



Barton Hoyle  
Senior Lawyer  
Strategy and Policy  
Australian Securities and Investments Commission

**By email:** [barton.hoyle@asic.gov.au](mailto:barton.hoyle@asic.gov.au)

10<sup>th</sup> April 2014

**RE: Report 384 – Regulating Complex Products**

Dear Barton,

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on *Report 384 – Regulating Complex Products*. We congratulate ASIC for producing a well structured and timely report. The Report addresses many important and emergent issues in financial regulation, such as the role of behavioural economics in regulation and the market, and the shift to a 'product life-cycle' regulatory approach. We are interested to see how this Report will influence ASIC's regulatory strategy and law reform efforts in future.

One of our concerns has been the risk of complex products being missold through general advice models. The FPA agrees with ASIC's assessment that the means by which complex products are distributed does affect the likelihood that the investor will understand the product and its risks. We also agree that the ability to make an informed investment decision also influences the likelihood of a positive outcome for investors. Despite this risk, there is no formal legal requirement for product issuers to consider the interests of the end users of their products, or to consider the appropriate distribution channels for their products.

However, the unsuitability of general advice-based distribution models for complex financial products also highlights separate problems relating to disclosure. The Report recognises several instances where disclosure obligations may be insufficient to prevent misselling. We agree that there are clear and present risks posed by financial products by way of the existing minimum legal requirements for disclosure. This is particularly true where the retail client or adviser has few means to evaluate the features or risks of the product. Beyond their general licensing obligations, product issuers and independent research houses who publish information about complex products also have no formal legal obligations the basic 'misleading and deceptive conduct' provisions of the ASIC Act.

The FPA is generally in favour of market-based solutions to these problems, and if complex products do offer value to retail investors, then appropriate and adapted disclosure standards and distribution avenues will assist retail investors to acquire the right products for them.

Many of these risks can already be addressed by the market. Disclosure risks can be mitigated if research houses and product issuers provide reports which contemplate the usefulness and suitability of products to retail clients, explain the operation of the product's complex features, and highlight the factors which affect risk, liquidity, and reward. Distribution risks can also be mitigated by suitability



regulation, which requires an assessment of the client's financial literacy or limits access to these products except through a professional financial planner.

However, where the market is inefficient due to informational asymmetries as between product issuers and retail investors, or even product issuers and other intermediaries such as financial planners, regulatory intervention will be required. For retail clients, the informational asymmetry concerns the nature of the product itself, but also extends to the regulatory framework and legal obligations of the product distribution channel. Therefore, appropriate regulatory interventions concerning retail investors and complex financial products should help consumers to make better informed financial decisions about the product and the financial intermediaries with whom they interact.

There are also opportunities for various firms and professional associations to collaborate with ASIC on standards for disclosure and advice relating to complex products. For example the FPA would be interested in exploring further with ASIC some of the opportunities presented in the report such as the product distribution stage and point-of-sale including both with financial advice and under a non-advised sales approach.

Thank you again for the opportunity to offer feedback to ASIC on the Report. We welcome further opportunities to contribute to the development of law and policy in this area and engage with other stakeholders to produce practical outcomes from the Report.

If you have any questions, please do not hesitate to contact me on 02 9220 4500

Yours sincerely,

**Dante De Gori**  
General Manager Policy and Conduct  
Financial Planning Association of Australia<sup>1</sup>

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<sup>1</sup> The Financial Planning Association (FPA) represents more than 10,000 members and affiliates of whom 7,500 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- We banned commissions and conflicted remuneration on investments and superannuation for our members in 2009 – years ahead of FoFA.
- We have an independent conduct review panel, Chaired by Professor Dimity Kingsford Smith, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1<sup>st</sup> July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.