SUBMISSION

FINANCIAL MARKETS CONDUCT (REGULATED FINANCIAL ADVICE DISCLOSURE) AMENDMENT REGULATIONS 2019

SIFA (Inc)

8 November 2019

Thank you for the opportunity to submit.

The format of our submission follows the questions in the Exposure Draft of the Regulations. However, our answers necessarily drill down into some the actual drafted text in the Regulations.

We do appreciate the DAYG (disclose as you go) design of disclosure.

However, as our submission shows, we have some concerns about some of the detail.

1. **Will the proposed record keeping requirement be workable in practice?**

It's hard to know.

If what is proposed becomes the law, then we will all have to comply with it. So, we would just have to make it work.

We are concerned about 4 issues

Volume of disclosures to be retained

There could be a huge volume of records that will need to be collected and retained. In the early stages of a client engagement, there could be 1 document for every suspect, 2 documents for every prospect (who doesn't become a client), and 3 disclosures for any person who is advised. The person who becomes a client could then get at least an annual disclosure for the ongoing relationship (s 229D).

Length of time a disclosure has to be kept

Every disclosure will need to be retained for 7 years. We really wonder what the rationale for 7 years actually is. It's hard to see why there is any need to retain records of a suspect or a prospect who doesn't choose to become a client, and certainly not for 7 years.

Similarly, why would it be necessary to retain 9 disclosures for a long-term client?

What is a record?

It is unclear to us what a "record" is. For example, is it the disclosure as made/sent/provided to the suspect/prospect/client, or does it need to be an acknowledgement by the suspect/prospect/client that they have actually received the disclosure?

Regulations 2229D (7) and 229E (5)

We are concerned about the impact of these clauses where an adviser has an ongoing relationship with a client. Assume a relationship where the adviser agrees to give quarterly updates.

It seems to us that at least every 5th quarter, the adviser will be required to regive disclosure under 229E at least and perhaps also 229D because it will be more than 12 months since the last disclosure was given. We think each quarterly review will be a new piece of advice. We would be delighted to be shown that this interpretation is wrong.

2. **Do you have any comments on the drafting of the Regulations that will require information to be made publicly available?**

References in this section are to regulations and sub-regulations in Regulation 4 of Schedule 21A

Clause (1)

(e) We think the words “from particular product providers” are unclear. Does this mean all the product providers the adviser might use, or is it intended to apply only where the FAP has a restricted APL?

We think the requirement to list the names of all the product providers that P gives advice about is way OTT when an adviser is truly multi-provider.

We think the requirement to name each provider should be required only when the adviser is restricted to a small number of product providers – say 10 or fewer.

When P can advise on more than say 10 particular product advisers, a statement that P advises in relation to products from more than 10 providers should be sufficient.

(g) we do not think that such explanatory matter or rationale should be included in the Regulations

(j) we submit that the word “given” should be replaced by “receivable by P”. Advice is given by the adviser, but commission is not given but rather received by the adviser.

(k) we do not see why an explanation of how to make a complaint should be in this public stage 1 disclosure.

(l) we do not see why at this stage the disclosure should give any overview of the process. It should be enough for suspects/prospects that they know P has an internal complaints process (and an EDRS as covered in (m).

Clause (2)

Example We are not aware of any insurance products where the commission is based on the “value of the policy”. It would be better described as “amount of the premium”.

Wherever possible we submit common industry meanings should be used, rather than inventing a new lexicon for the purposes of disclosure.

While the general thrust of our submission is to take things out of what is proposed, there is one exception. We think it could be useful to include the Duties information as in section 6 (1) (j) in this public information.

3. Do you have any comments on the draft Regulations that will require the disclosure of information when the nature and scope of the advice is known?

References in this section are to regulations and sub-regulations in Regulation 5 of Schedule 21A

Clause (1)

(a) and (b) are a repeat of information provided at the outset (clause 4 (1). This should not be required if the client has already received the public information disclosure.

(e) we note that at the time the advice and scope is known, an adviser (except one in a VIO) might not know which products they are going to recommend. This is a similar issue to what we raised above in the context of APLs vs unrestricted advice.

(f) We think you need to work out who the audience is – the client or the adviser. The reference to S431J of the principal Act is a warning to the adviser – we doubt a client would have any clue what this means.

(g) again, we question all the explanatory matter you have included.

Clause (2)

(f) We are particularly interested to know what COI disclosure will be required to be given when advice is given in a vertically integrated organisation. Arguably, disclosure of fees and commissions should be made right up the integration chain – e.g. a bank financial adviser giving advice on behalf of the bank and recommending the bank's manufactured or white-labelled financial products should have to disclose all the fees commissions and margins that will be earned at all levels of the integration.

(g) We do not think explanatory statements or rationales like this should be part of any regulations

Clause (2)

(f) We think commissions and other incentives are "received or receivable" by the person giving the advice, not "given".

4. Do you have any comments on the draft Regulations that will require the disclosure of information when financial advice is given?

References in this section are to regulations and sub-regulations in Regulation 6 of Schedule 21A

Clause (1)

(f) again, we question whether commissions are "given."

(j) Duties information – this is a summary of the law

5. Complaints

We are concerned about the wording of 229F (3) (b).

We are concerned that this wording might place an obligation of an advisor to give advice to any client who asks them for advice – in ordinary meaning, an adviser saying "no I don't want to provide advice to you" could well be interpreted by the client as "a failure to give advice."

If a complaint is restricted to a situation where an adviser says "I will give you advice" but then fails to deliver, then that makes sense – but the present wording is not so restricted.

Questions 6, 7, 8 and 9

No comment

Question 10

We see no reason why these regulations should not come into effect on June 25 2020.

This submission is made on behalf of SIFA (Inc) an industry body that has over 50 members who largely work in their own practices. Most of them are AFAs presently.

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