



14 November 2022

By email: AdviceReview@Treasury.gov.au

Ms Michelle Levy
C/O Secretariat, Quality of Advice Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Levy

QUALITY OF ADVICE REVIEW: CONFLICTED REMUNERATION CONSULTATION PAPER

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from online providers providing execution-only services to full-service stockbroking.

The history of the stockbroking profession in Australia can be found [here](#).

SIAA welcomes the opportunity to provide feedback to the Conflicted Remuneration Consultation Paper. SIAA has been extensively engaged in consultation with the Quality of Advice Review and attended the Treasury roundtable on conflicted remuneration on 11 November 2022.

Overview

As stated in our [submission to the Quality of Advice Issues Paper](#), the ban on conflicted remuneration was targeted at removing conflicts of interest in financial advice due to payments from product providers to those providing advice.

A typical charging model for stockbrokers involves a payment, commonly referred to as both brokerage and a commission, from the client to the broker that is typically charged as a percentage of the value of a certain transaction or a fee per transaction. Treasury noted at the time the FOFA reforms were implemented that a transparent and product-neutral regime with a client-paid fee — which is what brokerage is — would not be subject to the ban on conflicted remuneration.

The majority of our member firms that provide advice to retail clients have a remuneration structure for advisers which typically includes both:

- a retainer (salary), and
- a share of the brokerage charged to clients (commission), either paid regularly or as an annual bonus.

These arrangements do not give rise to the types of conflicts that the FOFA reforms were seeking to address. The same commission-sharing arrangements apply between the firm and the individual adviser regardless of the particular shares that a client may buy or sell. An adviser does not benefit from steering a client into, say, buying BHP rather than ANZ, because his or her commission will not differ because of the particular security, nor will BHP or ANZ provide incentives to the adviser to recommend their shares. That is, brokerage is product-neutral. This is the reason why regulations were passed to ensure that the traditional remuneration arrangements of brokers were not unduly impacted by the conflicted remuneration provisions.

It is important that any proposals of the Quality of Advice Review do not impact on these arrangements. We have highlighted below where we caution against proposals that remove exemptions relevant to our members or where the removal may give rise to unintended consequences.

Detailed comments

Proposals relating to general insurance, life risk and consumer credit insurance products

SIAA has no comments on the proposals relating to general insurance, life risk and consumer credit insurance products.

Proposals relating to interests in a time-sharing scheme

SIAA has no comments on the proposals relating to interests in a time-sharing scheme.

Benefits given by the client

We note that:

- fee for service arrangements where the client is the person paying the adviser are not conflicted remuneration even where the client pays a volume-based fee and
- section 963B (1) (d) (ii) of the Corporations Act is intended to exclude from the definition of conflicted remuneration any fee for service paid by the retail client, whether the benefit is given directly by the retail client or given by another party at the direction, or with the clear consent, of the retail client.

SIAA supports the proposal to modify the exemption to clarify that it also applies where the client authorises a product issuer to pay for financial product advice provided to the client from the client's financial product.

Advice that has not been given in the last 12 months

Our current view is that our members do not rely on this exemption to the ban on conflicted remuneration. However, due to the limited time we have had to respond to these proposals we will

continue to consider whether the removal of this exemption may have unintended consequences for our members and we caution against its removal.

Benefits given to agents and employees of Authorised Deposit-Taking Institutions

SIAA has no comments on the proposal to remove the exemption for benefits given to agents and employees of ADI's.

Removing exceptions not related to the provision of financial product advice

We note that issues surrounding the proposed removal of these exemptions were raised at the roundtable. It is important to ensure that any regulatory change does not create unintended consequences that impact on the ability of stockbrokers to charge commission brokerage to their clients and remunerate their advisers. Brokerage fees were not raised as an issue in the Hayne Royal Commission and we are not aware of any reason why changes are required to these provisions, other than to clarify what is a complex part of the law. We therefore caution against the removal of the two exceptions for the issue or sale of a financial product (Sections 963B(1)(d)(i) and 963C(1)(e)(i) of the Corporations Act) and for dealing in a financial product on behalf of the client (reg 7.7A.12E). While both of these activities are not strictly related to the provision of financial advice, we understand they were introduced because of the close links with advice. As a range of business models exist, we consider that there are likely to be firms and entities that rely on this exception to charge fees for their services.

In relation to reg 7.7A.12E we understand this change was introduced to exempt fees paid by clients for financial services which are not covered in paragraph 963B(1)(d) of the Act. Removing this exception may introduce a gap that will mean brokerage fees will become conflicted remuneration where a provider deals in financial products on behalf of a client. This is not an outcome we support. We note that if the removal of this exception does introduce a gap as set out above that it would undermine section 963B (1) (d) (ii).

Accordingly, we do not consider these exceptions are redundant and recommend that both be retained.

Brokerage and stamping fees

We welcome your finding that there is no evidence that leads you to think that the exceptions relating to stamping fees and brokerage are not, in general terms, an appropriate and fair way to remunerate advisers for their services. We strongly support the proposals to retain the stamping fee and brokerage fee exemptions contained in Regulation 7.7A.12B and 7.7A.12D of the Regulations.

As we stated in our submission on the Quality of Advice Issues Paper, removing the brokerage exemption would impact the traditional remuneration arrangements of employee brokers without conferring any benefit on the client and would have a significant impact on the ability of stockbroking firms to provide their services. Removing the stamping fee exemption would reduce retail access to primary capital raisings and the participation of retail clients in markets overall as well as increase the cost of capital to industry.

SIAA continues to advocate strongly for the return of the stamping fee exemption for Listed Investment Companies (LICs) and Listed Investment Trusts (LITs) to facilitate capital raising for these

entities. SIAA provided feedback to Treasury on the removal of the stamping fee exemption for LICs and LITs in July 2022. A link to our submission is [here](#). We await the government's response on this issue.

Other comments

Our members have asked for clarification that fees received from issuers for supporting retail investors responding to corporate actions are not viewed as conflicted remuneration. Stockbrokers need clarity that they can be remunerated by issuers for providing such services to assist their clients with corporate actions. If stockbrokers are unable to provide these activities clients will be left to deal with registries direct.

If you require additional information or wish to discuss this matter in greater detail, please do not hesitate to contact SIAA's policy manager, Michelle Huckel, at michelle.huckel@stockbrokers.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'JF' with a large flourish and 'Gx' below it.

Judith Fox
Chief Executive Officer