



9 September 2016

By email: submissions@retailbankingremunerationreview.com.au

Re. Independent review of product sales commissions and product based payments in retail banking.

Dear Sir/Madam,

Please find attached a submission into the Independent review of product sales commissions and product based payments in retail banking on behalf of the Financial Planning Association of Australia.

Our submission covers the development of a Code of Ethics which will cover any recipient of remuneration from the sale of products. We recommend that more robust monitoring and supervision arrangements are put in place to monitor compliance with the developed Code of Ethics and appropriate penalties over the long term.

If you have any queries or comments, please do not hesitate to contact Dimitri Diamantes (Policy Manager) or myself at policy@fpa.com.au or 02 9220 4500.

Yours sincerely

Benjamin Marshan

Head of Policy and Government Relations

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 11,000 members and affiliates of whom 9,000 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
 - In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
 - We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
 - The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
 - We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
 - CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
 - We are recognised as a professional body by the Tax Practitioners Board
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ABA REVIEW

FPA submission to:
ABA

9 September 2016

INTRODUCTION

Clarifying the terms of reference, we would consider any benefit where the amount provided is, to a material extent, based on a direct or formulaic relationship with the number of products sold or gross revenue generated from them is within the scope of the review. Such benefits have the potential to influence whether or not a sale is made; which product or service is sold; and the size of the sale.

The FPA accepts that there is a distinction between sales and advice; and that more is expected of advisers than sales people. On this basis and on the grounds that the products covered by the review are typically less complex than advised products, we don't oppose the provision of sales-based incentives in respect of the products on which the review is based. Nevertheless, we believe there is value in managing sales practices by monitoring conduct and assessing it against a code of ethical principles and rules, which could be incorporated into the Code of Banking Practice. ***In particular, a person or organisation should be eligible to receive sales-based remuneration if (and only if) they are bound by a code of ethics.***

The code should be drafted to provide a clear and comprehensive statement of what constitutes acceptable sales practice. While it should be broad enough to anticipate novel situations, it will need to be developed over time to address such changes that are unforeseen.

The focus of drafting and development of the code should be to provide a clear statement of acceptable practice, rather than imposing penalties. However, once expectations are reasonably clear, penalties for breach may be appropriate.

Given the focus of drafting and development of the code, one approach would be to work with relevant external dispute resolution schemes to glean best practice rules and indicia from their body of determinations; and to develop equivalent standards for issues not covered by existing determinations. This approach has the potential to provide consumers and individuals and organisations involved in the distribution process with greater clarity and predictability as to acceptable sales practices; and to help ensure potential breaches are addressed before grounds for complaint arise.

A. Code of Ethics

Potential recipients of sales-based benefits must be bound by code

The FPA recommends that, in order for potential recipients of sales-based benefits to be eligible to receive those incentives, the potential recipients - and all individuals and organisations in the distribution chain that can influence those recipients - should be bound by a code of ethics. This will help encourage good sales practices, due diligence and ongoing management throughout the distribution chain.

All potential recipients should be bound, including sales people (whether employees or intermediaries); distribution teams (e.g. business development team-members); distributors; product providers; and any other individual or organisation in the distribution chain capable of influencing the existence or size of the sale or which product is sold. Further, regardless of how a person's or organisation's remuneration is worked out, any person or organisation in the supply chain capable of influencing the potential recipient of sales-based remuneration in relation to the existence or size of the sale or which product or service is sold, should also be covered by the code.

Scope of code of ethics

The code of ethics should cover sales practices including pressure selling; and a duty to confirm the consumer's general understanding of how the product works and their rights and responsibilities under the product's terms and conditions. It should impose more onerous requirements for complex products, such as margin loans. For example, the duty to confirm the consumer's understanding of the product might require more in-depth questioning of the consumer for a margin loan than a basic deposit product.

The code should also include principles and rules for determining responsibility for those practices. This includes responsibility by the sales person, as well as all individuals and organisations involved in the sale through the distribution chain, including distribution teams, managers, distributors and product providers, based on their research on (and management of) relevant employees and business partners. Consideration would need to be given to what legal arrangements are available to ensure all parties in the distribution chain are bound by the code.

The code should cover activities, such as referral activities, in relation to advice or sales regardless of whether the activity is in respect of products on which the review is based. For example, the code should regulate the pressuring of the person to whom the referral is made, to make an inappropriate sale. This reflects the approach to allocating responsibility already discussed, but also reduces the opportunities for, e.g. managers to avoid the code by shifting risk to someone for whom they're not held responsible.

We would also recommend that the code covers the limits of acceptable practice as to product suitability. Suitability should consider not only the information (and in the case of credit products, advice) provided as part of the sales process, but also whether consumers have been sufficiently questioned to determine whether the product is, in a general sense, fit for purpose and whether the product stays within the limits of what would reasonably be expected of a product of that kind. For example, a cheque account that ceases to provide a cheque facility; a loan where the interest rate moves materially away from an appropriate benchmark; or a mortgage offset facility that materially reduces the relative interest saving of the facility would be obvious examples. Obviously, consideration would also need to be given to competition law issues.

Similarly, if a product provider's products are sold by sales people through a third-party distributor, the distributor should bear some responsibility for their due diligence in assessing the product. For example, a bank's sales force may sell home and contents insurance of a third-party insurer.

We would also recommend that the scope of the review be broadened. We question whether the retail and small business definitions will unduly constrain attempts to improve consumer outcomes. This is because asset value, income and, for business, number of employees may be poor proxies for the consumer's ability to protect their own interests.

While we accept that most of the products on which the review is based are simple enough that the review's retail and small business parameters aren't inappropriate, we are particularly concerned about more complex products such as margin loans. For such complex products, the code shouldn't be able to not apply unless: based on the consumer's education, training or experience, the consumer is likely to be sufficiently financially literate to understand the product; and the consumer also chooses not to be treated as a retail client. Where the consumer is not a natural person, the code should apply unless the authorised individuals representing the consumer meet the financial literacy test – e.g., in the case of a company, authorised directors or employees.

Monitoring and disciplinary action

As mentioned above, the focus of drafting and development of the code should be to provide a clear statement of acceptable practice, rather than imposing penalties. However, once expectations are reasonably clear, penalties for breach may be appropriate.

To be effective, the extent of compliance with the code would need to be monitored closely by an independent organisation and disciplinary action taken for breaches. Organisations and relevant individuals bound by the code should also be required to test compliance with it through their internal and external audit process. Disciplinary action would need to constitute an effective penalty (i.e. it will deter the relevant inappropriate behaviour).

Further, penalties should apply wherever in the distribution chain there is responsibility for inappropriate sales practices. Where financial penalties are imposed, it would generally be appropriate to use these amounts to provide for compensation for consumers.

Consideration would need to be given to whether and how the existing dispute resolution mechanisms could be adapted to fulfil the monitoring and disciplinary function. While monitoring may identify more issues that require resolution, there is also the potential that increased scrutiny will reduce the chances of sales practices that constitute grounds for complaint. Also, if the drafting and development of the code is done thoroughly, increased clarity and predictability will allow providers to avoid grounds for complaint before they arise.