Institute of Chartered Accountants Australia

Future of Financial Advice

Conflicted Remuneration

Fact Sheet

Conflicted remuneration is any benefit given to an AFS licensee, or its representative that due to the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence the choice of financial product that is recommended or the financial product advice given.

The following is a summary of the main elements of the new rules.

What is the prohibition?

The legislation imposes civil penalties and administrative sanctions:

- for an AFSL holder or a representative to accept conflicted remuneration; and
- for an employer or a product issuer to give conflicted remuneration.

It also provides a ban on platform operators accepting volume based shelf fees from a fund manager.

What is conflicted remuneration?

Remuneration is conflicted where the following elements are present:

- a benefit;
- given to an AFSL holder or representative;
- in relation to financial product advice (but not dealing);
- provided to a retail client;
- that could reasonably be expected to influence the choice of financial product or the financial product advice.

A benefit is presumed to be conflicted if it is volume based – so that it is then up to the recipient to prove that it was not conflicted. That said, there is no general prohibition on the receipt of volume or asset based fees being charged by advisers (except to the extent that the investment uses borrowed funds).

What is a benefit?

The concept of a benefit is very wide. It includes both monetary and non-monetary benefits.

Typical benefits that come within the rules include:

- commissions paid by product issuers;
- volume based rebates paid by product issuers;
- volume based bonus or profit sharing schemes for advisers;
- reward focussed entertainment or travel for advisers;
- equity participation schemes for advisers.

However it can also include indirect payments to an adviser's relatives or the payment of an adviser's expenses (such as school fees).

Are there any exceptions?

There are a number of exceptions to the general prohibition. These include:

- where the product is a basic banking product, a general insurance product or a life insurance product (other than certain superannuation policies);
- a benefit given in relation to an execution only issue or sale of a financial product (and at least 12 months after advice was provided);
- a benefit given or authorised by the client;
- 'stamping fees' in relation to securities;
- the passing on of brokerage fees received from a participant on a listed exchange;

Source: Holley Nethercote Commercial & Financial Services Lawyers - May 2013

- a benefit that is non-monetary and less than $300, relates to genuine education and training or is appropriate software and IT support.

When does this come into force?

The legislation provides for the "grandfathering" of arrangements that were in place before 30 June 2013. Under the proposed revised grandfathering regulations such arrangements can continue in operation for existing clients and persons becoming clients before 1 July 2014. Grandfathering will not apply to persons becoming clients after 1 July 2014.

What does this mean?

You may have already noticed that some product issuers have either changed the way they provide remuneration or are proposing to do so.

You should review the types of remuneration you receive and any benefits you provide to employees.

You may need to review the way you provide performance benefits for your employees.

For Further Information

ASIC has produced some guidance and examples about what remuneration and/or benefits are considered conflicted remuneration - see RG 246: *Conflicted remuneration.*

Source: Holley Nethercote Commercial & Financial Services Lawyers - May 2013