



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 73

Managing conflicts of interest in the financial services industry

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What this paper is about

- 1 This discussion paper uses hypothetical case studies illustrating real or perceived conflicts of interest across the financial services industry to explain ASIC's views on how those conflicts should be managed.
- 2 A number of the case studies are loosely based on real life examples of conflicts we have seen. The purpose of this paper is to highlight these examples and provide guidance on how these conflicts should be handled. Each case study illustrates an issue for discussion.
- 3 The obligation for all licensees to have in place adequate arrangements to manage conflicts of interest flows from s912A(1)(aa) of the *Corporations Act 2001* (the conflicts management obligation). This obligation forms part of a licensee's wider compliance and risk management obligations.

Note: See Policy Statement 164 *Licensing: Organisational capacities* [PS 164] for our expectations on compliance measures and risk management systems.
- 4 Our general approach to compliance with the conflicts management obligation together with guidance on managing conflicts of interests is set out in Policy Statement 181 *Licensing: Managing conflicts of interest* [PS 181].
- 5 We expect that these case studies, as enhanced by the consultation process, and the accompanying commentary will be incorporated, where appropriate in [PS 181].

Your feedback is invited

- 6 We invite you to comment on our draft case studies and on the specific questions we have raised. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential.
 - Q1 Are the examples used in the case studies practical and useful? Please refer to specific examples in your answer.
 - Q2 Are there examples of other practices that could usefully be included?
 - Q3 Is the commentary following the examples helpful and useful? Are the solutions discussed reasonable? Please refer to specific examples in your answer.
 - Q4 Should we include cross-references in the case studies to relevant parts of [PS 181] and/or *Managing conflicts of interest—An ASIC guide for research report providers*?

Comments on this discussion paper are due by **Friday 9 June 2006** and should be sent to:

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Section A: Financial advisers (wholesale) and research report providers

A1 Lead manager/house broker and conflicted research

A1.1 Ibex is appointed as the lead manager of an initial public offering (IPO) of shares by Boxcorp. Soon after Ibex's appointment, its research staff issue positive research on Boxcorp.

ASIC commentary

A1.1.1 The potential conflict in this case is that Ibex's research staff have issued positive research on Boxcorp only because Ibex has been appointed as the lead manager of the IPO. One way to manage this conflict of interest is to have arrangements in place to ensure that the quality and integrity of the research is high. These arrangements should include robust information barriers between the research staff and those working on the IPO, and review and approval of research reports by an experienced supervisor. The research report should also clearly disclose Ibex's role in the IPO and details of fees it will get, including actual amounts.

A1.1.2 Another way to manage this conflict of interest would be by not providing research on Boxcorp during the 'quiet period' when Ibex is marketing the IPO. This is seen as good practice by the International Organisation of Securities Organisations (IOSCO) and ASIC in their guidance to analysts.¹

A1.2 After the successful offering, Ibex sees itself as Boxcorp's 'house broker' and its research staff regularly issue positive research on the issuer.

ASIC commentary

A1.2.1 Again, the potential conflict here is that Ibex's research staff continue to issue positive research on Boxcorp only because of their pre-existing relationship. Generally, this conflict of interest can be managed by internal controls and disclosure. The research should disclose Ibex's role in the IPO and any continuing advisory roles. It should also disclose details of fees received and to be received from Boxcorp and any retainer. Ibex's internal controls should also ensure that the research is reasonably based and not biased.

¹ *Statement for addressing sell-side securities analyst conflicts of interest*, IOSCO Technical Committee (25 September 2003) and *Managing conflicts of interest—An ASIC guide for research report providers* (November 2004).

A2 Selective publication of changed recommendation

A2.1 A highly rated research analyst who works for Quail Equities Limited plans to issue a research report on Pheasant Enterprises Limited, a top 50 company, changing a long-standing recommendation from ‘accumulate’ to ‘sell’. Before the research report is issued, Quail advises a select group of Quail’s clients to sell their holdings immediately.

ASIC commentary

A2.1.1 The conflict here is that one group of clients’ interests are being preferred to those of other clients. The only way of adequately managing this conflict is by avoiding it. A licensee in Quail’s position should avoid situations where the interests of a select group of clients are favoured over other clients. This practice would result in unfair treatment of some clients and also engenders a lack of confidence in the fairness of the market.

A3 Conflicted buy recommendations

A3.1 In 2005, Armadillo Equities’ research staff made ‘buy’ recommendations on 47 listed entities and ‘sell’ recommendations on 14. Between 2000 and 2005, Armadillo provided advisory services to approximately 25% of the entities on whom it published a ‘buy’ recommendation, but had no relationship with those on whom it published a ‘sell’ recommendation.

ASIC commentary

A3.1.1 The perceived conflict here is that Armadillo’s research staff only put ‘buy’ recommendations on companies with whom it has some sort of commercial relationship. This might be because of informal arrangements with the ‘buy’ companies or an attempt to get more corporate advisory work.

A3.1.2 Ensuring that robust information barriers exist between the research and advisory staff can help manage this type of conflict. Other measures that can help are:

- review and approval of research reports by an experienced supervisor,
- disclosure in the research report of the initial and ongoing relationship (if any) between the firm and the listed entity covered by the report, and
- implementing internal controls that ensure that the research is reasonably based and not biased.

A4 Pressure to make favourable recommendations

A4.1 Goldfinch Investment Bank regularly provides corporate advisory services to Chartercorp, a listed company. Chartercorp is going through a slightly difficult period refocusing one of its major business units. This has lead it to threaten to exclude Goldfinch from further advisory roles if its research staff issue research that casts doubt on the progress of the restructure and has specifically warned Goldfinch not to issue ‘hold’ or ‘sell’ recommendations on it.

ASIC commentary

A4.1.1 The potential conflict here is that Goldfinch is under pressure to put out sub-standard research (or refrain from issuing any research, which would be to the detriment of its general client base) to try to retain corporate advisory work from Chartercorp. This would put the interests of Goldfinch above those of its clients who use, and might rely, on the research. The only way of managing this conflict is by avoiding it. Goldfinch should stop providing advisory services to Chartercorp until such time as Chartercorp withdraws the threat.²

A5 Poor disclosure of interests

A5.1 Salamander Securities Limited, a stockbroker, discloses, at the end of one of its research reports on Lizard Industries Limited, that it might have a range of relationships with Lizard from time to time. The disclosure is a lengthy attachment to the report, is non-specific, written in dense legalese and in smaller font than the rest of the document. Empirical evidence suggests that clients almost never read the disclosure. In fact, most clients who print out the research put the attachment straight in the bin.

ASIC commentary

A5.1.1 The problem here is that the disclosure is ineffective. For disclosure to be effective in helping to manage this conflict of interest, the reader must be able to make an informed decision about how the conflict of interest might affect the substance of the research. For example:

- the research report should clearly and concisely disclose the actual relationships and fees associated with those relationships, and
- the disclosure should be prominent and in the same size font as the body of the research report.

² The Financial Services Institute of Australasia (FINSIA) and the Australasian Investor Relations Association (AIRA) have released an exposure draft *Principles for building better relations between analysts and listed entities*. ASIC welcomes this initiative.

A6 Tender consultants and paid research

A6.1 Enclosed with a PDS issued by Echidna Wealth Solutions Limited is a report from Wombat Advisory Limited, a licensed research house giving the product a positive rating. Echidna pays Wombat a fee at normal commercial rates for producing the report. Wombat's investment advisers also recommend the product to investors.

ASIC commentary

A6.1.1 The potential conflict here is that users of the research do not realise Echidna has paid for the research. For disclosure to be an effective part of managing this conflict, clients need to be provided with key details of the commercial arrangements between Wombat and Echidna and the amount Echidna paid for the research.

A6.1.2 Wombat's internal controls should also ensure that the research report is not biased and is reasonably based. Wombat needs to be confident that, despite the incentive to issue positive research, all advice provided is appropriate and in the best interests of clients.

A7 Product issuer with interest in research house

A7.1 Cormorant Wealth Management Limited offers a variety of financial services across a range of sectors and also owns an interest in Jabiru Limited, a research house. Jabiru gives Cormorant the highest rating on its scale of ratings. Cormorant's interest in Jabiru is not disclosed in materials that Jabiru gives to its clients.

ASIC commentary

A7.1.1 The potential conflict here is that the research is biased due to Cormorant's interest in Jabiru. For disclosure to be an effective part of managing this conflict of interest, investors should understand that Cormorant has an interest in Jabiru. Details of Cormorant's interest in Jabiru should be clearly disclosed.

A7.1.2 Jabiru's internal controls should also ensure that its research report is not biased and is reasonably based. Jabiru needs to be confident that, despite the incentive to issue positive research, all advice provided is appropriate and in the best interests of clients.

A8 Agreement to issue positive research on a client

A8.1 XYZ Global Bank Limited was mandated to act for Redrock Mining Limited, a takeover target, in its defence of a hostile takeover bid by Bluemetal Co Inc. To secure the defence role, XYZ agreed to issue positive research about Redrock Mining.

ASIC commentary

A8.1.1 The conflict in this scenario is that XYZ put its own interests, in securing the defence role, above the interests of clients and other market participants who relied on the research. Clients are entitled to expect unconflicted and unbiased research. This type of conflict is serious and must be avoided.

A9 Research staff crossing information barriers/ A10 Proprietary trading

A9.1 *This paper presents only a few illustrative examples of types of potential or actual conflicts of interest. The conflicts of interest associated with staff crossing information barriers and proprietary trading are matters raised in litigation before the court, and accordingly, not commented upon in this paper.*

Section B: Licensees/financial advisers (retail)

B1 Commission only remuneration

B1.1 Hippo Ltd, a stockbroking firm, employs advisers who are solely remunerated by way of broking commission. If advisers do not advise a client to buy or sell a security, they are not remunerated.

ASIC commentary

B1.1.1 In this case, the interests of Hippo's advisers in earning remuneration for their services might be entirely at odds with the interests of its clients in receiving appropriate investment advice. This conflict is serious and as a matter of best practice should be avoided.

B1.1.2 While we think the conflict should be avoided, the conflict could potentially be managed in one of two ways:

- First, Hippo could implement additional incentives structures that reward advisers for providing quality, compliant and consumer-focused advice. For example, it could create a remuneration pool where remuneration is paid on the basis of criteria such as whether any complaints are made by clients against the adviser, whether the adviser regularly provides clients with timely and appropriate statements of advice and whether the adviser attends relevant education sessions.
- Second, Hippo could make full and frank disclosure to its clients about how the adviser is remunerated and why this method of remuneration can lead to a conflict of interest. The client needs this information so that he or she can decide how much weight to place on the adviser's advice.

B2 Product pipeline

B2.1 Sue has worked as a private client adviser at Brookfield Stockbroking for about 15 years. In the last 5 years, Brookfield has started pressuring advisers such as Sue to encourage clients to apply for new issues that Brookfield is underwriting or to apply for new managed fund products on which Brookfield gets commissions. This often involves Sue having to suggest that her clients sell securities or other products that she would otherwise recommend they retain so they can invest in these new issues or products.

ASIC commentary

B2.1.1 The conflict here is that Brookfield is putting its own interests above those of its clients. Unless the adviser reasonably believes that it is in a client's best interests to sell an existing holding so that the client can take up new securities, the only way of adequately managing this conflict is by avoiding it.

B2.1.2 Advisers should avoid situations where the interests of the licensee in earning brokerage, fees and commission are preferred to the interests of clients.

B3 Buyer of last resort

B3.1 Wedgetail Allfinanz Limited is a major provider of banking, insurance, superannuation and fund management services. It has a large number of managed fund products and a large network of advisers who recommend its products to their clients. In its arrangements with many of these advisers, Wedgetail agrees to 'buy' their businesses on a 'last resort' basis. The purchase price is a multiple of the annual commission income stream, with a higher multiple payable for sales of Wedgetail's products.

ASIC commentary

B3.1.1 The conflict here is that Wedgetail's advisers have incentives to recommend Wedgetail's products (which might or might not be appropriate to their clients' needs) to maximise the value of their businesses. The easiest and most reliable way to manage this conflict of interest is by not using this methodology to set a purchase price.

B3.1.2 For disclosure to be an effective part of managing this conflict of interest, the client must be able to make an informed assessment about how the conflict of interest might affect the adviser's product recommendations. In particular, the client should understand that the arrangement might result in a preference for recommending Wedgetail's products.

B3.1.3 Wedgetail's internal controls should also ensure that the integrity and quality of the advice is maintained at a high standard. Wedgetail needs to be confident that all advice provided is appropriate and in the best interests of clients.

B4 Relationship between product issuer and adviser

B4.1 Wealthinvest, a product issuer, owns a financial planner group called Lark. Lark's advisers only advise on and sell Wealthinvest's products. Lark does not use any of Wealthinvest's branding or logos, but if you look closely enough on Lark's website there is a small paragraph which says that Lark is a wholly-owned subsidiary of Wealthinvest. Lark's financial services guide and statement of advice also say, in the fine print, that Wealthinvest owns Lark.

ASIC commentary

B4.1.1 The conflict here arises because clients might not realise that Lark's services are restricted and that the advice that its advisers give is biased. Lark needs to be confident that, given the limited product range available to its advisers, it is still possible to provide advice that is appropriate and in the best interests of clients.

B4.1.2 For disclosure to be an effective part of managing this conflict of interest, the client must understand the relationship between Lark and Wealthinvest and how that relationship affects Lark's advisers' product recommendations. The client should clearly understand that the adviser cannot recommend other issuer's products and that the advice will be limited and as such the client might suffer detriment.

B5 Advice on platforms

B5.1 Jane, an adviser at Finco Super Pty Ltd, recommends to clients to switch to a wrap account provided by Leopard Financial Limited. Finco is a wholly-owned subsidiary of Leopard. Leopard's wrap account offers similar functions to the client's current platform, however it makes administration of the client's portfolio easier for Jane. Jane also gets up front and trailing commissions when clients switch to Leopard's platform.

ASIC commentary

B5.1.1 In this case study, Jane is receiving a financial benefit in moving clients to the new platform in circumstances where there is no discernible benefit to the clients in making the move. Generally, moving clients to the adviser's platform merely because it makes it easier for the adviser to service the clients is not a sufficient reason to justify the switch. The new platform should be objectively better for the client (e.g. in the service it provides or in lower fees and costs) to justify a switch. If there is no discernible benefit, the commission should be rebated to the client.

B5.1.2 For disclosure to be an effective part of managing this conflict of interest, the client should understand the relationship between Leopard and Finco, the amount of commissions that Jane will get as a result of the switch, the differences between the two platforms, including the advantages and disadvantages of the switch and the reasons why the adviser considers the switch suitable.

B5.1.3 Finco's internal controls should also ensure that despite the biasing influence of the ownership structure, all advice provided is appropriate and in the best interests of clients. Effective supervising and monitoring of the advice provided is an important part of this.

B6 Dial-up/dial-down fees

B6.1 An adviser regularly recommends a platform product that allows the adviser to select the entry and ongoing fees that the product issuer pays to the adviser from the client's account. This results in clients paying higher fees than they would if other comparable products that do not have this 'dial-up' option had been recommended.

ASIC commentary

B6.1.1 The adviser must reasonably believe the recommended product is suitable for the client. If both products are suitable, clear disclosure of the different features and fees for both products can help manage the conflict.

B6.1.2 The licensee's internal controls should also ensure that despite the incentive to recommend a product giving the adviser discretion over the fees charged, all advice provided is appropriate and in the best interests of clients. One way to help achieve this is by review and monitoring of advice by supervisors.

B7 Shelf fees

B7.1 Yellowhammer, a popular issuer of managed fund products, pays a fee to Buffalo, a large financial planning group to have Yellowhammer's products on Buffalo's approved product list. This fee is in addition to the normal commissions that Yellowhammer pays for the sale of its products.

ASIC commentary

B7.1.1 The conflict here is the potential that Buffalo has Yellowhammer's product on its approved product list because of the shelf fee and not because the product is appropriate for Buffalo's clients. The only way to manage this conflict of interest is to avoid it. The incentive for Buffalo to put Yellowhammer's products on the approved product list because of the shelf fee might mean that comparable or better products, that do not pay a shelf fee, are not considered.

B8 Payments for switching funds

B8.1 Hyena Financial Management Limited, a product issuer, offers an adviser a \$175,000 fee to switch all of her clients from a competitor fund to Hyena's Cheetah fund. The fee represents a substantial sum for the adviser and she finds it impossible to resist the offer, even though the Cheetah fund has had higher fees and lower returns for the last 3, 5 and 10 years, respectively, than the competitor fund. The adviser nonetheless recommends the switch and rebates part of the fee to the clients.

ASIC commentary

B8.1.1 There is a clear conflict of interest in this case between the adviser and her clients as the only basis for the switch appears to be the fee payable to the adviser. The only way to manage this conflict of interest is to avoid it. Rebating part of the fee to the client does not address the conflict of interest. Further, the adviser should only make recommendations that are appropriate for the client.

B9 Insurance brokers and cluster groups

B9.1 Badger is a member of a ‘cluster’ group of insurance brokers headed by Cluster Co. Cluster Co provides benefits to members of the cluster such as membership services and distributions. Cluster Co is partly funded by override commissions (i.e. extra commissions paid on top of the normal rate of commissions) by participating insurers when cluster members place specified lines and levels of business with those insurers.

ASIC commentary

B9.1.1 In this situation, Badger is potentially putting its interests above its clients’ interests. For disclosure to be an effective part in managing this conflict of interest, the client must be able to make an informed assessment about how the override commissions might affect Badger’s recommendations. In particular, the client should understand that the arrangement might result in a preference for the products of participating insurers.

B9.1.2 Badger’s internal controls should also ensure that the integrity and quality of its advice is maintained at a high standard. Badger needs to be reasonably confident that, despite the biasing influence of the cluster arrangement, all advice given is appropriate and in the best interests of its clients.

B10 Bulky statements of advice

B10.1 Finplanco asks for advice from its lawyers about its statement of advice (SOA) template. A priority for Finplanco, in getting legal advice, is to limit its liability as far as possible. Finplanco’s lawyers advise that Finplanco should put as much protective wording in its SOAs as possible to limit its legal exposure. This results in Finplanco’s average SOA being about 65 pages long.

ASIC commentary

B10.1.1 In this situation, Finplanco is putting its own interests above those of its clients. Clients are entitled to expected advice that is clear,

concise and effective. Finplanco should go back to its lawyers and ask them to draft user friendly SOAs that are not full of dense legalese.³

B11 Super funds that don't pay commissions

B11.1 Jessica is an experienced financial planner working for AdviceNetwork, a licensee that operates a large network of advisers who do not charge fees for their services, but rely on remuneration from commissions. She believes that many of her clients would be better off in super funds that had low fees, good managers and above average historical returns.

B11.2 However, because a lot of the super funds that fall into this category do not pay commissions, she cannot convince AdviceNetwork to include them on its approved product list. As a result, she never recommends that clients invest their super savings in any of these funds, but instead recommends funds that pay commissions.

ASIC commentary

B11.2.1 There is a conflict here between the remuneration model adopted by AdviceNetwork and the provision of advice that is appropriate to its clients in all cases. The remuneration model forces AdviceNetwork to prefer commission-paying products over products that do not pay commissions. Ideally, this conflict should be avoided and is often only partly addressed by disclosure and control mechanisms.

³ See, for example, ASIC Media Release 05-258 *ASIC example Statement of Advice: less is more* and the accompanying guide.

Section C: Product issuers/fund managers

C1 Directed brokerage

C1.1 Pickerel, a fund manager, gives Moose, a stockbroker, a large portion of its routine stockbroking work (i.e. buying and selling securities for its funds) because Moose's advisers, in turn, sell large amounts of Pickerel's products in return for commissions from Pickerel at prevailing market rates. However, Moose charges higher commission than other brokers for its execution services. The execution services provided by Moose are generic and do not involve any kind of 'value added' service.

ASIC commentary

C1.1.1 In this situation, Pickerel is favouring its own interests ahead of its clients by paying Moose above market commission rates. We think that this conflict of interest can only be adequately managed by avoiding it. The higher commissions charged by Moose will be reflected in increased management costs for Pickerel's products and a correspondingly reduced return for investors (all other things being equal).

C1.1.2 Pickerel must act in the best interests of its (fund member) clients. This applies to its selection of service providers, including its stockbroker.

C2 Asset management advice

C2.1 Antelope charges a fee for the advice it gives to super funds generally about new products. Antelope frequently advises funds to select Jaguar to manage fund assets. Antelope has a relationship with Jaguar, providing investment product reviews for a fee. Antelope tells Jaguar when it has recommended it to manage a fund in the hope of getting more product review work.

ASIC commentary

C2.1.1 The potential conflict in this case is that Antelope might be putting its own interests above those of its clients by selecting Jaguar if it is motivated more by getting product review work than getting the best manager for its clients. Generally, this conflict of interest can be managed by internal controls and disclosure. Any recommendation to use Jaguar should disclose Antelope's relationship with Jaguar and fees that it gets from Jaguar. The recommendation should also disclose that Jaguar will be told of the recommendation to use it.

C2.1.2 Antelope's internal controls should also ensure that the advice is not biased and is in the best interests of the funds.

C3 Related entities

C3.1 Peacock is a fund manager and a wholly-owned subsidiary of Honeybee. Honeybee provides asset management services to Peacock (and other entities). Honeybee also markets and distributes interests in the fund.

C3.2 The performance of the fund that Peacock is responsible entity for is below market expectations largely due to poor asset management by Honeybee. The ownership and governance structure of the two companies, however, prevents Peacock from terminating the relationship with Honeybee and selecting another asset manager.

ASIC commentary

C3.2.1 Regardless of the structure of its corporate group, a fund manager must act in the best interests of its members (investors) and Peacock is clearly not doing so in this scenario. Some corporate structures involve inherent conflicts of interest. This includes structures where a fund manager is obliged or expected to use other members of the corporate group as service providers. Such a corporate structure does not diminish the fund manager's obligation to act in the best interests of members at all times.

C3.2.2 For example, the fund manager must still ensure that the service providers it selects are appropriate and that it is reasonably able to supervise them. The fund manager should also ensure that the fees paid and other benefits (e.g. interests in the fund at a discount) given to service providers are competitive and reflect value-for-money for fund members.

C3.2.3 A fund manager should assess all asset management recommendations and consider which recommendations it will act on, based on whether they are in the best interests of fund members.

C4 Embedded termination benefit for responsible entity

C4.1 Cougar is the responsible entity of the Bigfee Growth Fund, a registered managed investment scheme. Under the terms of Bigfee's constitution, if Cougar is removed as the responsible entity, it will be paid a one-off termination fee equal to 3.5% of funds under management at the time of removal.

C4.2 The termination fee is in addition to other fees payable to Cougar including establishment and ongoing management and performance fees, broadly in line with market rates. All fees are disclosed in Bigfee's product disclosure statement. Cougar is a wholly-owned subsidiary of Bigfee Holdings, a financial services conglomerate and the promoter of the Bigfee Growth Fund.

ASIC commentary

C4.2.1 The conflict here is that the Bigfee Group has set up a scheme under which its interests will prevail over the interests of scheme members in two ways:

- the entrenchment of its wholly-owned subsidiary Cougar (thereby locking in a range of ongoing fees); and
- in imposing a pecuniary penalty, unrelated to the performance of management services, in the event that scheme members want to terminate Cougar's services.

Section D: Observations and conclusions

This section sets out some observations and conclusions from the case studies and our experience in administering the conflicts management obligation:

- 1 Adequate conflicts management arrangements are an important preventative tool. Good conflicts management arrangements are part of good compliance and risk management measures.
- 2 Conflicts of interest impact the quality of financial services provided. In our experience, poorly managed conflicts of interest tend to result in poor service to consumers and a market that is not fair and transparent.
- 3 Disclosure alone will rarely be sufficient to manage a conflict of interest. Accompanying internal controls are generally always needed to ensure that the quality of the underlying service is not compromised.
- 4 Some conflicts of interest are so serious that they cannot be managed by internal controls and disclosure, and must be avoided. Whether a conflict should be avoided will be determined by both the nature of the conflict and the nature of the firm.
- 5 Serious conflicts need to be avoided, not because they will *always* lead to actual harm to clients or to the market, but because allowing such conflicts to continue creates a high risk of that harm occurring. Firms need to take a risk management approach and ask themselves what level of risk their conflicts of interest expose them to. With some conflicts, the risk of an adverse consumer or market integrity outcome is too high—and these conflicts need to be avoided. Prudent firms will avoid such ‘high-risk’ conflicts.
- 6 Conflicts management arrangements will not be adequate unless they are actually implemented and maintained. They should be periodically tested to ensure that they are working and changes should be made if they are not. Where necessary, licensees must report failures to manage conflicts to ASIC under the breach notification requirements.
- 7 Compliance staff must have sufficient expertise and training to understand their business. Compliance staff should also have support from senior management. This will help them to be seen as credible by management, operations and front office staff which will in turn help them to implement adequate conflicts management arrangements.
- 8 Where disclosure is used as part of a licensee’s conflicts management arrangements it must be meaningful, that is, it must be clear, concrete and specific. The person receiving the financial service must be able to understand the nature and effect of the actual conflict of interest and its potential impact on the service being provided.
- 9 An important internal control is monitoring and supervision of staff and representatives. This is more difficult where staff and representatives are widely geographically distributed. Regardless, licensees need to ensure that their monitoring and supervision arrangements are effective.

Related publications

Policy statements

Policy Statement 164 *Licensing: Organisation capacities* [PS 164]

Policy Statement 175 *Licensing: Financial product advisers—Conduct and disclosure* [PS 175]

Policy Statement 181 *Licensing: Managing conflicts of interest* [PS 181]

Discussion papers and reports

Shadow shopping survey on superannuation advice, ASIC surveillance report (April 2006)

Disclosure of soft dollar benefits, ASIC report (June 2004)

Preferential remuneration project, ASIC report (April 2004)

Research analyst independence, ASIC surveillance report (22 August 2003)

Other relevant documents

Managing conflicts of interest—An ASIC guide for research report providers (November 2004)

Licensing: The scope of the licensing regime: Financial product advice and dealing—An ASIC guide (November 2001, updated November 2002)

Merrill Lynch Stock Rating System Found Biased by Undisclosed Conflicts of Interests, Press Release, Office of New York State Attorney General Eliot Spitzer (8 April 2002)

Investment Research: Conflicts and Other Issues, Financial Services Authority, (Discussion Essay 15 July 2002)

Fiduciary Duty: Return to First Principles, Speech by SEC Staff (Lori A Richards), (8th Annual Investment Adviser Compliance Summit, February 27th 2006)

Contemporary challenges in takeovers: Avoiding conflicts, preserving confidences and taming the commercial imperative, Andrew Tuch (2006)
24 *Company and Securities Law Journal* 107

Statement for addressing sell-side securities analyst conflicts of interest, IOSCO Technical Committee (25 September 2003)

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