

Option 4 - A Preferred Financial Services Advisory Regime

Introduction

The recently released Options Paper has much content to be commended and also contains some suggestions that do not appear to be consistent with the stated aims and objectives of the FAA Review process.

Furthermore, the Ministry's approach of seeking answers to pre-set questions by way of response to the Options Paper, with respect, tends to stifle responses in favour of certain directions where underlying assumptions are taken for granted.

For example, on p. 25 in the introduction reference is made to "*conflicted remuneration such as commissions*, and on p. 26 q.14.3 – "*If there was a ban or restriction on conflicted remuneration who and what should it cover?*"

The assumption is that commission is conflicted remuneration and is an issue, when evidence has not been produced to substantiate this. There is the opportunity for conflict of interest in the commission remuneration model, as is there is in every remuneration model, but this is no more than the opportunity to charge excessive fees, or to bill for hours of work not undertaken.

However, the behaviour that leads to conflict should be monitored, supervised, and eliminated.

Similarly, in 4.5 p. 31, q 17 – "*What are the benefits and costs of shifting to an entity licensing model.....?*" – the question assumes that there are benefits and does not call for consideration of the disadvantages, other than costs.

This paper therefore presents "Option 4" which is an amalgamation of the best aspects of all three options and of the existing regime, and contains suggestions from the MBIE Options Paper that have been rejected and why these suggestions are unsuitable.

In alignment with the intention of the FAA Review, Option 4 seeks to -

- Improve simplicity and clarity for the consumer,
- Extend access to the availability of good quality advice without exposing the public to greater risk,
- Reduce compliance costs and complexity for the advisory industry,
- Elevate the standards of advice which the consumer can expect,
- Enhance the levels of trust in the financial services advisory industry from the general public, the regulators, and other stakeholders.

Option 4

Not all sections of the MBIE paper are addressed in the following submission – only those aspects that specifically relate to financial advisers and their role in the market place.

1. Financial Advisers

- All financial advisers, as defined, should be required to be individually registered.
- All financial advisers who offer choice-driven advice to consumers should be required to acquire and display a uniform standard of competency in their chosen area(s) of practice.
- All financial advisers who offer choice-driven should follow an approved process including, but not limited to, client relationship explanation, client discovery, needs analysis, recommendation analysis, and implementation.
- All financial advisers should comply with a Code of Ethical Conduct that places client best interest above all others, includes full disclosure of status, practice, and remuneration, by way of written, verbal, and online statements.
- All financial advisers should be members of an approved Dispute Resolution Scheme.
- All financial advisers should be required to effect Professional Indemnity Insurance.
- All financial advisers should be entered into the Financial Services Provider Register with links to prescribed information on the specific functions and services available to, and searchable by, consumers.
- The term 'financial adviser' is restricted to those practitioners that comply with the above requirements.
- There are no grounds for providing exemptions for members of other professions or professional bodies from these requirements.

2. Sales v Advice.

- Disclosure by financial advisers as defined has already been covered in the Code of Conduct requirement above.
- Those practitioners retained by Qualifying Financial Entities should disclose that their primary responsibility is to their QFE, and explain the functions, duties, and obligations owed to the QFE; a financial adviser retained by a QFE is subject to the Code of Conduct.

3. Replacement of Life Insurance Policies

Replacement of a life insurance policy becomes problematic when the consumer is provided with no material advantage by switching policies or is materially disadvantaged by doing so.

The issue of consumer disadvantage should be addressed by way of a commonly agreed process for replacement business that is entirely aligned with the consumers' best interests.

In practice, replacement of obsolete, or no longer 'fit for purpose' life insurance policies, should be accompanied by a legitimate business case submitted to both receiving and departing insurers, with appropriate remuneration request included.

Monitoring and approval of this process is to be conducted by Compliance Officers at product provider level.

4. Rejected Proposals

- a) The concept of 'expert adviser' is a misnomer and extends the RFA v AFA confusion. All products are 'high-risk' depending upon client circumstances, and the complexity argument has already been discarded.
- b) Entity licensing is fraught with practical difficulties, increased risks, and unintended consequences.
- c) There are no practical or ethical grounds for providing exemptions from the regime. If lawyers or accountants wish to offer financial advice, they should be required to comply with the regime. Nothing in their training prepares them for the financial advice process as outlined in bullet point 3 in #1.