Fairness of Regulation to Market Intermediaries and its Global Trends

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Australian Regulation of Intermediaries

- Broad themes underpinning Australian regulation
- Need to consider client’s interests
  - Future of Financial Advice (FOFA) requirements
  - Remuneration restrictions
  - Proposed distribution obligation
- Professional standards and competence
- Structure of operations
  - Potential separation of functions
  - Performing services from offshore
- Cost of doing business
  - Recovery of regulator costs
  - Obligations to provide information to regulators
Sheer volume of regulatory change imposes cost

Fairness factors in a regulatory context

- Disproportionate compliance and direct costs
- Inefficiencies for the intermediary
- Structural costs
- Lack of harmonisation with global initiatives
- Data requests that do not benefit the intermediary or client
Act in Client’s Best Interests

- **Future of Financial Advice (FOFA)**
  - Commenced July 2012 and mandatory July 2013

- **Ban on conflicted remuneration structures**
  - Includes commissions in certain circumstances
  - Exemption for general advice
  - Exemptions for brokers unrelated to product

- **Duty to act in best interests of client**
  - Applies to retail investors

- **Obligation to renew agreements**

- **Annual fee disclosure statement**
Act in Client’s Best Interests

- Specific regulation of broker remuneration
  - Issue raised in Financial System Inquiry
  - Commission based remuneration based on volume and value
  - May be outside FOFA reforms
  - Government agreed in principle with review to follow

- Product Design and Distribution Obligation
  - Initially considered in the 2014 Financial System Inquiry
  - Requires distribution to target market
  - Noted AFMA Product Approval Principles

- Client Monies Reform
  - Protection from failure of intermediary
Professional Standards

- Key initiative of current Government
- Enhance competency of providers of financial services to retail investors

**New requirements:**
- All advisers to hold degree qualification by 2024
  - No grandfathering
- Exam requirements
  - New advisers from 2019
  - Existing advisers by 2021
- New advisers have professional year
- Code of ethics and association membership
ASIC recently reviewed potential conflicts

- Sell –side research and corporate advisory
- Proper handling of non-public information
- Management of conflicts
- Recommendations include
  - Physical separation between research and corporate advisory
  - Research remuneration not tied to advisory performance
  - Restrictions on staff allocations of securities

Review also undertaken into market cleanliness

- Tested pre-release price movements
- Found improved cleanliness
- Compared favourably in region and globally
Structure of Operations

- **Review of foreign financial service providers (FFSP)**
  - Providers of financial services to Australian wholesale clients from offshore
  - Designed to deal with FX and derivatives
- **Current exemption from holding a licence where FFSP is in certain countries** – Singapore, Hong Kong as well as US and other parts of Europe
- **Comprehensive review of regime announced**
  - Imposition of significant regulatory costs
Costs of Doing Business

- Industry funding model for ASIC
  - Seeks to recover $240 million from industry
  - Commencement is 2017
  - For market participants, proposed fee per transaction and per message
  - Fee for providers of financial advice
  - Are costs imposed on those that create need for regulation?

- Regulator requests for information
  - FATCA/CRS
  - Third party reporting information