AFA Monitoring Report

October – December 2012

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Introduction

FMA's monitoring programme enables us to observe and record how Authorised Financial Advisers (AFAs) are complying with their legal obligations, and provides us with a unique opportunity to give feedback to AFAs about our observations. It also gives AFAs the information they need to make any necessary improvements to their processes.

Reporting of outcomes means that gathered information can be used by all stakeholders to identify issues and share learning for the benefit of the wider advisory community.

During the October to December 2012 period, FMA conducted a significant number of monitoring activities, including: six verification visits; nine full visits; and 20 stand-alone reviews of Adviser Business Statements (ABS).

These visits related to AFAs based in both the Auckland and Wellington region, while the ABS reviews were part of a thematic review involving a selection of advisers from a range of locations.

Discretionary Investment Management Services (DIMS)

During this quarter, FMA commenced a thematic monitoring project focused on AFAs licensed to provide Discretionary Investment Management Services. There are around 1,300 AFAs licensed to provide these services. We are using a range of monitoring approaches, from reviewing AFAs' Adviser Business Statements (ABS) to conducting telephone interviews and monitoring visits.

FMA's aim is to get confirmation from those AFAs providing Discretionary Investment Management Services, and to understand how these services are being provided and if there are any potential compliance issues.

A report on our findings and guidance on DIMS will be published in April.

Conduct Obligations

As signalled last year, the focus and intention of FMA's monitoring work continues as we approach the end of our second year of operation under the Financial Advisers Act 2008.

Our overarching focus is on raising standards of good conduct, ethics and integrity amongst market participants. Where activities have been subject to regulation for some time, we expect that participants will operate above the bare minimum required and that senior management will sponsor a culture of integrity and good conduct.

As part of FMA's on-going monitoring of AFAs, we review AFA compliance with the conduct obligations set out in the Financial Advisers Act 2008.

Adviser obligations

Of particular relevance are sections 33 and 34 of the Financial Advisers Act 2008:

- All financial advisers must exercise care, diligence and skill.
- All financial advisers must not engage in misleading or deceptive conduct.

Advisers must have regard for these obligations when providing any financial adviser services. The obligation to exercise care, diligence and skill, and not act in a way that is misleading, deceptive or confusing, applies to all AFAs, as well as to anyone else who provides financial adviser services.

In general, when providing advice, advisers must:

- assess product suitability for the client's needs
- explain the key features and any limitations of the product to the client
- clearly articulate any limitations on the service being provided.

Examples of carrying out adviser obligations

Examples of carrying out adviser obligations, were published on FMA's website in February 2012 and can be found under https://www.fma.govt.nz/compliance/role/afas/your-on-going-obligations/. These examples illustrate FMA's view on how adviser obligations apply to advice on insurance, including payment protection insurance and product replacement advice. For example: replacement of insurance policies or debt consolidation.

We encourage advisers to familiarise themselves with these illustrations in order to gain a better understanding of how to meet their obligations in carrying out their services with 'care, diligence and skill'.

In FMA's recent monitoring, we considered these obligations in the case of insurance product replacement where an AFA had highlighted only that a new product was cheaper, without looking at other features of the product. FMA's care, diligence and skill examples demonstrate how highlighting only the benefits could be misleading.

Record keeping

AFAs also have specific conduct and record-keeping requirements under the Code of Professional Conduct https://www.fma.govt.nz/compliance/role/afas/your-on-going-obligations/code-of-professional-conduct/
Records should be kept demonstrating how advisers have fulfilled their care, diligence and skill requirements when providing financial adviser services, as well as how they have managed and disclosed any conflicts of interest arising from commissions or their remuneration.

Conclusion

This report shares the results of FMA's monitoring and comments on the implications for AFAs. FMA encourages all AFAs to read this report and consider whether any improvements are needed.

Our next report will be published in the second quarter of 2013, after completion of the next AFA monitoring round.


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