

28 August 2009

The Committee Secretary,
Parliamentary Joint Committee on
Corporations Law and Financial Services
Department of the Senate
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Dear Ms Batge,

INQUIRY INTO FINANCIAL PRODUCTS AND SERVICES IN AUSTRALIA

Our Ref: JMS:JPCINQ:250709

I provide a further response to a question asked of me by the Committee on Wednesday related to the legislative mechanisms that could be adopted to ensure AFS licensees and advisers comply with the additional ethical obligations recommended in our submission.

I have reflected on the matter and reviewed the current provisions of the Corporations Act in providing this additional submission.

At a Corporate level, the Committee could consider the following options:

1. Amend section 912A(1) of the Act related to the general obligations of AFS Licensees' to include a positive obligation that the Licensee must take reasonable steps to ensure it has an effective ethical culture consistent with the Australian Standards on Governance so as to provide financial services covered by the license; or
2. Insert a new section 912A(3) to the same effect.
3. This amendment then links to the breach provisions and civil penalty provisions in Chapter 7.
4. Recommend corresponding amendments to ASIC Regulatory Guidance on Licensee obligations to articulate the types of systems and procedures that would be expected to be implemented for an effective integrity framework.
5. Amend section 912A(1)(ca) to insert a positive obligation on Licensees to ensure representatives comply with the standards of conduct expected of a reasonable prudent adviser.

At an individual level:

1. Restrict the term “financial planner” and include an obligation that the term be linked to a fiduciary standard of conduct;
2. Increase the competencies and training expected of any financial adviser and of those who may be eligible to use the restricted term;
3. Ensure such training and competencies include training in ethics;
4. Amend the provisions related to the appointment and selection of responsible managers to add additional competencies and training in business ethics and governance;
5. Recommend corresponding amendments to ASIC Regulatory Guidance on competencies and training.

I hope this additional information is of assistance to the Committee.

Yours faithfully

June Smith

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June Smith

Principal, Argyle Lawyers Pty Ltd