

Part 3 of the Bill sets out additional regulation of financial advice

1. Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?

Southern Cross understands the phrase: "or doing anything in relation to the giving of advice" is intended to make it clear that the duty does not only apply in the moment of giving advice. This appears to be a new development.

As regards to the provision of execution, transactional or information only type services, Southern Cross understands that it must therefore be able to justify why this is in the client's interest as opposed to providing regulated financial advice.

Frequently clients seek these services, even if a financial advice provider offers the opportunity for (what is currently personalised) financial advice.

Southern Cross considers that, as drafted the personal nature of the provision means an assessment of a particular client's circumstances is needed to determine whether not providing financial advice is putting the client's interest first. This will in effect require a comparative assessment. In practical terms this is onerous and simply providing regulated financial advice as a matter of course may be the default outcome.

In seeking to address the real issue of under provision of appropriate personalised advice under the Financial Advisers Act, there is a significant risk that this will force the provision of financial advice in circumstances where clients explicitly do not want it or where doing so is artificial and disproportionate. This will not lead to better informed clients, and over-provision may see all financial advice devalued by clients. This will also likely lead to additional and unnecessary costs.

Southern Cross would like MBIE to clarify that clients can opt-out of this requirement, provided the offer of financial advice is made and the providers can through their sales evaluation and compliance process design maintain standardised approaches for information only type services where those approaches are appropriate.

2. Do you have any other feedback on the drafting in Part 3 of the Bill?

Under the new regime, financial advice providers that engage financial advisers are responsible for those advisers (howsoever they are engaged).

The definition of financial adviser expressly excludes a financial advice provider, which means these individuals do not need to be licensed in their own right (just registered). Such people can provide regulated financial advice. However, all other persons who provide regulated financial advice are required to be licensed. The only distinction is whether it is provided "on their own account". It is unclear which "independent" financial advisers will be required to be licensed and which will fall under a financial advice provider's remit. It also seems unusual that the adviser can link to the financial advice provider without the provider's authority.

Further guidance regarding what financial advice providers should consider when engaging financial advisers to ensure compliance would be useful (in particular, with respect to smaller, individual financial advisers who have linked their adviser registrations with financial advice providers).

Part 5 of the Bill makes miscellaneous amendments to the FMC Act

3. Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?
Yes, Southern Cross believes that to not do so will create moral hazard and unfairly expose financial advice providers.
4. Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?
Yes, while that defence would normally be available, if the Bill creates strict liability it places risk with financial advice providers that they cannot control and may lead to terminating services with non-employee advisers.

Phased approach to licensing

5. Do you have any other comments or suggestions regarding the proposed transitional arrangements?
From February 2019 until February 2021, the 'safe harbour' will enable Southern Cross to continue providing the same advice services that it currently provides. However, it unclear how granular an interpretation will be taken to what constitutes a relevant new advice service.

Southern Cross has some concerns this safe harbour concept is unnecessarily restrictive and will inhibit low risk and or beneficial developments industry wide. Southern Cross has also not seen any impact analysis on industry to justify this approach and absent this, it is unclear whether the transitional arrangements have a sound basis.

Demographics

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