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CONSULTATION PAPER 110

General conduct obligations of credit licensees

B1Q1 Do you agree with the guidance we have proposed in Section B of the draft update to RG 104?

I support your comments entirely as it is no more difficult than as you have stated as follows;

As the general conduct obligations for credit licensees are broadly similar to those for AFS licensees, we think it is appropriate to provide similar guidance to both groups of licensees.

In addition, the key compliance concepts set out in Section B of RG 104 are good business practice and can be appropriately applied to both financial services and credit provider businesses.

Providing similar guidance for credit and AFS licensees will also facilitate compliance of entities that are licensed under both regimes.

B1Q2 Is there any additional guidance you think would be useful?

Currently working under the current AFSL requirements and as a holder of Finance Broking Licence in WA, I feel the proposed in B1Q1 is more than adequate without the need to complicate the issues any further. There would be a danger of over complicating this matter with any further additions.

Unfortunately lack of understanding by many and some obvious self interest by others, has fuelled unnecessary worry and concerns with the way forward and having worked under both the AFSL requirements and the WA Credit Finance requirements the AFSL requirements is in fact more business friendly and actually guides and assists many business's to build a stronger and more professional business model.

B1Q3 Do you think we should provide this guidance for credit Licensees in an update to RG 104 or should we provide the guidance in a separate guide?

RG 104 is the correct place to provide this guidance as many AFS licence holders will also hold investment licences as they are moving towards more diversification of their business models. What we have to remember here is that the principles are the same; credit is still a product and hence for simplicity should be treated accordingly and in line with other current recognised ASIC products. The way forward is about simplicity and hence guidance should maintain consistency across all recognised ASIC products.

B2Q1 Do you agree with the guidance we have proposed in Section C of the draft update to RG 104?

Rationale as stated in points 14 and 15 fits the best practice picture for the way forward, given our previous statement that many will move across to supply other ASIC recognised products and to have different rules would prove counterproductive to the whole process.

Current credit licensing for Finance/Mortgage Brokers in WA is totally in opposite directions to the current AFSL licensing requirements and nowhere near as simple to understand or comply with as the current AFSL requirements. A current Licence requirement for Finance Brokers in WA was a cut and paste of the original Real Estate Licensing Act of 1985. Streamlining of the whole process will certainly make it a more simplistic journey for all. One must add here that the WA licensing was well controlled and maintained but is now past its use by date, given the global environment we now operate in.

Currently Financial Planners find that trying to meet the current WA licensing laws is big step back in time which is a totally confusing and frustrating experience, as compared to the clear guidelines and process provided under the AFSL requirements.

Having worked under both requirements the ASIC protocol is the way to go and would allow a more simplistic crossover for the licence holder.

B2Q2 is there any additional guidance you think would be useful?

Not at this stage and we all remember when the original FSR was introduced, which resulted in a lot of over regulation and a backlash from Dealer Groups/Principals advisers and clients alike, a more streamlined process has now been developed. Everything is work in progress and changes can happen along the pathway but we must remember not to make a simple matter over-complicated. Use of current FSR which have been tried and tested over the years would be the smart thing to do.

B3Q1 Generally, do you agree with the guidance we have proposed in Section D of the draft update to RG 104?

The requirements as outlined, whilst they may appear onerous to some on establishment of the risk management process, will in the long term benefit all licence holders. Current requirements under the AFSL can be mirrored across to ensure ongoing monitoring and control. Implementation of these procedures will in fact give a business more confidence that the requirements of everyone are being monitored and will in fact provide a lift in professionalism for the overall industry. Each licence holder has the choice to either have their own internal audit process and/or outsource components of the process.

B3Q2 Do you agree with the guidance we have provided in relation to conflicts of interest (RG 104.75–RG104.79)?

Conflicts of interest need to be fully documented and steps clearly set out for clients to follow should a conflict arise. The full process needs to appear in the Credit FSG. Volume overrides for meeting certain volume targets need also to be placed/mentioned (not actual figures) in the FSG to inform clients that they exist. This information must also appear in the SOA for any product sold that has volume overrides attached to the particular product being sold. One must understand that most Aggregators receive volume overrides on several of the products being currently sold. This is a source of income that is currently not always disclosed to clients at this stage, as it has not been a requirement to do so. Clients' need to clearly understand that the credit adviser has placed them into a particular product which will best suit the clients' needs and not best for the credit adviser's income stream Full and open disclosure is not something that can be avoided and clients appreciate the fact that they have all the facts before them. Clients are not adverse to advisers/licence holders making a living from commissions but nothing can or should be hidden. Full disclosure will address any of these issues. No waiver of current FSRL disclosure requirements should be allowed, right from the initial launch.

B3Q3 is there any additional guidance you think would be useful?

Volume override products/providers should be disclosed in the SOA if that particular product is chosen for a client. It is not possible to state the exact amount as targets may not be reached. Disclosure should be that if certain targets are met on a monthly basis then the adviser/principal may receive say a 5% volume override. Issues occur when these matters are not disclosed and launching of the credit licence scheme is about removing the hidden practises of the past and shaping the industry for the future.

B4Q1 Do you agree with the guidance we have proposed in Section E of the draft update to RG 104?

This section is long overdue and will bring the accountability back to the licence holders to ensure the adequate and ongoing monitoring and control of the training and up skilling of the advisors and support teams. Current practises are inadequate as training has in many cases been left to the individual to undertake. Training and up- skilling has not been a strong focus of many in the past, with completion only of the minimum required qualifications to undertake the role. Training for many has then been more about attending conferences etc rather than having a fully monitored and structured training program in place.

B4Q2 Is there any additional guidance you think would be useful?

Having the minimum required ongoing CPD hours as a strict requirement of the licence process/procedures coupled with the requirements of the licence holder to be totally accountable with the monitoring and control will ensure a higher level of professionalism. Currently this is a requirement of the associations and whilst some are monitored others are not. This issue exists across many professions that require CPD hours but little or no audit process is in place.

B5Q1 Do you agree with the guidance we have proposed in Section F of the draft update to RG 104?

Section F actually exists and provides clear guidelines for all licence holders to have a clearly designed pathway to ensure that their business, all their corporate authorised representatives and authorised representatives have clear guidelines on how to make their business models comply with further sound business practises. This section is doing no more than expecting business to review their current practises and where required introduce systems to ensure their business models are more in line with better business practice management concepts.

B5Q2 Is there any additional guidance you think would be useful?

Whilst many credit business models in Australia are conducted by small business owners trying to make a living, the main focus has been on making sales and hence to now require the introduction of section F may cause some initial issues. However, once the review is undertaken and implemented then ongoing monitoring and control can be either via internal or external providers. Business owners/licence holders will in fact have more comfort in knowing the processes of monitoring and control are in place, which in turn will also enhance the viability and ongoing saleability prospects. Whilst clients are not aware of what risk assessment processes are in place greater comfort would be felt by clients, product providers, licence holders and insurers alike if they were aware that all licence holders and their authorised advisors had proper monitored and controlled processes in place.

B6Q1 Do think that these questions will help credit licensees to design and test their compliance measures?

Going on the current FSR licensing requirements which follow your appendix 1 “broad compliance obligations”, I feel they are adequate to provoke thought and discussion for each respective licence holder and allow them to implement procedures to follow to cover both the licence holders business and the authorised representatives. Current requirements under the FSR certainly adequately address the issues as outlined and provide comfort for all parties involved. Once again parts of this process can also be outsourced by the licensee if required.

B6Q2 Do you think that it would be useful to provide other questions to assist credit licensees?

We must remember here that this is a new process to many and completing assessments in line as suggested in appendix 1, will certainly provide enough comfort to all parties concerned. Over compliance requirements will be more of a turn-off than assistance in setting up the right business models. Clarification may be sought in the initial rollout but it appears that the two main associations will be providing this level of service to their members. It also appears that construction of the compliance hand books will be undertaken by their respective law firms. If this is in fact the process, we must ensure the same issues do not arise as they did with the initial rollout of the FSR when complicated rules/requirements and documents were produced by lawyers. This created concerns due to their understanding as distinct from the actual requirements of the industry today. Such evidence was the initial production of the Statement of Advice which has been reduced considerably from its 60 plus pages after many complaints from clients and advisors alike. Hence ASIC's role and responsibilities should also include the monitoring and control of material produced by the lawyers to ensure the same issues as experienced with FSR rollout do not occur again.

To finalise we must all remember the changes are overdue and necessary. There is already a tried and tested process in place via the FSRL process for Financial Planners. ASIC just has to recognise credit as another product as it is that should mirror existing practices and processes. The model has been tried, tested and proven to work and as stated previously provides a much simpler and structured process for all advisors no matter what product they are selling or advising on.

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