the FSA that consumers would benefit if it were easier to distinguish between independent investment advice and financial product sales. We endorse the FSA's objective. Please note that the FSA is focusing simply on investment advice and has not attempted to deal with risk advice (insurance) or other types of financial advice.

Puzzle Financial Advice recommendations:

1. **Remuneration for advisors.** Product providers should not be allowed to set remuneration terms for advisors, and should require advisors to set their own charges. Also any payment for advisory services made through the customer's product or investment must be funded directly by a matching deduction from that product or investment made at the same time as that payment.
    - **Empower investors.** Further to FSA's recommendations, we recommend that investors be empowered to direct any product provider that any commission be rebated to investor. This helps to address the imbalance in the relationship between investors and advisors and helps investors ensure advisors deliver a valuable service.
    - **Regulate to change products so that independent advisors can use term "independent".** We recommend making it easier for an Australian advisor to comply with requirements to use the word "independent" - without weakening the spirit of the law. Specifically, we note that the lack of being able to direct all fund managers to rebate trailing brokerage (and volume bonuses) is a major impediment in Australia, to many advisors complying with ASIC's current interpretation of FSR's requirements regarding use of the term "independent". All products need to be required to be able to accommodate the rebating of all commissions to the benefit of the client.
2. **Use of the term "independent advice".**
    - Those wishing to provide "independent advice" "be required to provide unbiased, unrestricted advice based on a comprehensive and fair analysis of relevant markets." We support this recommendation of the FSA proposal.
    - We recommend that Australia go further than FSA's recommendations. Specifically:-
        - ***We recommend that if an advisor is to claim they provide "independent advice", that the advisor must be working towards conflict-free advice.*** Disclosure of conflicts of interest would not be sufficient.
        - ***We believe that some conflicts of interest are simply not consistent with "independent advice".*** For example, it needs to be recognised that an advisor who is hired to sell product, has an irreconcilable conflict which puts the representative's employment obligations ahead of the best interest of the client. This is not consistent with the concept of *"independent advice."*
        - We believe that advice should not be deemed to be independent if a product provider holds any form of financial interest (eg ***ownership***) in the advisor.
3. The term **'Professional Financial Advisor' (PFA) be available for use by independent advice providers** – so that consumers can differentiate independent advice providers from sales people (as per the recommendation of the FSA's Professionalism Group).
4. "An over-arching **Professional Standards Board,** with similar powers to standards boards in other professions, is established to provide a common framework for professional standards across all advice channels". This PSB would need to be both independent of product providers and to be seen to be independent of product providers. There is probably merit in having a Professional Standards Board for product sales people and a Professional Standards Board for independent advice providers, in recognition that these are two very different roles AND to help minimise the risk of the Professional Standards Board for independent advice providers becoming a captive of product providers.
    - *Currently basic professional and regulatory standards are not being enforced. Until they are, there is no point trying to "raise the bar".*
    - *To date a large portion of efforts to supposedly"raise the bar" have been FORM and not substance. A focus on form causes us all (and our clients) extra COST in time and money. Worse, these efforts potentially mislead the public into believing that something substantive is being done. To the extent the "bar is raised", it needs to focus on SUBSTANCE and not FORM. For example, the focus needs to be on whether the client is getting a good outcome, whether there is a "reasonable basis" for the advice, and that the advice is "reasonable in the circumstances." That is, the focus needs to be on the basics.*

Note: Many good experienced advisors seek to gain their own AFS Licence because, in our regulatory system, gaining your own license is the only way that the advisor can adequately managed the conflicts of interest caused by our regulatory system – removing impediments that otherwise get in the way of getting the best result for the consumer. Discussion Appendix C.

Discussion of recommendations.

The Problem:

The FSA's proposal was to create a regulatory environment to ***"ensure consumers can distinguish between independent investment advice and financial product sales."*** So it is important to note up-front that the FSA's recommendation is primarily about independent advice, not independent advisors – a very important distinction.

As the FSA recognise, currently it is very difficult for consumers to identify whether they are dealing with a financial product salesperson or an independent advisor. A financial product salesperson's top priority is to sell a product. A professional independent advisor's top priority is to do provide the best possible advice to the client. Very clearly financial product sales people seek to promote themselves in a manner that is meant to mislead and deceive clients into believing that they are independent (and non-conflicted), so as to make it easier to make a product sale. In the interest of consumer protection, the distinction between independent advisors and financial product sales representative.

According to Australian Financial Review 4/4/09 article **"Sort advisers from product sellers"** at the recent SPAA conference, *"former higher court chief judge Sir Anthony Mason criticised Australian laws for allowing a financial product seller to describe themselves as a financial adviser. 'Indeed our system enables a product seller to adopt the disguise of a financial adviser and endows that disguise with the aura of legitimacy by calling him a ^licensed^ financial adviser.'"* It is very easy to see why financial planners as whole, can never be regarded as a profession, while financial product sales people are allowed to use the same title (financial planner) as the professional advisors. In the interests of consumers, it is time that the blurred line between sales and advice is made clear – and that AFSL representative be forced to decide which side of the line they are on – the sales side – or the advice side.

Recommendation 1. Remuneration for advisors.

The UK FSA is seeking to ensure that product providers not be allowed to set remuneration terms for advisors, and require that advisors to set their own charges.

We recommend new requirements to reduce the conflicts of interest inherent in remuneration practices and improve transparency of the cost of all advisory services.

Specifically recommend:

- Adopting FSA recommendation that *"For independent advice to be perceived as truly independent, new requirements remove product provider influence over adviser remuneration and advisers are required to set their own charges for advice. Product providers not allowed to play any role in remuneration."*
- Adopting FSA recommendation that *"Any payment for advisory services made through the customer's product or investment must be funded directly by a matching deduction from that product or investment made at the same time as that payment."*

Related issues:

- **Empower investors.** Further to FSA's recommendations, we recommend that *consumers be empowered to be able to direct any product provider that any commission is to be rebated to consumer.* All products would need to be required to be able to accommodate this flexibility. This requirement ensures that there is an onus on the adviser and dealer to deliver service in exchange for any payments related to a client's investment. Therefore, if the consumer is unhappy with the advisors service, the consumer cut off payment of that advisor by directing the product provider to rebate the commission to the client's account.
- **Regulate to change products so that independent advisors can use term "independent".** The lack of being able to direct all fund managers to rebate trailing brokerage (and volume bonuses) is a major impediment in Australia, to many advisors complying with ASIC's current interpretation of FSR's requirements regarding use of the term "independent".

  ASIC's interpretation of current rules (on the use of the term independent) require every cent of commission to be rebated or refunded to the client within a very short period of time. The current rules are an administratively impractical, in that it would require:
  - that an advisor who wish to call themselves independent, would require a very costly administrative process to provide these rebates and refunds (noting that ASIC does not regard simpler approximation methods as being acceptable) OR
  - the advisor would have to avoid recommending some products which were in the best interests of the client.

Therefore, if regulations required that ***all*** financial products could facilitate commission rebates, then an independent advisor would be able to:

- recommend all the best products and
- be readily able to rebate all commission and
- so comply with ASIC's requirements much more readily, without the impractical cost burden that currently would be required.

Recommendation 2. Use of the term "independent advice."

- **Recommendation 2A.** The UK FSR is seeking to ensure that **"independent advice providers need to provide unbiased, unrestricted advice based on a comprehensive and fair analysis of relevant markets**." We think this is a self-evidently good thing. Australia should ensure that for an Australian advisor to describe their advice as "independent advice", they also should pass this test.
- **Recommendation 2B.** Going beyond FSA's recommendation:
  - **Recommend 2B-1.** If an advisor is to claim they provide "independent advice", then the advisor must be working towards **conflict-free advice**. For independent advice providers, disclosure of conflicts of interest would not be sufficient. The test of whether the advisor is conflict-free needs to be a rising bar, such that within 2 years virtually all material conflicts of interest have been eliminated.
  - **Recommendation 2B-2.** Some conflicts of interest are simply not consistent with "independent advice". For example, it needs to be recognised that an **advisor who is hired to sell product**, has an irreconcilable conflict which puts the representative's employment obligations ahead of the best interest of the client. This is not consistent with the concept of "independent advice."

    There are clearly, financial product sales businesses who are independently-owned and there are financial product sales businesses which are institutionally-owned.

    Likewise, it is very clear that a primary reason fund managers own financial planning businesses is to distribute (sell) their own products. These is further discussion of financial planning subsidiaries of funds managers being in the product distribution business below.

    Then there is **Storm Financial.** What went wrong there? Superficially (from press-reports) it would seem that contributing factors were that:
    - Storm Financial was a product sales business – selling/distributing their own Storm-badged products.
    - Having their own Storm-badged products makes Storm a product provider - so it would seem that Storm was making money from any fees and commissions that were charged to the client AND also earning a share of the management fee of the products they were selling. In summary, it would seem that this was a very highly-conflicted business.
    - There needs to be adequate consumer warnings about product sales businesses – including that a product sales business is there to sell you a product as top priority – and that product may not be appropriate to your needs. This issue needs to be discussed on ASIC's FIDO web site and should be disclosed at the front of any product sales proposal. (Note: Statements of Advice from product sales businesses would be, in many cases, better labelled as "Product Sales Proposal", so a consumer can see more clearly what the true nature of the document really is.)
    - Storm Financial also seems to be a an excellent example of a key problem in our regulatory system – the focus on FORM instead of SUBSTANCE. From what we have heard, Storm Financial produced large Statements of Advice which had the required FORM of a Statement of Advice – but it seems like it was poor advice. The FORM of the advice obviously did not protect the consumers. Therefore the regulatory focus was on the wrong issue. Clearly the regulatory focus needs to be shifted to the quality of the advice. The excess focus on FORM has added cost to consumers and largely has provided no consumer benefit. Worse still, the focus on FORM rather than SUBSTANCE has allowed many to create the appearance of quality where in fact there was none. So the focus on FORM actually contributes to the consumer being misled and deceived. We will look to deal with this issue further at this issue, in a follow-up submission.

  - **Recommendation 2B-3.** An advisory firm should not be deemed to be independent if a product provider holds any form of financial interest in that firm. This goes further than FSA's initial recommendation.

The FSA document supports the view that advisors owned by product providers, be allowed to call their advice independent on the basis that "*We are also mindful that in current economic conditions, and given our wider concerns with the sustainability of the sector, we should be cautious about acting to limit access to capital.*". We do not think this is a valid argument. The amount of capital required to take up an AFSL licence in Australia (or it's equivalent in the UK) is comparatively small and therefore is not an impediment to 'independent dealers" coming into existence. In particular:

- If an adviser cannot raise this small amount of capital themselves without going to a product provider to source these funds, it would seem that the advisor probably does not have the skills required to give financial planning advice, let alone be granted an AFS licence.

We agree that it is possible that conflict-free advice is achievable where an AFSL is owned or partly owned by product provider. However:

- In Australia, (seemingly unlike the UK) there is clear evidence of a strong correlation between ownership links and distribution of the product provider's products(see below), indicating that (at least generally) ownership links tend to go with a high degree of advice which is tainted by conflict.
- Therefore, if a product-provider-owned-adviser was to be allowed to use the term "independent advice" in Australia, then they should need to have to comply with extra tests of "independence" such as:
  - less than 10% of products recommended (by dollars and number) could be from the related product provider. The definition of product to include platforms where the AFSL shared in part of the revenue from the MER of the platform.
- We think it is the exception rather than the rule, that non-conflicted advice is available from advisers owned by product providers. We believe that Berna Collier (former commissioner of ASIC) summed this up well (see below) when she said that product providers owned financial planning groups because they wanted to be in the distribution business.
- Product providers use a range of often subtle means of influencing their advisors, in recommending the product providers products (and platforms.) Many of these means of influencing the advice would be difficult to detect in an audit of the business – but would be reflected in the behaviour (recommendations) of the advisors. However, product providers also have less than subtle ways of influencing their advisors such us "if you don't sell your quota of our product, your fired." Clearly if an advisor is employed to sell product, then they cannot be providing independent advice.
- Therefore we believe that FSA is being too liberal in who can call themselves independent. However, any step forward on this front must be good for consumers. Ideally much bigger steps down this path are needed.

- FSA, is of the view that an adviser who (directly or indirectly) has ownership relationship a product provider, could say they were providing independent advice. (Section 4.58). They say
  - "We have investigated a number of advisory firms that are currently owned or part-owned by providers to see whether they place a disproportionate amount of business with their parent. We did not find evidence of a systemic cross-industry issue at present."
- Maybe there are different issues in Australia as can be seen from the following findings:
  - ASIC Commissioner Berna Collier said in 2003 in a presentation to the Australian Investors Association *"The perception at present in many circles however is that **fund managers do not own financial planning groups because they want to be in the advice business. They want to be in the distribution business**."*
    - A more complete quotation from Berna Collier from her paper when commenting on the 2003 Shadow Shopping Survey of financial planners is as follows.
      - *"About 70% of financial planners have ownership links to product suppliers. Perhaps 95% accept commissions in some form from product suppliers. The perception at present in many circles however is that fund managers do not own financial planning groups because they want to be in the **advice business**. They want to be in the **distribution business. If there is no difference between the two then I suggest that the criticisms of this industry will continue.**"*
      - So from the last sentence, you can see that it was obvious to Berna Collier that

financial product sales needed to be separated from advice.

- Berna Collier's view that fund managers own financial planning groups because they wan to be in the distribution business, can be seen by looking at documents such as 18/9/08 presentation by the CEO of AMP where he clearly describes AMP's financial planners as "distribution channels". http://library.corporate-ir.net/library/14/142/142072/items/308113/pres.pdf
- ASIC's enforceable undertaking on AMP relating to super switching. http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/AMP_enforceable_undertaking.pdf/$file/AMP_enforceable_undertaking.pdf Section 2.4.3. of this enforceable undertaking says that "Between January 2005 and October 2005, ninety three (93) percent of all new investment or superannuation business resulting from the advice of AMPFP Planners was invested in AMP products. This is not atypical of dealers"
- AFR 8/12/08 article by Barrie Dunstan "Super investors content for now" reports on the latest Roy Morgan research of consumers of financial advice that:
  - "the latest figures from large-scale research by Roy Morgan Research also shows that most people who go to an advisor tied to one of the big financial groups continue to be stuffed with funds managed by the parent group – and in many cases may be unaware of the ties".
  - "Morgan's poll also raises questions whether clients realise some financial planners, though not carrying the parent brand, are part of a larger group. Clients can identify 'tied' planners using the parents name, but fail to identify other members of the group trading under other names. So 69 percent of people identify an AMP agent as 'tied' but ***only 40% knew that a Hillross planner was tied to AMP***. There were similar results in the MLC-NAB group for agents carrying the Godfrey Pembroke and Apogee brands. In Commonwealth Bank of Australia for Financial Wisdom, AXA's Charter and ING's Retireinvest. More worrryingly, significant numbers of clients of AMP (28 per cent of the survey) and AXA (31 percent) still told the pollsters, agents carrying the parent brand on their offices or business cards were 'independent' financial planners." ***Clearly there is a major problem of misleading and deceptive conduct problem here.***

So while in the UK, there may be not evidence of a systemic problem related to the conflicts of interest that come with ownership connections with product providers, in Australia this issue has been well documented – and well understood for those within the industry.

Recommendation 3.

The term **'Professional Financial Advisor' (PFA)** be available for use by independent advice providers – so that consumers can differentiate independent advice providers from sales people (as per the recommendation of the FSA's Professionalism Group). This clearly is consistent with the FSA's objective to ***"ensure consumers can distinguish between independent investment advice and financial product sales."***

Recommendation 4.

"An over-arching **Professional Standards Board,** with similar powers to standards boards in other professions, is established to provide a common framework for professional standards across all advice channels". This PSB would need to be both independent of product provides and to be seen to be independent of product providers. There is probably merit in having a Professional Standards Board for product sales people and a Professional Standards Board for independent advice providers, in recognition that these are two very different roles AND to help minimise the risk of the Professional Standards Board for independent advice providers becoming a captive of product providers.

On raising professional standards, let us make some general comments:

- "Raising professional standards" always sounds like a must-do because it is great mother-hood statement. And yes, it might be desirable as in equivalent professionals, that new advisers
  - are required to get a degree (or equivalent) in financial planning before giving advice and
  - be required to do a professional year with a qualified advisor, before being able to give advice.
- Too often in the past, calls to "raise professional standards" focused on issues and items that were about FORM but provided no improvement in the SUBSTANCE of advice, thus adding to the cost of advice, but not its quality. This relates to measure introduced by ASIC (under FSR) and by FPA. Such measures (about FORM and not SUBSTANCE) are pointless and damaging to consumers. In the 6 or 7 years that FSR has been operational, there has been growing awareness that in the implementation of FSR, that has been too much emphasis on FORM and not enough emphasis on the

SUBSTANCE related to the key principles identified in FSR.

On the potential creation of a **Professional Standards Board.**

- FSA proposes that this is a group initially be a subsidiary of the FSA. A potential problem with this is that in Australia, ASIC may not be well-equipped to determine what "professional behaviour is or should be."
  - That being said, the benefit of setting up a Professional Standards Board as a subsidiary of ASIC would be that it would be more conflict-free than giving this role to a group like the FPA. That being said, because there is a regular employment movement of staff between product providers and ASIC, there is potential for a PSB under ASIC to become, in effect, captive of fund managers – or at least conflicted.
- FPA is equally unfit to be the controller of a Professional standards board because since 80% of its members are representatives of the financial planning subsidiaries of product providers:
  - FPA is more about looking after the interests of the financial planning subsidiaries of product providers (or their parents) than professional standards (i.e. FPA financially cannot afford to cross swords with the product providers as they are the primary source of their income, directly or indirectly – and therefore it is irretrievably compromised)
  - many good and professional dealers and advisors have been alienated by the FPA because of the FPA's conflicted position because of their relationship with product providers, and because of the behaviour which leads from that.
- Ideally, a Professional Standards Board to oversee INDEPENDENT ADVICE should be a professional body whose members were solely non-conflicted advisors.

How do you raise professional the standards?

- **Currently basic professional and regulatory standards are not being enforced. Until they are, there is no point trying to "raise the bar" - either for professional standards or regulatory standards.** Given this reality, efforts to "raise the bar" seem to be more about trying to convince consumers that the quality of advice is improving, which I do not believe is the case. So in fact, these attempts to "raise the bar" become a cruel hoax on the consumer – misleading and deceptive conduct.
- Note: The FSA say they are not looking for an increase in CPDs per year which is good since CPDs are part of the FORM over SUBSTANCE problem.
- Too often, attempts to "raise professional standards" translate into requiring more FORM (i.e. The form or training in terms of CPD hours, attending courses) rather than SUBSTANCE. The problem with these things are that for some (eg product distribution subsidiaries of fund managers) it is just too easy to make a mockery of the system though self-assessment whereas for others (eg small dealers seeking to provide cutting-edge advice with world's best research), the system does not count the vast bulk of the ongoing education and research. Therefore the new CPD system is not really about "raising professional standards", but really a sham and a fraud with no consumer benefit, which have the potential to mislead the public into believing that standards have been raised, and which unreasonably raise costs (in terms of time and money) for some sectors of dealers and financial planners while imposing minimal imposition on others. Please note that:
  - other professions such a the accounting profession (eg chartered accountants), allow self-assessment where very experienced professional accountants can determine the most appropriate ongoing education – whether it be through formally structured seminars or courses – or through self-learning.
  - a lot of good ongoing education receives no CPD points. For example:-
    - some of the best ongoing education material is available via the Internet from independent analysts – but this material does not receive Australian accreditation for CPD purposes
    - Likewise there are no CPD points for personal analysis of the then-current specific risks of investment sectors and relevant products.
    - There are no CPD points for the BFPPG conference, a conference of AFS Licensees which represents some of the highest concentrations of advice-focused advisors, seeking to provide quality advice rather than product distribution.
  - A well qualified and experienced advisor has learned how to self-learn most of what they need to learn in an ongoing sense. Universities teach students how to think and how to learn. A significant percentage of advisors have undergraduate degrees. Many have masters degrees. A number of them have PhDs. A lot of these advisors have the competence and capability to structure their ongoing learning and do it through self-learning. Requiring these advisors to attend training that has been designed to suit the mass market of newcomers to the industry, would be a pointless imposition in terms of extra time and cost to these advisors – and hence to

their clients.

- that officially accredited CPD hours are often the least useful aspect of ongoing training. For example:-
  - A lot of sessions that receive CPD points are of very low learning content. (eg many fund manager provided presentations).
  - A lot of CPD sessions are run by fund managers are more about promoting the manager and not consistent with the FSA's requirement of independent advisors namely that "**provide unbiased, unrestricted advice based on a comprehensive and fair analysis of relevant markets**." This is generally best done aware from the influence and presence of fund managers.
  - A lot of available ongoing official CPD points may have value for new inexperienced financial planners starting the education learning curve, but is of little value for highly experienced planners who have been through that material.
- Rather that "raising professional standards", FPA's new "professional standards" seem to be more about increasing FPA revenue (selling more FPA courses i.e. FPA's conflict of interest)
  - For example, on 3/11/07 a complaint went in to FPA, as a result of the Roy Morgan research which found that most clients of financial planning subsidiaries of fund managers (eg Hillross as a AMP company) thought that they were dealing with an independent advisor and were not aware of the relationship between the advisor and the fund manager. The complaint to the FPA was that this indicated a very widespread failure to comply with FPA rules of professional conduct. Specifically:
    - Rule 103 said "Rule 103 A Principal member shall ensure that prospective clients are clearly informed in writing about:
      · (e) the nature and extent of any significant financial relationship or connection with a product supplier and any other material conflict of interest."

    It was also pointed out that this behaviour is clearly also both misleading and deceptive conduct which was a breach of FPA's Rule 101 which said "In the conduct of professional and business activities, a member shall not engage in any act or omission of a misleading, deceptive, dishonest or fraudulent nature."

    FPA refused to take any action against the offending principal members of the FPA. One of the excuses that FPA gave for not investigating this complaint was that they did not have sufficient resources to investigate this complaint. So again, **there is no point trying to "raise the bar" when the current rules seem both unenforced and unenforceable.**

  - Likewise, ASIC does not seemed to be keen to investigate the findings of Roy Morgan's research that suggest that there is a widespread failure to disclose *"factors which might influence"* and the related misleading and deceptive conduct. This is quite puzzling because Corporations Law clearly states that an SoA must disclose *"any associations or **relationships between the providing entity**, any employer of the providing entity, the authorising licensee or any of the authorising licensees, or any associate of any of those persons, **and the issuers of any financial products**; that might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice;"* Section 947C (2)(f)(ii). The SOA also must be *"clear concise and effective"*. If this relationship is disclosed, Roy Morgan's research would such that the disclosure is not effective.

Appendix A. Key points from FSA's "Retail Distribution Review" November 2008

Note: the FSA proposal does not attempt to cover risk advice or mortgage broking. Therefore, this proposal is discussing the use of the term INDEPENDENT in the context of investment advice.

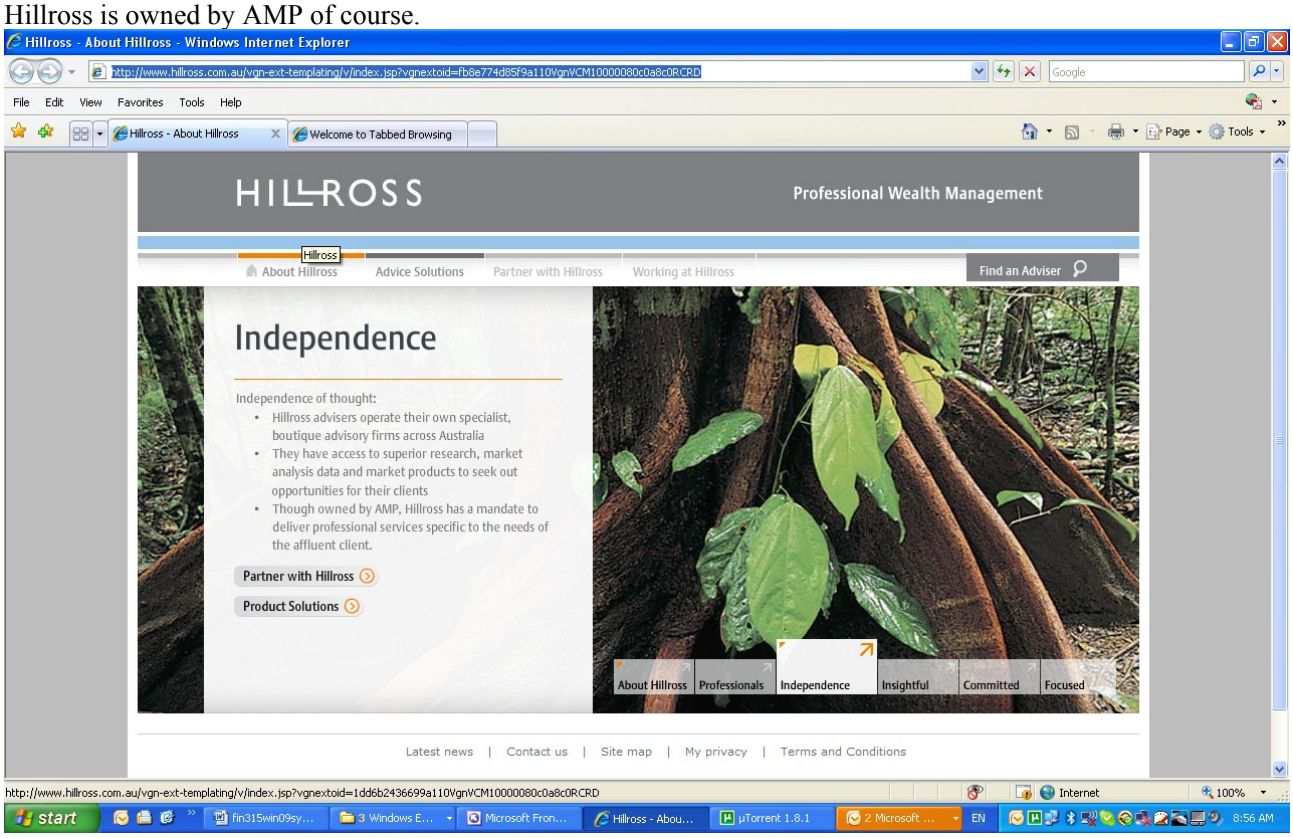
Quotes from FSA's document – Introduction points 3 and 10.

"There are three measures that we regard as most fundamental to delivering the market outcomes that we set out to achieve and which will materially alter and improve the interactions between consumers and the industry. These are to:

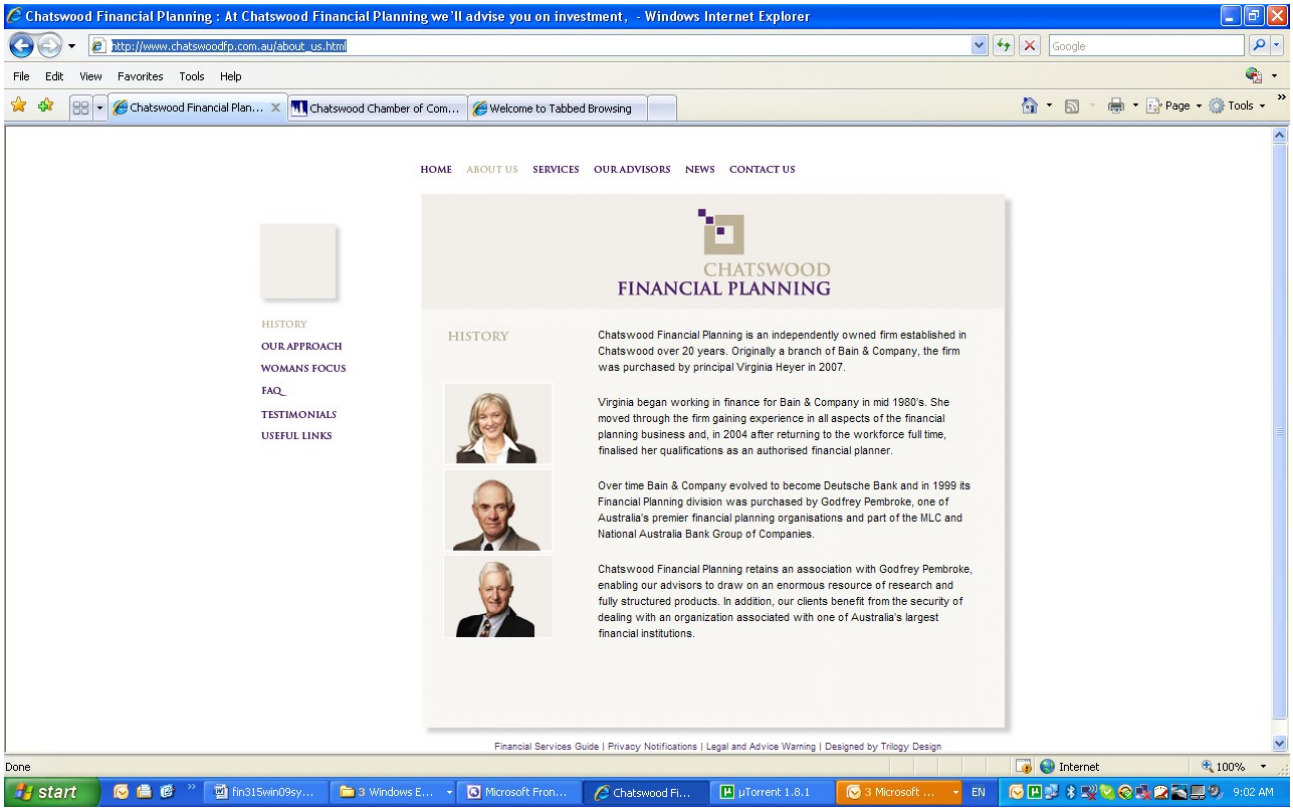
- *improve the clarity for consumers of the characteristics of different service types and the distinctions between them;"*
  - Specifically on "Clarity of Services" (Introduction point 10) the FSA have as a goal that
    - *"The regulatory landscape distinguishes between investment advice that is independent and sales services"* and that
    - *"Independent advice is truly independent: new requirements make clear that independent advisers, not just those advising on packaged products4, need to provide unbiased, unrestricted advice based on a comprehensive and fair analysis of relevant markets."*
- *"raise professional standards; and*
- *reduce the conflicts of interest inherent in remuneration practices and improve transparency of the cost of all advisory services."*
  - Specifically on "Remuneration" (Introduction point 10)
    - *"For independent advice to be perceived as truly independent, new requirements remove product provider influence over adviser remuneration and advisers are required to set their own charges for advice. We would prefer to go further and not allow providers to play any role in remuneration"*
    - *"by the end of 2012, any payment for advisory services made through the customer's product or investment must be funded directly by a matching deduction from that product or investment made at the same time as that payment."*

Appendix B. Examples of how currently, the term "independent" is abused and mis-used.

Hillross is owned by AMP of course.



The following group are NAB reps.



Appendix C. FSA's recommendations in the context of the Australian regulatory framework.

The UK focused on the concept of "independent advice" and talks to some extent about "independent advisors" (eg FSA proposed "to modernise the requirements that independent advisers have to meet in making suitable recommendations to their clients.") In Australia, regulatory focus is on the Licensee (AFS Licensee) and the structure of Corporations Law focuses on:-

- the "advisors" as merely pawns of the licensee, where in effect, any advice provided by an advisor, is the responsibility of the AFSL – as if the AFSL itself provided that advice.
- where the AFSL is responsible for supervision and compliance of their representatives and authorised representatives.

So in that context, the equivalents to the UK FSA's proposals would need to be seen to refer to the "independent advice" and "independent licensees". Therefore it is important to reflect on the implications for UK FSA recommendations if UK FSA proposals were to be implemented in Australia.

Discussion:

Bottom line: Many good experienced advisors seek to gain their own AFS Licence because, in our regulatory system, gaining your own license is the only way that the advisor can adequately managed the conflicts of interest caused by our regulatory system – removing impediments that otherwise get in the way of getting the best result for the consumer. A good experienced advisor (with their client's best interests at heart) therefore naturally seeks their own AFS licence to help create an advice environment in which the advisor has the best chance of getting the best result for the consumer.

In the provision of financial advice there are four parties (six if you include the client and financial product organisation) and they are;

1. Financial Planner/Adviser- the one who deals with the client
2. Responsible officer - who sets the terms within advice is provided and the compliance representative of the licensee
3. Director - the shareholder representative and in control of both the financial planner and responsible officer
4. Shareholder of the AFSL - often a financial product organisation

Both the responsible officer and financial planner report to the director. The responsible officer sets the approved product list and other such terms. The financial planner must act within these terms. The director controls both the financial adviser and responsible officer. *Consequently, the director can control how advice is provided* (they direct the traffic so to speak). The director is accountable to the shareholder representative however, they are not really accountable for any misadventure (i.e. *Despite the fact that Corporations Law makes it clear that advice is the responsibility of the AFSL, strangely it is the financial planner who is banned, it is the financial planner that goes to jail. This seems an unexpected and inconsistent outcome from the design of Australia's regulatory system*.).

The financial adviser has most of the responsibility but no authority and yet they must also deal with conflicts of interest – their personal conflicts of interest and the conflicts of interest of their employer and their licensee.

This outcome of our regulatory system therefore seems to guarantee bad outcomes for consumers in that:

- it is the directors of the AFSL which control the advice that can be given on behalf of the AFSL
- yet, the directors of the AFSL are not being held accountable when bad outcomes for consumers occur.

Furthermore, the directors of the the AFSL have under Corporations Law primary responsibility to their shareholders – at the same time that they control the advice which is being provided.

Therefore, where the AFSL is controlled by a product provider (eg fund manager), necessarily the needs of the clients (advice-receiver) become secondary to the needs of the AFSL owner (the product provider).

This is precisely why, under our regulatory system, many good experienced advisors seek to obtain their own AFSL. If a good experienced advisor controls their own AFSL, then they wear all four hats discussed above. Therefore where a good experienced advisor controls their own AFSL, they are in a position to deal with the conflicts of interest (other than simply disclosing it).

This is a key reason why the independent advice sector is very important to many consumers. Yes, it is true, that independent advice advice does not guarantee quality of advice, but it is a pre-requisite for the best advice.