# PROPOSAL TO ENSURE CLEAR CONCISE & EFFECTIVE DISCLOSURE OF FACTORS WHICH MIGHT INFLUENCE ADVICE

**Submission by Boutique Financial Planning Principals Group Inc, a national association of independently-owned AFS Licensees with over 50 AFS Licensee Members around Australia.**

About BFPPG:

BFPPG was formed to give a voice to small, independently-owned financial planning businesses which in the main, are in the tailored-advice business rather than the product sales business. Since we are not associated with any product vendors – and since we are in the advice business (rather than the product sales business), we believe that our goals are fairly closely aligned with the needs of consumers and the intent of the law. Most of our member businesses have only 1, 2 or 3 advisors – being small family-owned businesses. The greatest diversity of choice exists among boutique financial planning firms. Many of the most experienced financial planners work in boutique financial planning firms. Often these experienced planners set up their own businesses because they believe this provides an environment where they can best serve their clients. [Eg In a small business, financial planners are less likely to find themselves under an obligation to "sell a quota of product" and less likely to be under any obligation to direct investments to a certain product or IDPS provider. Rather, the financial planner can focus on doing the best for their client.] The BFPPG is an association that supports high ethical standards.

## 1.SUMMARY OF THE PROBLEM

1.1 There clearly is a very major problem in FSR compliance relating to disclosure of "factors which might influence" as required under Section 947B.

1.2 Many of the "factors that might influence" advice are NOT being DISCLOSED in a CLEAR CONCISE and EFFECTIVE fashion. This seems to be a clear breach of FSR law, but this critical aspect of FSR Law is not being enforced it seems.

**Note:** In a 9 March 2007 presentation by Sir Anthony Mason (former Chief Justice of the High Court of Australia – and well-regarded authority on the topic of ethics) to the Self-Managed Super Fund Professionals Association (SPAA), Sir Anthony indicated that the standard of disclosure should be *"Full disclosure of all the facts is required to enable the client to understand how integrity of advice may be compromised."*

1.3 As a result of failure to provide clear disclosure, many consumers are receiving advice without being made sufficiently aware that the there are factors which might have tainted the advice – and without being sufficiently aware of how these factors might have influenced the advice. That is, the consumer is not being adequately armed with the knowledge to enable them to judge how conflicted a piece of advice (or advisor) might be.

1.4 As a result, this critical consumer protection plank in the Financial Service Reform Act is being defeated by many AFS licensees and their representatives.

This is an absolutely critical CONSUMER PROTECTION issue that desperately needs to be fixed.

## 2.FAILURE TO DISCLOSE 'FACTORS WHICH MIGHT INFLUENCE'

2.1 FSR made one major step forward - a requirement for clear disclosure of FACTORS which might influence eg commissions, kick-backs, relationships etc etc. Section 947B (2) (d) & (e)

2.2 However many product providers & AFS licensees have turned this disclosure requirement into a farce and a nonsense. Product providers of course, have a vested interest in seeking to influence advice, so as to maximise distribution of their product. Likewise, many AFS licensees have a vested interest in influencing advice

For example: Many AFS Licencees seek to influence the advice of their reps
- to ensure reps recommend the products of a related entity, OR
- to recommend a platform that maximises the profit to the AFS licensee OR

- to recommend product that maximises the profit to the AFS licensee.

These last two factors reflect that many licensees have arrangements with platform providers and product providers for volume bonuses [or similar] and/or other financial incentives to distribute the product in question. In addition, some AFS Licencees have created their own investment products – and profit is maximised by recommending the AFS Licencees own products.

2.3 There clearly is widespread very blatant flouting of FSR's requirement that AFSL reps disclose factors ***"that might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice."*** This failure to disclose, is very much against consumers best interests – as it diminishes the consumer's ability to readily & clearly identify factors which might taint the advice.

*This Submission puts forward four proposals intended to help ensure disclosure of these conflicts of interest.*

## 3. OUR PROPOSALS

### 3.1 **Proposal 1**

That a standard Disclosure ('Disclosure of Factors Which Could Influence my Advice'), derived from a list (less than 1 page) of factors that might influence be developed, that each AFS Licencee & rep must answer - and this list (with answer) **should appear on the front page of every FSG and on the front page of the first SoA** that a rep provides to a client that he has not dealt with before. **This important proposal seeks to prevent "factors which might influence" the advice, being buried deep in a FSG or SOA where a client is unlikely to find it.**

In addition to the standardised disclosure checklist of factors which might influence, **there should also be,** for each disclosed factor which might influence, **a related discussion *"to enable the client to understand how integrity of advice may be compromised".***

However, as can be seen by the following points made by Sir Anthony Mason, clear disclosure of factors which might influence in itself, is not sufficient – thus prompting us to make three further proposals.

3.1.1 In Sir Anthony Mason's 9/3/07 presentation to SPAA, he made the following points:

3.1.1.1 About professional advice & ethics

- "The distinctive and idealistic ***claim of the professional*** is that he or she offers a service which is ***expert*** in the sense that it is the product of ***special skill*** and knowledge and it is ***provided for the benefit of the client*** (or patient) and ***in the interests of the client*** and ***not in the interests of the provider*** except in so far as the provider receives a reasonable remuneration for the service rendered." Para 11.
- "The ***independence of the professional adviser*** and the ***objectivity of the advice*** which was given, these being two of the qualities which distinguish the true professional from the vendor of a product" Para 14.
- "The failure of a profession to maintain high standards of conduct results in a forfeiture of trust and confidence in the profession." Para 16.
- "Professionalism now signifies high professional standards of competence. On the other hand, ethics signifies high standards of ethical conduct. The attainment of high standards of professional competence is not enough on its own. It is necessary to pursue high ethical standards as well. " Para 20.

3.1.1.2 ***"A person who is a fiduciary -*** and, depending upon the particular circumstances, an adviser may conceivably be a fiduciary - ***is bound by law to avoid being in a position where his personal interest conflicts with his duty.*** It would be a mistake to think that disclosure of a conflicting interest is a magic wand in a situation where

personal interest conflicts with duty." Para 54.

3.1.1.3 Sir Anthony also made the following points:

- *"ASIC was not confident that all consumers could use this information to adequately judge whether the conflicts had influenced, or had the potential to influence, the advice. This seems to have been due to an inability on the part of consumers to appreciate the impact that various types of conflict could have on the quality of advice given.* ASIC concluded: '*While disclosure is a critical part of consumer protection, this survey suggests that it can only play a limited role in protecting consumers from inappropriate or conflicted advice.*' The ASIC conclusion is as one would expect. *The client reposes trust and confidence in the adviser and therefore looks upon the disclosure as vindicating that trust and confidence rather than viewing the facts disclosed as a reason for subjecting the advice to critical scrutiny. The SOA is not crafted in such a way that it alerts the reader to question the advice which is given."* Para 51.

- ***"The structural relationships in the industry may constitute an important part of the problem".*** Para 58.
  - Clearly, there is a structural problem in that over the last 12 years, product manufacturers (who clearly have a vested interest in distributing their own product) have increasingly developed their own distribution channels by buying or developing their own financial planning businesses. Approximately 80% of advice-providing AFSL reps are now representatives of an AFSL which is a related entity to a product manufacturer. Corporations Law predisposes the "financial advice industry" to be largely owned by the product manufacturers and their related parties on the basis that under current laws:
    - a financial planning planning practice is worth far more to a product manufacturer (so they can use it as a distribution channel) AND
    - a product manufacturer has a very big incentive to "own" distribution channels, for their product, so they can make profit on product manufacturing. That is product manufacturers have a big incentive to own the advice providers.

    Is this the best result for consumers? Many think not.
    Should legislators be structuring Corporations Law so that "financial product advice" is less controlled by highly-conflicted distribution channels? Many think so.
    - "Lawyers, doctors and dentists provide professional services for a fee. But financial service providers also engage in **product selling** which is inherently a commercial operation and is different from the **provision of advice.** Unfortunately, ***in many instances, the two roles are combined so that the adviser who is product selling*** (for which he may be remunerated by commission or bonus) ***is also acting as adviser.*** This situation ***may well lead to a dominant culture of selling to which the role of advising is subordinated.*** In other words, ***there is a risk that the role of professional adviser will be subordinated to that of the salesman. The risk is compounded by the circumstance that the salesman is described as a licensed financial adviser."*** Para 59-60
  - Note:
    - There is a small but growing segment of fee-for-service advisors, who do not face such of conflict between the roles of SALES vs ADVICE.
    - Clearly it is very problematic for consumers if financial product salespeople can hold themselves out as advisors. There is a community expectation that an advisor provides objective advice.

- "I should emphasise that, in the context of a conflict of interest, ***the obligation is one of full disclosure. What is required is a full disclosure of all facts which would enable the client to fully understand how the conflicting interest*** (say, the mode of remuneration) ***might compromise the integrity of the advice given.*** The provision of

this information is necessary to enable the client to decide what weight should be given to the adviser's advice." Para 64.

- A clear critical failure in current compliance behaviour is that while technically an AFS licencee and its rep do "technically" disclose all conflicts of interest, the disclosure is often not of a nature that would enable the client to understand how these conflicts might compromise the integrity of the advice. That is, there is failure to deliver disclosure to a level where the ***client fully understood how the conflicting interest might compromise the integrity of the advice given.*** This is a serious failure – because it means that the disclosure required under FSR has failed to achieve the desired outcome which is to sufficiently alert the consumer that advice being received is conflicted and how much it is conflicted.

●"The client should clearly understand that the adviser cannot recommend other issuer's products, that the advice is necessarily limited and that the client may suffer detriment. Even if disclosure along those lines is made, as ASIC suggests, there are problems. Does the adviser engage in a comparison with rival products? **The difficulty here is that, in reality, the adviser is a product seller, yet he is described as a licensed financial adviser, a description which endows him with a very different aura of authority and influence"** Para 65.

- In effect, we have a situation of misleading and deceptive conduct where under current law, someone who is in fact a sales person is able to wear the mantle of authority and influence of someone who might be an objective, impartial professional advisor. This places consumers at great risk.

●Sir Anthony says that the difference between a sales person and a professional is:
- For a sales person - earning compensation is primary - service is secondary
- For a professional - service is primary - compensation is secondary

3.1.1.4 One of Sir Anthony's bottom line points was approximately that ***"conflicts of interest are <u>inconsistent</u> with being a professional advisor".***

3.1.2 Sir Anthony also indicated that a recently published consumer survey produced the following result: 85% of consumer said ADVISORS should be required to act for the client. We suspect most of us all feel that about 85% of AFSL representatives who call themselves advisors are a salesperson first i.e. These AFSL representatives are primarily acting to achieve a product sale.

3.1.3 The second proposal relates to an observation Sir Anthony Mason makes regarding conflicted advice. Sir Anthony says *"The difficulty here is that, in reality, the adviser is a product seller, yet he is described as a licensed financial adviser, a description which endows him with a very different aura of authority and influence."*

**3.2 <u>Proposal 2</u>**

That a point system be developed, such that if an AFS licensee gets more than X points, the business **<u>must</u>** use the title ***"Australian Financial Service licensee - Product Sales"***. Likewise if a rep gets more than Y points, he/she **<u>must</u>** use the title ***"Financial Product Salesperson"***. This point system would create a division between FINANCIAL ADVICE reps and PRODUCT SALES reps of AFS licensees. Those who wear the title "FINANCIAL ADVICE reps" would need to abide by a strong code of conduct, to ensure that they behave consistent with the principles Sir Anthony Mason laid down at the SPAA conference.

**<u>Note:</u>**

There is an important historical precedent in Australia for separation of SALES from ADVICE. This precedent is found in the old **Insurance (Agents and Brokers) Act 1984** (IABA), which was repealed in 2001 to make way for the **Financial Service Reform (FSR)** Act, which sought to unify regulation of advice under **IABA** and advice under **Corporations Law.** It would seem that this discarded element of the old law, really does have

an important place and should not have been discarded – in the interest of clarity for consumers.

### 3.3 Proposal 3

That an AFS licencee can only have FINANCIAL ADVICE reps or PRODUCT SALES reps - not both - so as to not confuse the public.

### 3.4 Proposal 4

FINANCIAL ADVICE reps and PRODUCT SALES reps (and the AFS licencee they represent) should have precisely the same compliance obligations.

3.4.1 This is a proposal in the interest of consumers, who clearly at the moment have little chance in most cases, of distinguishing between:

- an AFS rep whose primary job is to SELL the consumer a product OR
- an AFS rep who is prepared to provide objective, disinterested professional ADVICE.

## 4.DISCLOSURE OBLIGATIONS UNDER THE LAW

4.1 Key elements of thee disclosure obligations are set out as follows about what a Statement of Advice must disclose:

4.1.1 **Section 947B (2) (c)** a statement setting out the name and contact details of the providing entity

4.1.2 **Section 947B (2) (d)** information about any remuneration (including commission) or other benefits that any of the following is to receive that might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice:

i) the providing entity;
ii) a related body corporate of the providing entity;
iii) a director or employee of the providing entity or a related body corporate;
iv) an associate of any of the above;
v) any other person in relation to whom the regulations require the information to be provided

4.1.3 **Section 947B (2) (e)** information about:

i) any other interests, whether pecuniary or not and whether direct or indirect, of the providing entity or of any associate of the providing entity; and
ii) any associations or relationships between the providing entity or any associate of the providing entity and the issuers of any financial products;

that might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice;

## 5. HOW ARE CONSUMERS BEING DECEIVED ABOUT "FACTORS WHICH MIGHT INFLUENCE"?

A significant portion of the financial product and financial planning industry have made an absolute farce of the FSR obligation to clearly and concisely disclose "all factors which might influence". From what we can see the following "factors might influence" are often not disclosed in a manner that consumers can readily recognise as possibly tainting the advice in a manner. Further, the disclosure often seems to be of a nature where it would be unlikely that most consumers would understand how these disclosed factors might be influencing the advice. In summary, FSR's intended outcome from disclosure of "factors which might influence", is being defeated by the disclosure practices of many AFS Licencees.

5.1 Commission disclosure may be buried at the back of a large SoA eg 80-120 page SoA which client was never intended to read – and that the client would never consider reading because of its bulk. The commission disclosure can also be unclear or not concise.

5.2 Volume over-rides are often provided to dealers who deliver certain volumes of new or existing business. In effect, these volume over-rides are commission levels in excess of the normal commission levels discussed in Product Disclosure Statements. It seems that often volume over-rides are not disclosed. Where volume over-rides are disclosed, it should not be acceptable to portray these over-rides in a manner suggesting that these over-rides would not be capable of influencing the advice

5.3 "Marketing support". "Product Training support", "shelf-space", "approved list acceptance fee" are labels under which product providers provide "financial support" to dealers and advisors who support their products. We believe this is simply a commission by another name – but there financial payments to AFS licencees is often not disclosed.

- "Marketing support" often occurs for promotion of a specific individual product. This is a payment by (for example) a product provider to an AFS licencee, theoretically in return for the AFS licencee promoting the product providers product. Often such payments are simply a financial incentive for the AFS licence to promote the product provider's product. All "Marketing support" payments should be clearly disclosed.
- "Product Training support" in various guises is a fee charged by some dealers to product providers for allowing a product onto an approved list. There are similar fees or related fees sometimes charged like "shelf-space" (typically shelf-space onto the in-house Wrap or Platform product) and "approved list acceptance fee". "Product training support" is clearly a financial incentive for the AFS licence to promote the product provider's product.

5.4 "Non-financial support" has often been provided by fund managers – and we suspect is still not clearly disclosed in Statements of Advice.

5.5 It had been a long-standing practice that life insurance companies provided loans to the businesses of life insurance agents – as a means of influencing the agents on which product to recommend/sell. We suspect that in many instances these loans still exist. Again, we suspect the presence of such loans is often not disclosed.

5.6 Kick-backs via third and 4th parties including shares in company that administers a platform. Usually these would not be disclosed – or if disclosed, disclosed in an oblique manner.

- For example, there are many arrangements where a dealer will receive, in return for volume inflow into a product or set of products, both shares in a 3rd-party (largely unrelated) company which is receiving volume over-rides – but also potentially "free" services and / or some additional revenue/commission. Again, we

suspect these arrangements are often not clearly disclosed as a factor which might influence the advice.

5.7 Connections with product providers eg I am Joe Blow of Joe Blogg Financial Planning Pty Ltd (in big writing) corporate authorised rep of ABC Financial Planning (micro writing) subsidiary of DEF Funds Management P/L (not disclosed). Clearly there is little chance for many consumers to understand the connection between the rep and DEF Funds Management P/L. However, clearly this is a factor which might influence (or "might reasonably be expected to be or have been capable of influencing the providing entity") – and therefore should be disclosed.

5.8 Clearly there are dealers where the rep is required to sell certain products – and if there is insufficient of the specified products sold, then the rep will lose his job. There are many subtle and not-so-subtle ways this source of "influence" in the advice may be exerted by (for example by) a product manufacturing parent company. Again this is clearly another factor that might influence.

5.9 Buyer of Last Resort (BOLR)

**Under current FSR law (see sections above), failure to adequately disclose "factors which might influence" could be prosecuted – but it seems that it is not.** Further, this behaviour also seems to clearly fail the following provisions:

- The **Corporations Act 2001** requirement that:
  - a licensee must "do all things necessary to ensure that the financial services covered by the licence are provided efficiently, **honestly** and fairly" s912A(1)(a)

- The **ASIC Act 2001** provision for protection in respect of:
  - **Misleading or deceptive conduct.** Section 12DA.
  - False or **misleading representations**. Section 12DB.

Failure to enforce these aspects of FSR is a major failing of the regulator – failing to protect the consumer.

## 6.WHAT THE CONSUMER NEEDS

6.1 It is stating the obvious that the consumer needs a simple and clear way to tell whether they are receiving significantly-conflicted advice. This would be achieved if the providers of significantly conflicted advice were required to wear and use the title "Product Sales Person" to clearly differentiate themselves from the term that un-conflicted advisors could use eg "Financial Advisor".

6.2 This type of CLEAR and MEANINGFUL disclosure is something that ordinary clients (including financially naïve clients) could readily understand. This type of CLEAR and MEANINGFUL disclosure who take the unreasonable onus off the consumer to wade through often-voluminous disclosure documents (eg like a 80 to-120-page Statement of Advice – or a cryptic Financial Services Guide which might only vaguely reference factors which might influence.)

**The title SALESPERSON should be very clearly on the Front of both the FSG and on each SoA in a clear concise and effective manner.**

## 7.WHY A LICENCEE SHOULD HAVE ONLY SALES REPS OR ONLY ADVICE REPS.

The issues with AFS Licensees being able to have both SALES reps and ADVICE reps are as follows:

7.1 There is a wide-spread view, at least amongst professional advisors, that the majority of consumers choose an advisor on feel (feelings, gut instinct etc) rather than logic. i.e. it is not about whether the consumer is savvy enough to pick a good advisor, it is about whether (for whatever reason) the consumer decides he can trust this advisor - so we are dealing heavily with an emotional decision rather than with a rational decision. (at least for a big portion of consumers). This is why branding is important - because advertising and promotion of a dealer will be playing to the emotions - people either trust a brand or they don't. So if a dealer can have both sales people and advisors, the consumer might have bought the brand (because he trusted it for whatever reason), but he might then fail to distinguish between whether he dealt with a sales person or an advisor.

7.2 Therefore it is crucial that a brand (eg when it is being promoted on television etc) clearly identify itself as either a financial product SALES brand – or a non-conflicted Financial ADVICE brand.

7.3 **Another benefit of this proposal** is that it would speed up the development of a much larger sector financial planning professional advisors who provide non-conflicted advice. Currently only a small portion of "advisors" would pass the test as to whether they were providing advice-without-conflict.

## 8. HOW DO WE DEFINE WHO IS SALES AND WHO IS ADVICE?

A scoring system based on conflicts such as those identified in Appendix A, could be developed. Only those with low scores would be allowed to wear the PROFESSIONAL ADVISOR badge.

## 9. COMPLIANCE REQUIREMENTS FOR SALES vs ADVICE - Compliance obligations should the same for both.

PRODUCT SALES and ADVICE reps for complex products such as investments should have precisely the same compliance obligations for disclosure, training etc. This is because both groups (PRODUCTS SALES reps and ADVICE reps) who deal in complex products such as investments and superannuation can cause serious financial damage to consumers who depend heavily on their expertise, ethics, honesty and professionalism.

# APPENDIX

## DISCUSSION OF "FACTORS WHICH MIGHT INFLUENCE"

**1. Is the advisor going to be paid the same, regardless of what advice he/she provides?**

For example, is the advisor going to receive an increased compensation (eg commission) for recommending changing the portfolio? (i.e. Versus recommending no change)

- Ideally, if objective, dispassionate, unbiased advice is to be provided, the compensation arrangements should be unbiased. If the advisor was to receive $4000 commission for recommending one product, while nothing for recommending no change or cash, it is reasonable to expect that the compensation arrangements might influence the advice.

- In other words, commissions which are not fully rebated to the consumer do have the potential to influence advice. However, it is noted that where commissions are credited to a client's account to reduce fees otherwise payable by the client, an unbiased compensation arrangement may exist.

- Note: Where these factors exist, the disclosed compensation arrangements should include:
  i. share of fees and commissions
  ii. wages & salary
  iii. bonuses
  iv. the rep not losing their job eg if sales targets are not met or if appropriate bias in recommendations is not achieved.

It is very clear that some licencees' profit line is almost 100% accounted by volume over-rides – and as such this is very clearly a factor which might influence. It therefore is a clear breach of FSR where this "factor which might influence" is not disclosed. Failure to adequately disclose volume over-rides in a clear concise and effective way, may well be a widespread breach of Section 947B (2) (d) and similar provisions.

**2. Is the AFS licencee going to be paid the same, regardless of what advice the reps provide?**

- For example, some product providers pay volume bonuses (sometimes called volume over-rides) to the AFS licencee. This clearly acts as a higher (in effect) commission for the dealer, who may (or may not) share this with the rep. In certain cases, these volume bonuses make up nearly the entire profit of the AFS licencees, so clearly the licencee is highly incentivised to provide incentives for the AFS reps to recommend the products that deliver this volume bonus.

- Some licencees will not allow a product on their approved list unless:
  - the product provider pays commissions (or similar financial reward for the dealer) OR
  - the product provider "makes a contribution towards rep training" OR
  - the product provider provides "marketing support dollars" OR
  - the product provider pays "shelf-space fees" to be on the approved list

●**Bottom line:** These practices can influence the advice, because:

- These practices can result in exclusion of a product from the list of "solutions" that the rep can offer – and this can lead to sub-optimal advice. Sometimes the best product for the client might be excluded from the recommendations that the advisor can offer.
- These practices provide a large incentive for the AFS licensee to create a behavioural pattern among reps to "prefer" some products over others (profit maximisation for the dealer), thus biasing the advice.

**3. Ownership of the Licensee – Product Provider**

- Does a product provider (or any related party) own a portion of the AFS licensee (or a related party)? If yes, the product provider has a vested interest in having its products distributed through this AFS licensee – and various behaviour-changing systems are likely to be in place to influence the representative when recommending products. Clearly therefore, where a product provider (or any related party) owns a portion of the AFS licensee (or a related party), then:
  - The name(s) of the product provider (or related party) needs to be disclosed.
  - The relationship between the product provider(s) (or any related party) and the AFS licensee (or a related party) needs to be disclosed.

●A sample of the issue which exists here is as follows:

- Joe Bloggs Financial Planning P/L is a corporate authorised rep of an AFS Licensee who is owned by a large institutional product manufacturer.
- Joe Bloggs Financial Planning P/L provides clients with corporate literature where the name of the Licensee is only ever provided in small print (or maybe it is omitted altogether).
- The client (being a normal human being without understanding of the interconnections and relationships in the financial planning industry) does not realise there is any connection between the Licensee and the large institutional product manufacturer.
- So when Joe Bloggs Financial Planning P/L provides advice, the client is not aware of this factor which might influence – i.e. The relationship between the large institutional product provider and Joe Bloggs Financial Planning P/L.

●Another issue here is where an AFS licencee has their own financial product which they recommend to clients. In this case, Section 947B (2) (d) and similar provisions, would require clear disclosure of all revenue received by the licencee – including:

- trailing brokerage
- up-front brokerage.
- management fees for the underlying product. It is important that this important additional income stream is identified clearly as a factor which might influence.

**4. Ownership of the Licensee – Platform**

●A "platform" is a vehicle through which investments are made – such as a mastertrust or wrap. Eg BTWrap, Macquarie Wrap, E-wrap, Navigator, Asgard

●Does a platform provider (or any related party) own a portion of (or is a related party of) the AFS licensee (or a related party)? This issue has become increasingly important over recent years because:

- For many AFS licensees, a large proportion of profit comes from profit from

the platform. That is, selling the platform is where the money is made. For many AFS licencees profitability, it does not matter what fund manager or product is sold on the platform, as many of the fund managers expense ratios the lion share of the profit is increasingly being made from selling the platform. Fund Manager profitability is in many cases, being squeezed by the platform providers. (Ref 15/3/07 Money Management article by Barry Lambert page 14).

- This point is intended to cover situations such as where a licensee has its own in-house platform, or its own branded platform, or where the platform-provider is a related party.

- If there is an in-house, branded or related party platform, the platform provider (and or licensee) has a vested interest in having its platform distributed through this AFS licencee – and various behaviour-shaping systems are likely to be in place to influence the representative when recommending a platform. Clearly therefore, where a platform provider (or any related party) owns a portion of (or is a related party of) the AFS licensee (or a related party), then:

- Clearly therefore, the name(s) of the platform provider (or related party) needs to be disclosed – and the relationships between AFS licencee and the platform provider needs to be fully disclosed – and the disclosure should be in a manner that would enable the consumer to understand how the relationship between the AFS licencee and the platform provider might have compromised the advice.

**5. Third-party Arrangements with Platform Providers**

Again these arrangements reflect the fact that the profit in product distribution is increasingly captured by the platform rather than by the underlying manager of the funds.

●Some licensees have an arrangement with a third-party to consolidate volume of product distributed with a set of other dealers. By this means, the third party is able to negotiate a volume over-ride (i.e. extra commission) or other financial benefit from the product or platform provider. The financial benefit extracted by the third party can then be shared along one or more of the following lines:

- a portion of the financial benefit is retained by the third party
- a portion of the financial benefit is paid to the AFS licensee directly
- the AFS licensee might also receive some “free” services as part of the deal
- the AFS licensee might also receive shares in the third party or in a 4th party, where the financial benefit is available by way of dividends at some point, or by way of the capital value of those shares.

**6. Buyer of Last Resort (BOLR) Arrangements**

●Some licensees have arrangements with their reps, to be “Buyer of Last Resort” for their practices – and the value of these buy-out arrangements varies depending on what products had been recommended – that it varies depending on the make-up of the funds-under-advice. This is just another example of one of the many means that licensees can influence their reps to recommend product (including platforms) which is in the best interests of the AFS licensees – rather than product (including platforms) that are in the best interest of the consumer.

**7.Other Non-financial Support to the AFS Licensee eg From a Product or Platform Provider**

**8. Loans to the AFS Licensee eg from a Product or Platform Provider**